

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

THOMAS L. TAYLOR III, SOLELY IN	§	
HIS CAPACITY AS COURT-APPOINTED	§	
RECEIVER FOR ROBERT A. HELMS, ET	§	
AL.,	§	
PLAINTIFF,	§	A-15-CV-627-LY-ML
V.	§	
	§	
MARK KYLE AND APPLIED	§	
QUANTITATIVE SOLUTIONS, LLC,	§	
DEFENDANTS.		

**ORDER**

Before the Court is Plaintiff’s Motion to Compel Responses to Discovery Requests and for Sanctions Pursuant to Fed. R. Civ. P. 37 [Dkt. #24] filed April 10, 2017. The motion was referred to the undersigned for disposition by United States District Judge Lee Yeakel pursuant to 28 U.S.C. § 636(b)(1)(A), Federal Rule of Civil Procedure 72, and Rule 1(d) of the Local Rules of the United States District Court for the Western District of Texas.

Thomas L. Taylor, court-appointed receiver in the action styled *SEC v. Helms, et al.*, No. 13-CV-1036-ML (W.D. Tex. 2013), and Plaintiff in the above-styled action (“Receiver”), requests that the court enter an order compelling Defendants Mark Kyle and Applied Solutions, LLC (“Defendants”) to respond to written discovery requests made pursuant to the Federal Rules of Civil Procedure. (Dkt. #24-4).

**I. BACKGROUND**

On December 23, 2015, the District Court entered Default Judgment against Kyle in the amount of \$484,178.13. (Dkt. #20). Final judgment was entered against Kyle on December 28, 2015. (Dkt. #23).

On or about January 13, 2016, counsel for the Receiver mailed to Kyle's last known address discovery requests in aid of the judgment pursuant to Rule 69(a)(2). The Receiver served interrogatories pursuant to Rule 33 and requests for production of documents pursuant to Rule 34 (the "Requests"). Those Requests were returned as undeliverable by the Post Office. Counsel then requested by email a new address for Kyle. (Dkt. #24-2). Kyle failed to respond to counsel's request.

On February 15, 2016, counsel for the Receiver engaged a process server to locate and personally serve the Requests on Kyle (Dkt. #24-3). Following several months searching for Kyle's new address, and several unsuccessful attempts at several separate addresses (Dkt. #24-4), personal service was made on Kyle on January 16, 2017 (Dkt. #24-5). Accordingly, Kyle's responses to the Requests were to be served on the Receiver by February 15, 2017. The Receiver did not receive any responses from Kyle.

On March 1, 2017, the Receiver sent to Kyle by hand delivery a letter (Dkt. #24-6) demanding responses to the Requests, and granting a courtesy extension of five days, to March 6, 2017, to serve such responses. Kyle failed to respond to this letter.

Accordingly, the Receiver filed the pending motion to compel and for sanctions against Kyle on April 10, 2017. Kyle's response to the motion was due on or before April 17, 2017. *See* Loc. R. W.D. Tex. CV-7(e). To date, Kyle has not filed a response.

## **II. LEGAL STANDARDS**

The Rules permit a party seeking responses to discovery requests to move for an order compelling those responses. *See* FED. R. CIV. P. 37(a)(3)(B) ("A party seeking discovery may move for an order compelling an answer, designation, production, or inspection."). If such a motion is granted, the "the court must . . . require the party . . . whose conduct necessitated the

motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." *Id.* 37(a)(5)(A). Moreover, the court may order sanctions against a party that, "after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response." *Id.* 37(d)(1)(A)(ii).<sup>1</sup> Such sanctions include the payment of reasonable expenses, including attorney's fees, caused by the nonmovant's failure. *Id.* 37(d)(3).

### III. DISCUSSION AND CONCLUSION

The Receiver seeks an order pursuant to Rule 37 compelling Kyle to serve responses to the Requests and pay the Receiver's attorney's fees in the amount of \$1,122 incurred in pursuing this matter. The undersigned is unaware of any excuse or objection Kyle may have had to the Receiver's discovery and attorney's fees requests for the simple reason that Kyle did not respond within the time mandated by local rule. If the respondent fails to file a response within the time required by the Local Rules, the motion may be granted as unopposed. Loc. R. W.D. Tex. CV-7(e)(2). The Receiver's motion is both unopposed and facially valid. The Magistrate Court therefore **GRANTS** the Receiver's motion [Dkt. #24].

It is therefore **ORDERED** that Kyle shall serve responses to the Receiver's First Set of Interrogatories in Aid Of Judgment and First Requests for Production in Aid of Judgment, dated January 11, 2017, within fourteen (14) days of the entry of this Order.


It is further **ORDERED** that Kyle is sanctioned pursuant to Rule 37 of the Federal Rules of Civil Procedure. Kyle must pay to the Receiver, within fourteen (14) days of the entry of this

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<sup>1</sup> Each of the above remedies are contingent upon the movant good faith conferring or attempting to confer with the party failing to act in an effort to obtain the answer or response without court action. As certified below, and demonstrated by the facts recited above (*see, e.g.*, Dkt. #24-6), the Receiver has attempted without success to confer with Kyle regarding his failure to respond to the Requests.

Order, \$1,122.00, which equals the Receiver's reasonable attorney's fees incurred due to Kyle's failure to respond to the Receiver's discovery requests and having to bring the Motion to Compel.

SIGNED May 22, 2017.

  
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MARK LANE  
UNITED STATES MAGISTRATE JUDGE