

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JUSTIN NELSON,

Plaintiff,

v.

Case No: 5:23-cv-595-JSM-PRL

RHYNO CONSTRUCTION INC.,

Defendant.

ORDER

Before the Court is Defendant's motion to compel Plaintiff's initial disclosures and responses to its first set of interrogatories and first request for production. (Doc. 27). Because the motion to compel is unopposed, it is due to be granted. (Doc. 30).¹

The parties agreed on an April 22, 2024, deadline to serve initial disclosures under Federal Rule of Civil Procedure 26(a)(1)(A). (Docs. 22 at 1; 27 at 2). The plaintiff served his initial disclosures on May 13, 2024, after being contacted by Defendant's counsel on three separate occasions. (Doc. 27 at 2). However, the initial disclosures were incomplete, and, after additional conferrals, Plaintiff's counsel said she lacked the "information from Plaintiff . . . to amend [his] initial disclosures, but would get that information and serve amended initial disclosures by the end of the following week." (Doc. 27 at 2–3). However, as of June 11, 2024, those disclosures had not been provided. *Id.*

¹ The Local Rule 3.01(g) certification states that the motion to compel was opposed (Doc. 27 at 3, 8), however, the plaintiff did not file a response in opposition within the fourteen-day window after the motion was filed on June 11, 2024. M.D. Fla. Local Rule 3.01(c). On July 10, 2024, the Court directed the plaintiff to file a response within seven days, or the motion would be treated as unopposed. (Doc. 30). Plaintiff did not, and the time for doing so has passed.

Further, Defendant served its first set of interrogatories and first request for production on Plaintiff on April 24, 2024—meaning that, under Federal Rules of Civil Procedure 33 and 34, Plaintiff’s responses were due May 24, 2024. (Doc. 27 at 3). Plaintiff did not provide these responses or request an extension to do so. *Id.* On May 28, 2024; May 30, 2024; June 3, 2024; and June 5, 2024, Defendant’s counsel emailed Plaintiff’s counsel about the lack of response, but Plaintiff’s counsel did not even respond to the emails. *Id.* On June 5, 2024, Defendant’s counsel called Plaintiff’s counsel—and, in an unsurprising turn of events—Plaintiff’s counsel said she had not served the responses because Plaintiff had not provided her with the information necessary to do so. *Id.* at 3–4. Ultimately, Plaintiff’s counsel said she could not provide a date by which the responses would be served. *Id.* at 4.

Accordingly, Defendant’s motion to compel is **GRANTED**. (Doc. 27). Within **fourteen days** of the entry date of this Order, Plaintiff shall provide his amended Rule 26(a) initial disclosures, and his responses to Defendant’s first set of interrogatories and request for production.

Further, Defendant requests that it be awarded reasonable attorney’s fees and costs incurred in preparing and filing its motion to compel. Because the motion is granted, Rule 37(a)(5)(A) of the Federal Rules of Civil Procedure applies here. Fed. R. Civ. P. 37(a)(5)(A). Plaintiff has not demonstrated that his failure to provide complete Rule 26 disclosures and to respond to the discovery requests was substantially justified; nor has he demonstrated that other circumstances make an award of expenses unjust under Rule 37(a)(5)(A). Thus, Defendant’s request for reasonable expenses, including attorney’s fees (Doc. 27) incurred in making the motion is due to be **GRANTED**.

Within **fourteen days** of the entry date of this Order, Defendant is directed to file an affidavit supporting its motion for reasonable expenses, including attorney's fees, incurred in making the motion. Plaintiff shall then have **seven days** from the date that Defendant's affidavit is filed to file any objections to the expenses and fees sought. Alternatively, if the parties can reach an agreement regarding reasonable expenses, including attorney's fees, they should so advise the Court by written notice within the time frame stated above.

DONE and ORDERED in Ocala, Florida on July 18, 2024.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties