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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10 SOUTH CENTRAL DISTRICT
11 LIMITED CIVIL CASE

12 MANLEY’S BOILER, INC., a California Corporation,) CASE NO. 08C05379

13 Plaintiffs,)

14 vs.)

15 EDMUND KIM INTERNATIONAL, INC.,)
16 a California Corporation; PACIFIC)
17 CONTINENTAL TEXTILE, INC., a)
18 California Corporation; and DOES 1)
19 through 10,)

20 Defendants.)

**PLAINTIFF’S NOTICE OF MOTION AND
MOTION TO COMPEL ANSWERS TO
INTERROGATORIES AND REQUEST
FOR ADMISSIONS AND FOR
SANCTIONS.**

DATE:
TIME: 9:00 A.M.
DEPT: N

Complaint Filed: December 3, 2008
Case Management Date: May 12, 2009

22
23 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

24
25 **PLEASE TAKE NOTICE** that on _____ or as soon thereafter as counsel can
26 be heard, Plaintiff Manley’s Boiler, Inc. [hereinafter “Manley’s”] will and hereby do move this
27 Court, at the Los Angeles Superior Court, located at 200 West Compton Boulevard, Compton,
28 California 90220, in Department N thereof, for an Order Compelling Responses from Defendants

1 Edmund Kim International, Inc. [hereinafter “Kim”], Pacific Continental Textile, Inc.
2 [hereinafter “PCT”], and Does 1 through 10, inclusive, in response to Plaintiffs’ First Request for
3 Admissions and Interrogatories without objection.

4
5 **PLEASE TAKE FURTHER NOTICE** that Plaintiffs will and hereby do move the
6 Court for monetary sanctions to be awarded in favor of Plaintiff and against Defendants Edmund
7 Kim International, Inc., Pacific Continental Textile, Inc., and DOES 1 through 10, inclusive,
8 (hereinafter collectively referred to as “Defendants”) in the amount of \$2,500 under Code of
9 Civil Procedure §§ 2023.030, 2030.290(c) and 2033.280(b) and (c) for the reasonable attorneys’
10 fees incurred by the moving party in connection with this proceeding.

11
12 Plaintiff’s Motion to Compel Responses for Failure to Respond to Form Interrogatories
13 and Requests For Admission, and Request For Monetary Sanctions in the amount of \$2,500.00
14 against Defendants is based on the grounds that Defendants were properly served with Form
15 Interrogatories and Requests For Admission relevant to the subject matter of this litigation, and
16 have failed to provide answers in any manner to such discovery within the time period prescribed
17 by law.

18
19 Defendants’ failure to answer is without substantial, or any justification. Further,
20 although Defendant has been alerted to the issue of overdue responses and warned that this
21 Motion would be brought, Defendant never produced the requested discovery.

22
23 This motion is made pursuant to Code of Civil Procedure §§ 2023.030, 2030.290 and
24 2033.280. This motion is based on this notice of motion and motion, the supporting
25 memorandum of points and authorities, the declarations of Katie Richey filed in support hereof,
26 and the exhibits thereto, on the records and file herein, and on such evidence as may be presented
27 at the hearing of the motion.

28 //

1 DATED: April 10, 2009

LAW OFFICE OF KATIE RICHEY, PC

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By: _____

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Katie Richey, Esq.

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Attorney for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **INTRODUCTION**

4 By this motion, Plaintiff seeks an order compelling responses to Plaintiff’s First Request
5 for Admissions propounded on February 23, 3009 and First Set of Interrogatories propounded on
6 January 26, 2009 directed to Defendants Kim, PCT and Does 1 through 10 inclusive. Plaintiff
7 has made several requests via telephone and email and has been assured by Defendants that the
8 discovery requests would be fulfilled. Despite Plaintiff’s requests and Defendants’ assurance,
9 Defendants have failed to provide responses to Plaintiff’s First Request for Admissions and First
10 Set of Interrogatories.

11
12 Pursuant to Code of Civil Procedure §§ 2033.280(b) and 2023.030 the Court should order
13 the truth of the matters specified in Plaintiffs’ First Request For Admissions and the genuineness
14 of the documents and that they be admitted and sanctions imposed on Defendants. Similarly,
15 pursuant to Code of Civil Procedure §§ 2030.290(a) and (c) and 2023.030 the Court should order
16 Defendants to respond to the First Set of Interrogatories without objection and sanctions imposed
17 against Defendants.

18
19 **STATEMENT OF FACTS.**

20 Plaintiff Manley’s Boiler, Inc [hereinafter “Manley’s”], a California corporation moves to
21 compel responses to Plaintiff’s Request For Admissions propounded on February 23, 20009 and
22 Form Interrogatories, Set One propounded on January 26, 2009 to Defendants. Declaration of
23 Katie Richey at ¶¶ 6, 9 [hereinafter “Richey Decl.”]. [See Exhibit “C”]. Defendant failed to
24 respond to the First Set of Requests for Admissions by the due date of March 30, 2009. Richey
25 Decl. at ¶ 19. Defendant failed to respond to the Form Interrogatories, Set One by the due date
26 of March 2, 2009. *Id.* Defendants seem to have purposefully evaded their duty to respond to
27 discovery requests, thus wasting the time of the court and the Plaintiff.

