

**MANNING CURTIS BRADSHAW
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Court-Appointed Receiver of U.S. Ventures, LC,
Winsome Investment Trust, and the assets of Robert
J. Andres and Robert L. Holloway*

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

R. WAYNE KLEIN, the Court-Appointed
Receiver of U.S. Ventures LC, Winsome
Investment Trust, and the assets of Robert J.
Andres and Robert L. Holloway,

Plaintiff,

vs.

WINGS OVER THE WORLD MINISTRIES
and TERRY L. HARPER,

Defendants.

**MOTION TO COMPEL AND
MEMORANDUM IN SUPPORT**

Case No. 2:12-cv-00023-DN

District Judge David Nuffer

Pursuant to Fed. R. Civ. P. 37, Plaintiff R. Wayne Klein, Court-Appointed Receiver of U.S. Ventures LC, Winsome Investment Trust, and the assets of Robert J. Andres and Robert L. Holloway (“Plaintiff” or the “Receiver”) hereby submits this Motion to Compel and Memorandum in Support.

STATEMENT OF RELIEF SOUGHT AND GROUNDS THEREFOR

Defendant Terry Harper has failed to respond to the Receiver's August 23, 2013 First Set of Discovery Requests. The Receiver has attempted to confer with Mr. Harper regarding this failure; however, Mr. Harper has ignored those attempts. Accordingly, the Receiver requests that the Court order Mr. Harper to provide a complete response to all interrogatories and requests for production within seven days of the Court's order granting this Motion and that the Court confirm that the Receiver's requests for admission are admitted pursuant to Fed. R. Civ. P. 36(a)(3). The Receiver further requests that the Court order Mr. Harper to pay the Receiver's fees and expenses incurred in bringing this Motion pursuant to Fed. R. Civ. P. 37(a)(5)(A).

Additionally, because Mr. Harper's failure to respond will result in the Receiver obtaining any responsive documents shortly before the current deadline for fact discovery, the Receiver requests that he be permitted to conduct fact discovery for an additional 60 days after Mr. Harper provides any information required by the Court.

STATEMENT OF FACTS

1. On August 23, 2013, the Receiver served on Defendant Terry Harper the Receiver's First Set of Discovery Requests. *See* Plaintiff's First Set of Discovery Requests to Defendant Terry L. Harper, attached as Exhibit A.

2. On August 26, 2013, Mr. Harper filed a document styled as "Respondent Answer to Requests for Admissions from R. Wayne Klein/Receiver and Request for Certification of the Record." *See* doc. 49. However, that filing did not respond to the Receiver's Requests for Admission or other discovery requests in any way. *See id.* Rather, Mr. Harper's filing raised various lengthy arguments regarding issues that the Court has already decided, such as standing and jurisdiction, in a manner similar to his other filings which the Court has now stricken. *See,*

e.g., Report and Recommendation (doc. 60) (recommending that the Receiver's Motion to Strike Mr. Harper's frivolous filings be granted); Memorandum Decision and Order (doc. 67) (adopting Report and Recommendation).

3. On October 2, 2013, the Receiver's counsel sent Mr. Harper a letter informing him that his response was past due and requesting that Mr. Harper respond. *See* Oct. 2, 2013 letter from Christopher Glauser, attached as Exhibit B.

4. Mr. Harper did not respond to that letter.

5. On October 23, 2013, the Receiver's counsel sent Mr. Harper an e-mail requesting that Mr. Harper provide a response and contact the Receiver's counsel. The Receiver's counsel also called Mr. Harper on the telephone at a number believed to be Mr. Harper's and left a message regarding the Discovery Request. *See* October 23, 2013 e-mail, attached as Exhibit C; Certification of Good Faith, attached as Exhibit D.

6. Mr. Harper did not respond.

7. The current deadline to complete fact discovery is November 26, 2013. *See* Scheduling Order (doc. 35) at ¶ 5. However, if this Motion is granted, the Receiver will likely obtain Mr. Harper's responsive information shortly before, or even after, that date, leaving him insufficient time to conduct follow up discovery related to Mr. Harper's production and to conduct depositions with the benefit of the produced information.

ARGUMENT

I. MR. HARPER SHOULD BE ORDERED TO RESPOND TO THE RECEIVER'S DISCOVERY REQUESTS.

Fed. R. Civ. P. 37(a)(3)(B) provides that a party may move to compel a response if the opposing party fails to respond to interrogatories under Fed. R. Civ. P. 33 or produce documents under Fed. R. Civ. P. 34. Both Rules 33 and 34 require that a party served with discovery

requests must respond within 30 days of service. *See* Fed. R. Civ. P. 33(b)(2); Fed. R. Civ. P. 34(b)(2). Rule 36 provides that requests for admission are admitted if no response is provided within 30 days. *See* Fed. R. Civ. P. 36(a)(3). Mr. Harper has failed to comply with these deadlines.

