

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 08/05/2016

TIME: 01:30:00 PM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Kelly Breckenridge

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2015-00008210-CU-NP-CTL** CASE INIT.DATE: 03/11/2015

CASE TITLE: **SHARP vs STOCKTIPS.COM [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Discovery Hearing

MOVING PARTY: George Sharp

CAUSAL DOCUMENT/DATE FILED: Motion to Compel Discovery, 05/25/2016

EVENT TYPE: Civil Case Management Conference

EVENT TYPE: Discovery Hearing

MOVING PARTY: George Sharp

CAUSAL DOCUMENT/DATE FILED: Motion to Compel Discovery, 05/25/2016

APPEARANCES

George Sharp, self represented Plaintiff, present.

Kenneth H Stone, counsel, present for Defendant(s).

Kenneth Stone, specially appearing for counsel JENNIFER RAKERS NINO, present for Defendant(s).

ROBERT JOHN HUSTON III, counsel, present for Defendant(s) telephonically.

Corey Houmand, Defendant, present telephonically.

The Court hears oral argument and **MODIFIES AND CONFIRMS** the tentative ruling as follows:

Rulings on Motions to Compel Discovery

Sharp v. Stocktips.com, Case No. 2015-8210

August 5, 2016, 1:30 p.m., Dept. 72

1. Overview and Procedural Posture.

In the present case, as before,* Sharp sues defendants for violations of the California Restrictions on Unsolicited Commercial E-mail Advertisers Law (Cal. Bus. & Prof. Code 17529.5). Plaintiff alleges that all defendants participated in a scheme to disseminate spam emails containing false and misleading information to encourage plaintiff and other members of the public to purchase publicly traded penny stock of the defendants. According to the complaint, plaintiff has become well-known as a crusader against this sort of thing. Instead of just deleting the emails and/or placing the senders in his spam filter, Sharp filed this lawsuit in which he alleges that the defendants engaged in fraudulent and deceptive actions by initiating the sending of numerous unlawful spam e-mails on behalf of themselves and other defendants between late 2013 and March of 2015. ROA 1. Plaintiff seeks statutory damages of \$210,000.00.

The case has been slow to gain traction. See ROA 28, 39, 52, 69, 97. It is set for a fifth CMC today. Plaintiff claims this is the result his inability to join all the defendants because of defendants' unwillingness to disclose the identities of those responsible for the spam emails containing false and misleading information.

A demurrer was calendared and then vacated. ROA 16, 21. Plaintiff scheduled and then rescheduled a motion to compel. ROA 40-42. That motion never went forward. See ROA 44. Defendant Tiger Oil sought a protective order preventing plaintiff from deposing Tiger Oil's PMK beyond an additional 12.5 hours. ROA 60. The court granted the motion in part on March 25, 2016. ROA 69. After several amendments to the complaint (adding Doe defendants – ROA 71-78, 92), plaintiff filed (by stipulation) his first amended complaint (FAC). ROA 91, 93. Defendants Tiger Oil and Empire Stock Transfer have answered the FAC. ROA 100, 101. Defendant Coastal Integrated Services has not answered the FAC, but it did answer the original complaint after it was added as Doe 1. ROA 19, 23.

Presently, plaintiff has filed two motions to compel directed at defendant Coastal Integrated Services. ROA 85-90. [One of the motions was inexplicably filed twice; ROA 87 is the same as ROA 89, and ROA 88 is the same as ROA 90.] Plaintiff seeks responses from Coastal Integrated Services as to his first document demand, and further responses from Coastal Integrated Services as to his second document demand. The latter motion is supported by a separate statement. Both sets of moving papers seek imposition of monetary sanctions in the form of reimbursement of the \$60.00 motion filing fee. Both sets of moving papers include a proof of service showing electronic service upon attorney Huston, who substituted in on behalf Coastal Integrated Services last fall. ROA 32.

Neither motion is opposed.

2. Applicable Standards.

Code of Civil Procedure section 2017.010 provides: "Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. . . ."

Code of Civil Procedure section 2017.020, subdivision (a) provides in full: "The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other

affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040."

Informal resolution of discovery disputes is a centerpiece of California civil practice. California law requires that civil litigants make "a serious attempt to obtain 'an informal resolution of each issue.' (CCP §2025, subd. (o)....) This rule is designed 'to encourage the parties to work out their differences informally so as to avoid the necessity for a formal order....' (*McElhanev v. Cessna Aircraft Co.* (1982) 134 Cal.App.3d 285, 289, 184 Cal.Rptr. 547.) This, in turn, will lessen the burden on the court and reduce the unnecessary expenditure of resources by litigants through promotion of informal, extrajudicial resolution of discovery disputes. [Citations.]" *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1435; *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016.

Sanctions may be awarded for misuse of the discovery process, and misuse of the discovery process includes failing "to confer ... in a reasonable and good faith attempt to resolve informally any dispute concerning discovery [where the statute] requires the filing of a declaration stating facts showing that such an attempt has been made." *Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1114.

A determination of whether an attempt at informal resolution is adequate involves the exercise of discretion. Among the factors the court should consider are the history of the litigation, the nature of the interaction between counsel, the nature of the issues, the type and scope of discovery requested, and the prospects for success. A trial judge's perceptions on such matters, inherently factual in nature at least in part, must not be lightly disturbed. *Stewart v. Colonial Western Agency, Inc., supra*, 87 Cal.App.4th at 1012-1013.

3. Rulings.

The motions are granted, and sanctions are imposed on Coastal Integrated Services and its counsel, Robert Huston, in the total amount of \$120.00. The sanctions are payable by Sept. 1, 2016.

The motion to compel (ROA 85) is granted as to set one, which relates to a document demand containing only one category of document. Coastal Integrated Services failed to respond at all, and by so doing has waived objections. It must, by Sept. 1, 2016, produce all responsive documents in its possession or under its control, and must serve forthwith a verified response in writing and under oath.

The motion to compel (ROA 87-90) is granted as to set two, which relates to a document demand containing 15 categories of documents. Coastal Integrated Services interposed blanket, boilerplate objections as to most of these categories. It must forthwith produce all responsive documents in its possession or under its control, and must serve, by Sept. 1, 2016, an amended verified response in writing and under oath. The boilerplate, blanket objections are overruled, because Huston and his client completely failed to engage with Mr. Sharp in a meaningful "meet and confer" effort.

Because Coastal Integrated Services failed to file any opposition to the motions, the court is entitled to consider that lack of opposition to be an admission the motions are meritorious. See *Sexton v. Superior Court* (1997) 58 Cal.App.4th 1403, 1410. Further, by failing to oppose the motions, Coastal Integrated Services has failed to preserve for appeal a challenge to the granting of the motions. *In re Carrie W.* (2003) 110 Cal.App.4th 746, 755; *Broden v. Marin Humane Society* (1999) 70 Cal.App.4th 1212, 1226-1227, fn. 13; see also *Duarte v. Chino Comm. Hospital* (1999) 72 Cal.App.4th 849, 856; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-85.

IT IS SO ORDERED.

*See *Sharp v. Cuba Beverage Company*, Case No. 2011-090093; *Sharp v. IDO*, Case No. 2012-101057; *Sharp v. Xumanii*, Case No. 2013-00048310.

Civil Case Management Conference is continued pursuant to Court's motion to 10/07/2016 at 09:00AM before Judge Timothy Taylor.

Mr. Sharp is ordered to give notice.



Judge Timothy Taylor