28 On February 23, 2009, Plaintiff properly served Form Interrogatories, Set One via U.S.

1 Mail to defendants' attorney, Richard P. Keavney at Law Offices of Richard P. Keavney, 2377
2 Crenshaw Boulevard, Torrance, CA 90501-3325. Richey Decl. ¶ 9. This address was provided
3 in Defendants' Answer to Plaintiff's Complaint. Plaintiff, attempted on several occasions to
4 contact Defendants to inquire about the timeline for responses. Richey Decl. at ¶ 11. Plaintiff's
5 numerous attempts to contact Defendants included at least five phone calls on February 19, 2009,
6 February 23, 2009, February 25, 2009, March 2, 2009 and March 30, 2009 in an attempt at
7 informally resolving this discovery issue. Id. at ¶ 12. Plaintiff left voicemails throughout these
8 phone calls reiterating the need for a timely response. Richey Decl. at ¶ 15. Additionally, an
9 email was sent by Plaintiff on March 14, 2009 to inquire as to the status of Plaintiff's discovery
10 requests. Richey Decl. at ¶ 17. [See Exhibit "D"] On or about March 31, 2009 Plaintiff
11 received a message from Defendants confirming that the requested discovery would be provided
12 to Plaintiff by April 3, 2009. Richey Decl. at ¶ 16. Defendants failed to provide the request
13 discovery by April 3, 2009. Id. at ¶ 19.

14
15 Plaintiff's final message to Defendants on March 30, 2009 noted that Plaintiff wished to
16 resolve this matter informally, but would be filing a motion to compel if the issue was not
17 resolved. Richey Decl. at ¶ 13.

18
19 As of today, Plaintiff has still not received Defendants' responses to the Form
20 Interrogatories, Set One and the First Set of Request for Admissions. Richey Decl. at ¶ 19.
21 After making multiple informal attempts to seek cooperation from Defendants, Plaintiff
22 respectfully requests the Court to order: (1) Defendants to provide verified responses to the
23 request for Form Interrogatories, Set One, propounded on Defendants, without objection; (2) the
24 truth of the admissions in the First Set of Request For Admissions and admit them; (3) the
25 genuineness of the documents included in the First Set of Requests For Admissions and admit
26 them; (4) Defendants pay monetary sanctions in the amount of \$2500.00 for reasonable
27 attorney's fees and costs associated with bringing this motion.

28 //

AUTHORITY

Pursuant to California Code of Civil Procedure section 2033.280, if a party to whom requests for admissions have been directed fails to serve a timely response, the propounding party may move for an order compelling responses. (West 2006). Furthermore, pursuant to section 2033.280(b), the requesting party may move for an order that the truth of any matters specified in the requests and the genuineness of any documents be deemed admitted. (West 2006).

Pursuant to California Code of Civil Procedure section 2030.290, if a party to whom interrogatories have been directed fails to serve a timely response, the propounding party may move for an order compelling responses. (West 2005). Furthermore, pursuant to section 2030.290(a), where a party fails to serve a timely response, that party waives any objection to the interrogatories, including one based upon privilege or on attorney work product. Id.

Plaintiff served the First Set of Requests for Admissions upon Defendants on Plaintiff on February 23, 3009. Richey Decl. at ¶ 9. Plaintiff served Form Interrogatories, Set One, upon Defendants on January 26, 2009. Id. at ¶ 6. To date, Defendants have failed to respond or even request an extension. Richey Decl. at ¶ 19. Thus, Plaintiff is entitled to an order from the Court compelling the responses to the discovery propounded to Defendants.

I. DEFENDANTS SHOULD BE COMPELLED TO RESPOND TO PLAINTIFF'S DICOVERY REQUESTS BECAUSE PLAINTIFF HAS DONE EVERYTHING POSSIBLE TO RESOLVE THIS INFORMALLY.

Defendant failed to provide responses to Plaintiff's Form Interrogatories, Set One and Plaintiff's first set of Requests for Admissions. Counsel for the propounding party need not even attempt to informally resolve this failure to respond. Richey Decl. at ¶ 19; Code Civ. Proc. §§ 2016.040, 2030.290 (West 2005).

Yet, Plaintiff's counsel has attempted in vain to meet and confer beyond the standards

1 prescribed in the California Code of Civil Procedure. Richey Decl. at ¶¶ 11-16. Plaintiff's
2 numerous attempts to contact Defendants included at least five phone calls on February 19, 2009,
3 February 23, 2009, February 25, 2009, March 2, 2009 and March 30, 2009 in an attempt at
4 informally resolving this discovery issue. *Id.* at ¶ 12. Plaintiff left voicemails throughout these
5 phone calls reiterating the need for a timely response. Richey Decl. at ¶ 13. Additionally, an
6 email was sent by Plaintiff on March 14, 2009 to inquire as to the status of Plaintiff's discovery
7 requests. Richey Decl. at ¶ 17 [See Exhibit "D"]. On or about March 31, 2009 Plaintiff received
8 a message from Defendants confirming that the requested discovery would be provided to
9 Plaintiff by April 3, 2009. Richey Decl. at ¶ 16. Defendants failed to provide the requested
10 discovery by April 3, 2009. *Id.* at ¶ 19.

