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6 STEPHEN LAKE

7 **SUPERIOR COURT OF CALIFORNIA**
8 **COUNTY OF SAN DIEGO, HALL OF JUSTICE**

9 AMY SHERLOCK, an individual and on
behalf of her minor children, T.S. and S.S.,
10 ANDREW FLORES, an individual;

11 Plaintiffs,

12 vs.

13 GINA M. AUSTIN, an individual; AUSTIN
14 LEGALGROUP, a professional corporation,
15 LARRY GERACI, an individual, REBECCA
BERRY, an individual; JESSICA
16 MCELFRESH, an individual; SALAM
RAZUKI, an individual; NINUS MALAN, an
17 individual; FINCH, THORTON, AND
BARID, a limited liability partnership;
18 ABHAY SCHWEITZER, an individual and
dba TECHNE; JAMES (AKA JIM)
19 BARTELL, an individual; NATALIE
20 TRANG-MY NGUYEN, an individual,
AARON MAGAGNA, an individual;
21 BRADFORD HARCOURT, an individual;
SHAWN MILLER, an individual; LOGAN
22 STELLMACHER, an individual;
23 EULENTIAS DUANE ALEXANDER, an
individual; STEPHEN LAKE, an individual,
24 ALLIED SPECTRUM, INC., a California
corporation, PRODIGIOUS COLLECTIVES,
25 LLC, a limited liability company, and DOES 1
through 50, inclusive,

26 Defendants.
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Superior Court of California,
County of San Diego
11/23/2022 at 05:07:00 PM
Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

Case No. **37-2021-0050889-CU-AT-CTL**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO COMPEL RESPONSES TO
REQUESTS FOR PRODUCTION OF
DOCUMENTS, FORM
INTERROGATORIES, AND FOR
MONETARY SANCTIONS AGAINST
PLAINTIFF**

Hearing Date: February 17, 2023
Hearing Time: 9:00 a.m.

Case Filed: December 3, 2021
Department: C-75
Judge: Hon. James Mangione
Trial Date: N/A

1 Defendant STEPHEN LAKE (“Defendant” or “LAKE”) hereby moves to compel Plaintiff
2 AMY SHERLOCK, an individual and on behalf of her minor children T.S. and S.S. (“Plaintiff” or
3 “SHERLOCK”) to respond to LAKE’s Requests for Production of Documents, Set One (“RFD”) and
4 Form Interrogatories, Set One (“FI”) (RFD and FI shall hereinafter be collectively referred to as
5 “Discovery”). Further, Plaintiff will further move this court for an award of monetary sanctions
6 against Defendants in the amount of \$2,820.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. INTRODUCTION**

9 This is a simple and straightforward Motion to Compel discovery responses. Despite having
10 an additional *two months* to respond to the Discovery, SHERLOCK has failed to provide *any*
11 response to either the RFD or FI. As such, LAKE has been forced to bring this Motion to procure
12 the responses to which he is entitled. LAKE requests that SHERLOCK be compelled to respond to
13 LAKE’s Discovery and that sanctions be issued in the amount of \$2,820.00.

14 **II. SUMMARY OF FACTS**

15 On July 26, 2022, LAKE served the Discovery on SHERLOCK. *See Declaration of Andrew*
16 *Hall (“Hall Dec”)* ¶ 3. On August 2, 2022, counsel for SHERLOCK confirmed his agreement to
17 accept service by email and the email address provided matched that on which the Discovery was
18 served on July 26, 2022. *Hall Dec* ¶ 4.

19 On August 15, 2022, SHERLOCK requested an extension of time to respond to the Discovery
20 to November 21, 2022, which was granted by counsel for LAKE. *Hall Dec* ¶ 5. On October 27, 2022,
21 counsel for SHERLOCK appeared *ex parte* to request a stay of the case pending the outcome of a
22 pending appeal of a party unrelated to this motion. The Court denied the request and confirmed that
23 there was no stay, including a stay on discovery, in place in the action. *Hall Dec* ¶ 6. After the hearing,
24 counsel for LAKE sent an email to counsel for SHERLOCK confirming the November 21 discovery
25 response deadline. *Hall Dec* ¶ 7. SHERLOCK never sent a response nor had SHERLOCK
26 communicated with LAKE at all regarding discovery since the October 27 email. *Hall Dec* ¶ 8.

27 SHERLOCK never provided response to the Discovery. *Hall Dec* ¶ 9.

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1 **III. LEGAL ARGUMENT**

2 1. *The Court Is Authorized To Compel Compliance With The RFD*

3 Where there has been no timely response to a *CCP* § 2031.010 demand, the first thing the
4 demanding party must do is to seek an order compelling a response. *CCP* § 2031.300. SHERLOCK’s
5 failure to timely respond also results in a waiver of all objections. No attempt to resolve the matter
6 informally is required before filing the motion. *CCP* § 2031.300.

7 The RFD were duly served on July 26, 2022. SHERLOCK, through counsel, confirmed
8 receipt of the requests and requested a nearly two-month extension to respond, which LAKE granted.
9 Nevertheless, as of the filing of this motion, no responses have been provided by SHERLOCK. As
10 such, LAKE seeks an order compelling SHERLOCK to respond to LAKE’s RFD without objections
11 and produce the requested documents.

12 2. *The Court Is Authorized To Compel Compliance With The FI*

13 If a party to whom interrogatories are directed fails to respond, the propounding party’s
14 remedy is to seek a court order compelling answers to the interrogatories. *CCP* § 2030.290; *Sinaiko*
15 *Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404. The
16 failure to timely respond waives all objections to the interrogatories. *Leach v. Sup. Ct. (Markum)*
17 (1980) 111 Cal.App.3d 902, 905-906.

18 The FI were duly served on July 26, 2022. SHERLOCK, through counsel, confirmed receipt
19 of the requests and requested a nearly two-month extension to respond, which LAKE granted.
20 Nevertheless, as of the filing of this motion, no responses have been provided by SHERLOCK. As
21 such, LAKE seeks an order compelling SHERLOCK to respond to LAKE’s FI without objections.

22 3. *Plaintiffs Are Entitled To Sanctions Against Defendant*

23 A monetary sanction “shall” be imposed against the party losing a motion to compel. *CCP* §§
24 2030.290(d), 2030.300(d), 2031.300(c) and 2031.310(d).

25 Again, LAKE provided a nearly two month extension of time to respond to the Discovery,
26 leaving SHERLOCK with nearly *three months* to respond to LAKE’s straightforward discovery
27 requests. The deadline was acknowledged by counsel for SHERLOCK. However, despite this, no
28 responses were provided and SHERLOCK has failed to communicate with LAKE regarding the

1 outstanding responses. Given that SHERLOCK has ignored her obligation to respond and then failed
2 to meet deadlines she previously acknowledged, LAKE is left with no alternative but to file this
3 motion. As a result, LAKE has incurred \$120 in costs and \$2,700 in attorney's fees in bringing this
4 Motion.

5 **IV. CONCLUSION**

6 LAKE requests that SHERLOCK be compelled to respond to the RFD and FI immediately,
7 without objection, and immediately provide any responsive documents. Further, Plaintiffs request
8 sanctions against the Defendant in the amount of \$2,820.

9
10 Dated: November 23, 2022

BLAKE LAW FIRM



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12 By: _____

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14 ANDREW E. HALL, ESQ.
15 Attorneys for Defendant
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