|  |  |
| --- | --- |
| DISTRICT COURT, DENVER COUNTY, COLORADO |  |
| DA | TE FILED: March 22, 2017 2:12 PM |
| Court Address: Denver County Court FIL  1437 Bannock St., Room 256 CA | ING ID: C98B41E9DDC3F SE NUMBER: 2015CV31709 |
| Denver, CO 80202 |  |
| (720) 865-8301 |  |
| Plaintiffs: ROBERT ABRAMS and ABRAMS & |  |
| ASSOCIATES, LLC, a Colorado limited liability |  |
| company; |  |
| v. | **COURT USE ONLY** |
| Defendants: SHAWN BEESON |  |
| Attorneys for Plaintiffs: |  |
|  | Case Number: 2015CV31709 |
| Nathan Silver  Silver Law Firm, LLC 700 17th Street, Suite 650  Denver, Colorado 80202  Phone: (303) 328-8510  E-m[ail: nathan@silverlawdenver.com](mailto:nathan@silverlawdenver.com) Atty. Reg. # 28836 | Division: 275 |
| ABRAMS & ASSOCIATES, LLC  Robert Abrams  700 17th St., Suite 650  Denver, CO 80202 |  |
| Phone #: (303) 322-4115  Fax #: (303) 333-0708  E-m[ail: Robert@AbramsLaw.net](mailto:Robert@AbramsLaw.net) Atty. Reg. # 37950 |  |
| **PLAINTIFFS’ RESPONSE TO DEFENDANT’S MOTION TO STRIKE PLAINTIFFS’ MOTION TO COMPEL** | |

COMES NOW, Plaintiffs Robert Abrams and Abrams & Associates, LLC, by their attorneys at Silver Law Firm, LLC and Abrams & Associates, LLC, and hereby file their Response to Defendant’s Motion to Strike Plaintiff’s Motion to Compel. In support thereof, Plaintiffs state and allege as follows:

# LEGAL AUTHORITY

1. C.R.C.P. 12(f). “Upon motion filed by a party within the time for responding to a pleading … or upon the court’s initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this section (f).” C.R.C.P. 12(f).

# ARGUMENT

1. Defendant’s deadline to answer Plaintiffs’ discovery requests was February 16, 2017. Defendant failed to answer by that deadline.
2. Opposing counsel never informed that Defendant’s discovery would be late, nor inquired of Plaintiffs’ position on the matter. Simply, no discovery was timely produced.
3. On February 22, 2017, Plaintiffs contacted Defendant regarding his late discovery responses, wherein counsels agreed to extend the deadline for Defendant to respond only to Plaintiff’s requests to produce and written interrogatories until February 24, 2017, provided Defendant actually produced 100% of the requested discovery. *Exhibit 1.*
4. Defendant provided a completely inadequate and incomplete discovery response on February 24, 2017, just before the extended deadline to which the parties agreed.
5. Plaintiffs conferred on their Motion to Compel on February 28, 2017 with a list of deficiencies, informing Defendant that Plaintiffs would not file if the deficiencies were cured within 3 days thereof. Defendant failed to cure same by the deadline, and Plaintiffs filed the Motion on March 6, 2017.
6. Plaintiffs believe there is no substantially justified or harmless reason for Defendant’s failure to timely disclose the requested discovery, especially when he received an extension from Plaintiffs to produce responses for all of the interrogatories and requests for

production.

1. Defendant’s Motion to Strike is unnecessary and frivolous. Plaintiffs Motion to Compel is proper in this case in light of Defendant’s failure to respond to discovery.
2. Defense counsel represents that he was given a mere 3 days to respond to discovery, when in reality he had over two months, 15 days of which were an extension granted by Plaintiffs. *See Defendant’s Motion, ¶ 4.*
3. Despite defense counsel’s representations that he is willing to work with Plaintiffs to cure deficiencies, Defendant has yet to fully produce or otherwise remedy the deficiencies as of March 22, 2017. *See id. at ¶ 5.*
4. Instead of using this time to attempt to cure, Defendant filed a Motion to Strike.

Should the Court grant such a Motion, Plaintiffs will be prejudiced without adequate discovery responses after the discovery deadline of March 13, 2017.

1. Defense counsel’s claim that conferral on Plaintiffs’ Motion to Compel was not “meaningful” is absolutely frivolous and baseless in light of the timeline and extensions and does not meet the threshold contemplated in Rule 12(f) for striking redundant, immaterial, impertinent, or scandalous matters.
2. For the above reasons, Defendant’s Motion to Strike Plaintiff’s Motion to Compel should be denied.

WHEREFORE, Plaintiffs respectfully request this Court deny Defendant’s Motion to Strike Plaintiffs’ Motion to Compel, attorney’s fees and costs for responding to this frivolous and groundless Motion, pursuant to C.R.S. § 13-17-102, and for any other relief the Court deems just and proper under the circumstances.

RESPECTFULLY SUBMITTED this 22nd day of March, 2017.

SILVER LAW FIRM, LLC

*/s/ Nathan Silver*

Nathan Silver, Attorney at Law

*(Original signature on file at Silver Law Firm, LLC, pursuant to C.R.C.P. 121 § 1-26)*

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY I have this 22nd day of March, 2017, via ICCES, served a true and correct and correct copy of the foregoing PLAINTIFFS’ RESPONSE TO DEFENDANT’S MOTION TO STRIKE PLAINTIFFS’ MOTION TO COMPEL upon:

Wadi Muhaisen

Muhaisen & Muhaisen, LLC 1435 Larimer Street, Suite 203

Denver, Colorado 80202

*Attorney for Defendant*

*/s/ Michael A. Gubiotti*

Michael A. Gubiotti, Law Clerk

*(Original signature on file at Abrams & Assoc. LLC pursuant to C.R.C.P. 121 § 1-26)*