Here, the facts are straightforward and undisputed. The Receiver served Mr. Harper with interrogatories, requests for production, and requests for admission on August 23, 2013.

Statement of Facts ("SOF") ¶ 1. Mr. Harper did not respond to those discovery requests within 30 days. SOF ¶ 2. It has now been more than 60 days since the discovery requests were served and no response has been provided. The only document Mr. Harper provided is his filing styled as an "Answer to Request for Admissions." *Id.* However, that filing does not contain any response to the Receiver's discovery requests. *Id.* Despite the Receiver's follow-up attempts to confer with Mr. Harper and obtain his response, Mr. Harper has still not responded. SOF ¶¶ 3-4.

Mr. Harper has failed to comply with the Receiver's Discovery Requests as required by the Rules. The Receiver requests that the Court compel Mr. Harper to provide a complete response to the Receiver's interrogatories and requests for production and that the Court confirm that the Receiver's requests for admission are admitted. Because the current deadline for fact discovery is less than a month away, it is also necessary that Mr. Harper provide his response promptly. Therefore, the Receiver requests that the Court require Mr. Harper's complete response within seven days of the Court's ruling on this Motion.

II. THE RECEIVER SHOULD BE ALLOWED ADDITIONAL TIME TO CONDUCT DISCOVERY.

The Court's current Scheduling Order sets the date for completion of fact discovery for November 26, 2013. *See* doc. 35. However, after time for briefing this Motion and for the Court to make its decision, Mr. Harper will likely not produce responsive information until shortly

before, or perhaps after, the fact discovery deadline. This delay is the result of Mr. Harper's failure to comply with the Rules and the Receiver should not be prejudiced due to Mr. Harper's dilatory conduct.

If the current schedule is not extended for the Receiver, he will be unable to conduct follow up discovery related to Mr. Harper's production, which he would have been able to do had Mr. Harper timely responded. The Receiver will also have little to no time to review Mr. Harper's production for use at relevant depositions, including Mr. Harper's, and will be unable to ask Mr. Harper questions about documents and information he provides. Accordingly, to avoid such an unjust result, the Receiver requests that he be given 60 days to conduct additional discovery from the time Mr. Harper produces any information and documents ordered by the Court in its disposition of this Motion.

III. MR. HARPER SHOULD BE ORDERED TO PAY THE RECEIVER'S FEES AND COSTS.

Rule 37 provides that:

If the motion [to compel discovery] is granted—or if the disclosure or requested discovery is provided after the motion was filed—the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees.

Fed. R. Civ. P. 37(a)(5)(A). The Court must award these fees unless the Motion is brought before the moving party attempted to resolve the matter in good faith, the non-moving party's failure to respond is "substantially justified," or other circumstances make the imposition of fees unjust. *Id.*

Here, there is no reason to excuse Mr. Harper from his obligation to pay the Receiver's fees and costs. The Receiver made a good faith effort to confer with Mr. Harper before bringing

this Motion, but Mr. Harper did not respond. Mr. Harper has not provided any response to the Receiver's inquiries, let alone a response demonstrating that his failure to respond is "substantially justified," and there are no other circumstances making the required award of fees and costs unjust. Accordingly, the Court should also order Mr. Harper to pay the Receiver's reasonable fees and costs incurred in bringing this Motion.

CONCLUSION

For the foregoing reasons, the Receiver requests that the Court order Mr. Harper to provide a complete response to all interrogatories and requests for production within seven days of the Court's order granting this Motion and that the Court confirm that the Receiver's requests for admission are admitted. The Receiver further requests that he be provided an additional 60 days to conduct fact discovery after Mr. Harper provides the information ordered by the Court and that the Court order Mr. Harper to pay the Receiver's fees and expenses incurred in bringing this Motion pursuant to Fed. R. Civ. P. 37(a)(5)(A).

DATED this 29th day of October, 2013.

**MANNING CURTIS BRADSHAW
& BEDNAR LLC**

/s/ Christopher M. Glauser
David C. Castleberry
Christopher M. Glauser
*Attorneys for Plaintiff R. Wayne Klein, the
Court-Appointed Receiver of U.S. Ventures, LC,
Winsome Investment Trust, and the assets
of Robert J. Andres and Robert L. Holloway*

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **MOTION TO COMPEL AND MEMORANDUM IN SUPPORT** to be served in the method indicated below to the Defendant in this action this 29th day of October, 2013.

<input type="checkbox"/> HAND DELIVERY	Terry L. Harper
<input checked="" type="checkbox"/> U.S. MAIL	1450 Harbor Island Dr.
<input type="checkbox"/> OVERNIGHT MAIL	San Diego, CA 92101
<input type="checkbox"/> FAX TRANSMISSION	
<input type="checkbox"/> E-MAIL TRANSMISSION	
<input type="checkbox"/> USDC ECF NOTICE	

/s/ Christopher M. Glauser