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KEVIN S. SANDERS, LLC., a Limited Liability
Company; KEVIN S. SANDERS, an individual,

Plaintiffs/Counter-Defendant.

v.

LEWIS TODD BARNETT,

Defendant/Counter-Plaintiff.

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CASE NO.: 2017-CA-705

DIVISION: CV-H

PLAINTIFFS' MOTION FOR DEFAULT; OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

The Plaintiffs, by and through the undersigned counsel, move this Honorable Court to grant the Plaintiffs a default against the Defendant, or in the alternative or in addition thereto grant a summary judgment in favor of the Plaintiffs, and to grant the Plaintiffs their attorney's fees and costs, and as grounds therefore would state:

1. The Court should take judicial notice of the following pleadings that are on the Court's docket, evidencing the extreme problems with gaining discovery from the Defendant, due to the actions of the Defendant and Defendant's counsel, and would respectfully request that the facts and information contained within those pleadings be considered a part of this argument.

69 D72	--	4/30/2018 5/1/2018	MOTION TO COMPEL (PLTFS'), MOTION FOR SANCTIONS, MOTION FOR ATTORNEY'S FEES AND COSTS AGAINST DEFT FOR FAILURE TO COMPLY WITH DISCOVERY	2
77 D80	--	9/14/2018 9/17/2018	MOTION FOR CONTEMPT , MOTION TO COMPEL, MOTION FOR SANCTIONS, MOTION FOR ATTORNEY'S FEES AND COSTS AGAINST DEFT. FOR NON-COMPLIANCE WITH COURT ORDER [regarding discovery] (PLTF.'S)	4
85 D88	--	3/20/2019 3/21/2019	MOTION (2ND) TO: COMPEL; FOR SANCTIONS; FOR ATTY'S FEES AND COSTS AGAINST DEFT FOR FAILURE TO COMPLY WITH DISCOVERY AND DEPOSITIONS/ATTY FOR PLTFS	25
92 D95	--	7/2/2019 7/5/2019	MOTION (PLTF) TO STRIKE DEFT PLEADINGS OR IN THE ALTERNATIVE FOR A DEFAULT FOR SUCH NONCOMPLIANCE WITH COURT ORDERED DISCOVERY RESULTING IN A SUMMARY JUDGMENT	2
101 D104	--	9/6/2019 9/10/2019	MOTION (3 rd) TO COMPEL, MOTION FOR SANCTIONS, MOTION FOR ATTORNEY'S FEES AND COSTS AGAINST DEFT. FOR FAILURE TO COMPLY WITH DISCOVERY AND DEPOSITIONS (PLTF.'S)	19

2. This action was filed on February 3rd, 2017 (2 ½ years ago), and the Plaintiffs have been tied up in what seems to be an endless struggle to gain simple discovery from the Defendant. Plaintiffs have had to get the Court involved on numerous occasions in what is standard interrogatories and discovery requests that have been ignored, compelled to be responded to, responded to in vague and non-responsive ways, again requiring the Court's assistance, and the Court considering a contempt order for failure to comply, and the Defendant and Defendant's counsel always filing late and untimely, non-responsive answers just before each hearing on Plaintiffs' motions to compel.

3. In an effort to stop the evasive nature on the part of the Defendant and the non-responsive answers to Plaintiffs' discovery, the Plaintiffs set the deposition duces tecum of the Defendant to require all documentation to be provided. Due to alleged scheduling conflicts on the part of the Defendant and Defendant's counsel, such had to be set off for almost two months. Defendant's counsel, not unexpectedly, again delayed the discovery process by unilaterally cancelling the deposition of the Defendant because the Courthouse was closed. The closure of the Courthouse is not the termination of all legal business, deadlines, meetings, mediations, depositions, or discovery. Not only did the Defendant's counsel unilaterally cancel the Defendant's deposition, Defendant's counsel's office reached out to the Plaintiffs' court reporter and told Plaintiffs' court reporter the deposition was cancelled. Defendant and Defendant's counsel also contacted another witness to be deposed on the same day, and told that witness that the deposition was cancelled, all of which was untrue, as the Plaintiffs did not agree to any further delay in discovery, keeping in mind it took nearly two months just to set up the first deposition date of the Defendant, and the fact that in 2 ½ years the Plaintiffs have not received any proper responsive discovery from the Defendant or Defendant's counsel. Proof and documentation of these actions are summarized with evidence within the Plaintiffs' Third Motion to Compel at docket #101, and by reference such is incorporated herein.

4. It is clear that the Defendant and Defendant's counsel have not participated and refuse to participate in meaningful discovery, after 2 ½ years, and in the most recent unilateral cancellation of the Defendant's deposition, and in what the Plaintiffs consider inappropriate conduct on the part of Defendant's counsel and Defendant's counsel's office in contacting the Plaintiffs' court reporter and other witness, without Plaintiffs' knowledge or consent.