11
12 Plaintiff's final message to Defendants on March 30, 2009 noted that Plaintiff wished to
13 resolve this matter informally, but would be filing a motion to compel if the issue was not
14 resolved. Richey Decl. at ¶ 13. Despite Plaintiff's numerous informal attempts, Defendants
15 have still failed to respond to the Form Interrogatories, Set One and the first set of Requests for
16 Admissions. Richey Decl. at ¶ 19.

17
18 Thus, Plaintiff's counsel has attempted, via email correspondence and telephone to have
19 discovery responses provided by Defendants, but Plaintiff has remained unsuccessful. Richey
20 Decl. at ¶¶ 11-17. Plaintiff's counsel has expended considerable effort in attempting to resolve
21 the issues informally. These efforts are more than required.

22
23 **II. The Court Should Impose a Monetary Sanction Against Defendants for the**
24 **Failure to Respond to Form Interrogatories, Set One and the First Set of**
25 **Requests For Admissions Because Defendant Has Acted Without Substantial**
26 **Justification.**

27 Under both Code of Civil Procedure section 2030.290 and section 2033.280 where after
28 service of interrogatories and/or requests for admissions , a party to the action fails to serve a

1 timely response, the propounding party may move for an order compelling responses. (West
2 2005, 2006). Once the motion to compel is granted, a court “shall impose a monetary sanction”
3 in favor of the party who brought the motion, unless the court finds that the party subject to the
4 sanction acted with substantial justification or that other circumstances make the imposition of
5 the sanction unjust. Id.

6
7 This Court should grant Plaintiff's request for monetary sanctions against Defendants
8 because Defendants cannot meet their burden of showing good cause for their failure to respond
9 to discovery. The service of interrogatories under Code of Civil Procedure section 2030.010
10 places the burden on the interrogated party to respond by answer, the production of writings, or
11 objection. (West 2006). This obligation to respond must be satisfied unless excused by a
12 protective order obtained upon a factual showing of good cause for why no response should be
13 given. Id.; See, Coriell v. Superior Court, 39 Cal.App.3d 487 (1971) (A party failing to respond
14 to interrogatories bears the burden of establishing good cause for the failure to respond.))

15
16 Defendants cannot make a factual showing of good cause for his failure to respond to
17 Plaintiff's Form Interrogatories, Set One or Plaintiff's First Set of Request for Admissions.
18 Defendant has obstinately refused to comply with his discovery obligations after filing an
19 answer, despite having ample time to respond to Plaintiff's discovery request. Plaintiff's counsel
20 has made several phone calls to Defendants to request responses to the interrogatories and even
21 attempted to informally resolve the issue via email to Defendants. Defendants should be
22
23 sanctioned for failing to make any response whatsoever to fulfill their duties to respond to
24 discovery.

25
26 Plaintiff has gone beyond what is required by the Code to obtain discovery responses
27 amicably, but to no avail. Plaintiff was not required to show a reasonable and good faith attempt
28 to resolve the matter informally before filing this Motion. (Weil and Brown, Cal. Practice

1 Guide: Civil Procedure Before Trial (The Rutter Group 2008) at ¶ 8:1141.) However, Plaintiff
2 has made numerous attempts to resolve this discovery dispute with Defendants, but Defendants
3 have failed to comply with their discovery obligation. To date, Defendants have still not
4 provided any responses to the Form Interrogatories, Set One or the First Set of Requests for
5 Admissions.

6
7 As required by Code of Civil Procedure § 2023.040, the attached Declaration
8 demonstrates that Plaintiffs incurred attorney's fees in the amount of \$ 1,500.00 in bringing this
9 motion and expect to incur another \$ 1,000.00 through the hearing of the motion. Accordingly,
10 Plaintiffs request that the total amount of \$ 2,500.00 be awarded against Defendants as sanctions
11 under Sections 2023.030 and 2031.310(d) of the Code of Civil Procedure.

12
13 **CONCLUSION.**

14 Defendants have stonewalled Plaintiffs in their attempt to obtain legitimately
15 discoverable, and critical documents, as part of Defendants' ongoing cover-up of the
16 malfeasance and dereliction of duty that is alleged in the complaint. The Court should put a stop
17 to Defendants' machinations and order that they comply with the discovery sought. It should
18 further award monetary sanctions to Plaintiffs, represented by their costs of having to bring this
19 motion, and to punish Defendants for their misuse of the discovery process.

20
21 DATED: April 10, 2009

LAW OFFICE OF KATIE RICHEY, PC

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23
24
25 By: _____

26 Katie Richey, Esq.

27 Attorney for Plaintiff
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