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Rudy Blake Frazier and Building Technology  
Consulting LLC Order on Defendants' Motion to  
Strike Complaint

Elizabeth E. Long  
*Superior Court of Fulton County*

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IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA



RUDY BLAKE FRAZIER and BUILDING )  
TECHNOLOGY CONSULTING LLC )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
MATTHEW LIOTTA and PODPONICS, LLC )  
 )  
Defendants )

Civil Action File No.  
2014CV244363

**COPY**

ORDER ON DEFENDANTS' MOTION TO STRIKE COMPLAINT

Before the Court is Defendants' Motion to Strike Complaint filed on October 27, 2014. Having considered the pleadings and the record, the Court finds as follows:

Defendants assert that Plaintiffs' failure to comply with statutory discovery deadlines and failure to provide meaningful responses to discovery requests merits the sanction of striking the Complaint. Defendant PodPonics served its First Request for Production of Documents, First Interrogatories, and First Request for Admission on August 27, 2014. Counsel jointly agreed to an extension to respond until October 6, 2014. Plaintiffs responded to the Request for Admission via email on October 14, 2014.<sup>1</sup> Plaintiffs' Interrogatory Responses were served on November 10, 2014. There is no indication of record that responses to the Request for Production were ever served.

In response to the Motion, Plaintiffs' Counsel provided a list of personal and professional obligations that he claimed limited his ability to respond to discovery requests in a timely

<sup>1</sup> While Defendants complain that these responses were late, unsigned, and unverified, they do not seek relief relating to these shortcomings.

manner.<sup>2</sup> Plaintiffs' Counsel also responded that the Motion should be denied because it was not supported by an affidavit, because the delay was minor, and because Defendants have unclean hands.

Even busy attorneys are required to comply with statutory discovery deadlines. The statutes do not allow for minor infractions nor do they allow avoidance of deadlines and obligations based on the other parties' alleged discovery infractions. O.C.G.A. § 9-11-33(a)(2) requires responses to interrogatories to be filed within 30 days after service. Similarly, O.C.G.A. § 9-11-34(b)(2) requires a written response within 30 days after service.

Under O.C.G.A. § 9-11-37(a), when a party fails to answer an interrogatory or respond to requests for production, the proper remedy is to seek an order from the court compelling a response. Evasive and incomplete responses to discovery requests are treated as a failure to answer. *See* O.C.G.A. § 9-11-37(a)(3). If the responding party then fails to comply with an order, the court may then sanction the nonresponsive party, which may include striking pleadings or dismissing the action. *See* O.C.G.A. § 9-11-37(b)(2)(C); *see also* *N. Druid Dev., LLC v. Post, Buckley, Schuh, & Jernigan, Inc.*, No. A14A1101, -- S.E. 2d --, 2014 WL5784464 at \*3 (Ga. Ct. App., Nov. 7, 2014) (quoting *McConnell v. Wright*, 281 Ga. 868, 869, 644 S.E.2d 111 (2007) (citations omitted)) (noting that two-step proceeding is required before ultimate sanction of dismissal for discovery violations—first, a motion to compel must be granted, and second, if the party fails to comply with that order compelling discovery, the court must provide offending party with an opportunity to be heard).

Because the Court has not been asked to issue an order compelling discovery, the Court will not strike Plaintiffs' pleading as requested by Defendants. However, the Court will not

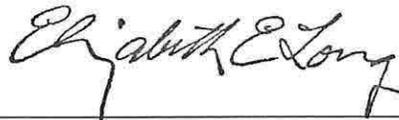
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<sup>2</sup> These obligations were set forth in an Affidavit filed with the response to this Motion. There are no Leaves of Absence for Plaintiffs' Counsel on the record for these events.

tolerate abuses of the discovery process. The Court orders Plaintiffs to serve amended responses to Defendants' Interrogatories by **December 17, 2014, at 5:00 p.m. EST.** In particular, Plaintiffs shall provide more complete responses to Interrogatories ## 8-10, 14-17, 19-23, 41, & 43-46. The Court further orders Plaintiffs to serve their written response to Defendants' Requests for Production by **December 17, 2014, at 5:00 p.m. EST.** Finally, the Court orders Plaintiffs to correct the technical deficiencies in their responses to the Requests for Admission by serving a signed and dated copy of the Requests for Admission with the proper verification by **December 17, 2014, at 5:00 p.m. EST.** Failure to comply with this Order will result in the imposition of serious sanctions.

Therefore, Defendants' motion to strike the complaint is **DENIED except to the extent that discovery is now compelled.**

IT IS SO ORDERED, this 8<sup>th</sup> day of December, 2014.



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The Honorable Elizabeth E. Long  
Judge, Fulton County Business Court

**Copies to:**

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