5. The Defendant and Defendant's counsel have engaged in years of discovery violations and discovery abuse, which the Court already has knowledge of, and even issued a show cause order at one point in time for such violations, which are continuing and ongoing. The Defendant and Defendant's counsel's actions are contemptuously in violation of the Court's previous discovery orders, and it can be determined by this Court, based on such abuse and defaulting of standard discovery for 2 ½ years, that it would be in the best interest of justice and judicial time to grant a default against the Defendant, and a default judgment or summary judgment against the Defendant.

6. Pursuant to F.R.C.P. 1.380, it is within the Court's authority to sanction the Defendant with dismissal or default. In Mercer v. Raine, 443 So.2d 944 (Fla. 1983), the Supreme Court ruled, "A deliberate and contumacious disregard of the court's authority will justify application of this severest of sanctions, as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness." The Supreme Court later ruled in Commonwealth Fed. Sav. & Loan Ass'n v. Tubero, 569 So.2d 1271, 1273 (Fla. 1990) that the Court can impose such sanction of dismissal or default if it finds that there has been a willfulness or a deliberate disregard on the part of the Defendant to comply with discovery.

7. In this case, the Defendant, Lewis Todd Barnett, and his counsel have clearly shown a deliberate and willful disregard to the Court's previous orders compelling discovery, by filing non-compliant discovery late or at the last minute before a hearing on an order to show cause months after such discovery was due, and now by unilaterally cancelling depositions set that the Plaintiffs had hoped would short-cut the 2 ½ years of delays by the Defendant and Defendant's counsel, only to again be denied the discovery that could have so easily been provided by the Defendant and Defendant's counsel. There are numerous cases that have followed Commonwealth on this issue to include CYC Fishing, Ltd. v. Martinez, 994 So.2d 461, 462 (Fla. 3d DCA 2008); Nationwide Mut. Fire Ins. Co. v. Robinson, 915 So.2d 262 (Fla. 4th DCA 2005); Precision Tune Auto Care, Inc. v. Radcliffe, 804 So.2d 1287 (1291 (Fla. 4th DCA 2002); Mack v. Nat'l Constructors, Inc., 666 So.2d 244, 245 (Fla. 3d DCA 1996); McCormick v. Lomar Industries, Inc., 612 So.2d 707, 708 (Fla. 4th DCA 1993); Henry A. Knott Co. v. Redington Towers, Inc., 428 So.2d 687, 688 (Fla. 2d DCA 1983); Sinatra v. Ikaros Aviation, Inc., 723 So.2d 358, 359 (Fla. 3d DCA 1998).

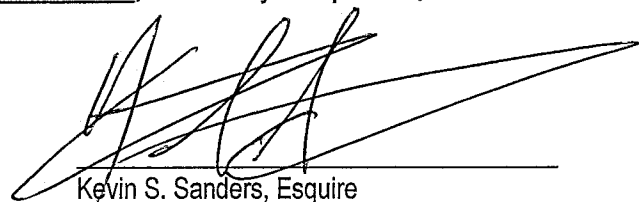
8. The Plaintiffs have been prejudiced, and continue to be prejudiced, by unreasonable and continuing delays and stall tactics of the Defendant and Defendant's counsel, which the F.R.C.P. govern that

discovery should be conducted within a reasonable time of 30 days, rather than years. In Precision Tune Auto Care, Inc. v. Radcliffe, 804 So.2d 1287 (1291 (Fla. 4th DCA 2002), the Court further held that "The purpose of imposing sanctions for discovery violations is not to punish, but rather is to ensure compliance with the trial court's order." This Honorable Court, in this case against Defendant Barnett, has already made a ruling of the necessity to comply with discovery and even had to issue an order to show cause, which the Defendant and Defendant's counsel used to further delay discovery by waiting until the last minute to again file non-compliant responses to the Plaintiffs' discovery. See also Winn Dixie v. Teneyck, 656 So.2d 1348, 1351 (Fla. 1st DCA 1995). Even if this Honorable Court finds that the fault and failure to comply with discovery is solely on Defendant's counsel, this should not deter this Court from granting the Plaintiffs' request for the sanction of default and summary judgment. See Hussamy v. Rose 916 So.2d 785 (Fla. 2005).

9. Based on the foregoing, the history of this case, the Court's rulings (and the Court's pending rulings), and all the evidence of record, the Plaintiffs are entitled to a default against the Defendant, and based on such would be entitled to a Summary Judgment in Plaintiffs' favor against the Defendant as a matter of law.

WHEREFORE, Plaintiffs respectfully request this Honorable Court to grant Plaintiffs a default against the Defendant, for a summary judgment in favor of the Plaintiffs, and to grant relief consistent with the pleadings contained herein, to award attorney's fees and costs to the Plaintiffs against the Defendant, and any subsequent attorney's fees that the Court might find appropriate against the Defendant and Defendant's attorney regarding its own powers under F.S. 57.105 to assess such, and to grant such other and further relief as would be just and equitable in the premise.

I certify that a true copy of the foregoing has been furnished to the Defendant, c/o Theresa Carli Pontieri, Esquire, via email only at eservice@carlilaw.com; tcarli@carlilaw.com, this 11th day of September, 2019.



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