

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

JOHN DAGOSTINO,

Plaintiff,

v.

Case No.: 2:22-cv-447-JES-KCD

FEDERAL EXPRESS
CORPORATION and ANNE
MARIE CAVISTON,

Defendants.

ORDER

Before the Court is Defendants' motion to compel discovery responses. (Doc. 29.) Plaintiff has not responded, and the time for doing so has passed.

Federal Rule of Civil Procedure 37(a) provides that a party may move for an order compelling discovery. If a court grants a motion to compel, or discovery is provided after its filing, "the court must, after giving an opportunity to be heard, require the party . . . 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). "But the court must not order this payment if: (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's

nondisclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(a)(5)(A)(i-iii). The Eleventh Circuit has reached the “inescapable conclusion,” in construing the predecessor version of Rule 37(a)(5), that “sanctions . . . are mandatory unless the court finds a substantial justification for discovery delays.” *Devaney v. Continental American Ins. Co.*, 989 F.2d 1154, 1162 (11th Cir. 1993).

Defendants attempted to confer with Plaintiff’s counsel in a good faith effort to resolve this dispute to no avail. (Doc. 29 at 2; Doc. 29-1.)

Having received no response in opposition, the Court grants the motion to compel (Doc. 29). By **March 10, 2023**, Plaintiff must serve full and complete responses to the outstanding discovery requests and show cause why the Court should not award Defendants reasonable expenses, including attorney’s fees.

ORDERED in Fort Myers, Florida this February 28, 2023.



Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record