

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 06-1045-JTM

**Bank of America Account Number
005041639105, Styled as Alajah Fitchpatrick
in the approx. amount of \$10,416.58 more or
less, et al.,**

Defendants.

MEMORANDUM AND ORDER

Now on this 18th day of November, 2008, this matter comes before the Court on Plaintiff's Motion to Compel (Doc. 158), which requests that defendant Byron Fitchpatrick (hereafter Fitchpatrick) be required to respond to discovery requests served on that defendant on or about September 4, 2008. *See* Doc. 155 (Notice of Service by United States of America of First Set of Interrogatories, Request for Production of Documents and Request for Admissions concerning Defendant No. 3). The time for responding to the motion has expired and no response was filed on behalf of defendant Fitchpatrick. On November 12, 2008, the court filed its Notice of Hearing (Doc. 159) concerning the motion to compel, which set a hearing for November 18, 2008, and which also directed counsel for Fitchpatrick to appear at the hearing. Attorney James T. McIntyre had previously entered his appearance for Fitchpatrick (Doc. 98), but subsequently sought to withdraw as counsel. (Doc. 138). However, the Court determined that McIntyre had not provided the required proof of service of his motion to withdraw on Fitchpatrick, and took the motion under advisement. (Doc. 153).

Therefore, McIntyre was official counsel of record for Fitchpatrick at the time the above-described discovery was served and at the time the above-described motion to compel was filed. McIntyre received notice of all of these filings through the Court's electronic CM/ECF system.

At the November 18, 2008 hearing, only counsel for the Government appeared. The Court therefore finds that the Motion to Compel (Doc. 158) should be GRANTED as an uncontested motion pursuant to D.Kan. Rule 7.4. Defendant Byron Fitchpatrick is hereby given until **December 18, 2008**, to serve full and compete answers and responses to the Plaintiff's discovery requests and to produce the documents requested in Plaintiff's request for production of documents. All objections to any of the discovery requests have been waived by the failure of Byron Fitchpatrick to file timely responses. If defendant Byron Fitchpatrick fails to comply with the requirements of this Order, the Court may assess sanctions against him, including but not limited to an Order forfeiting any and all claims Byron Fitchpatrick may have to any of the defendants identified in these proceedings.

A copy of this Order will be served on James McIntyre through the court's electronic service, CM/ECF. In addition, the Clerk is directed to forward a copy of this Order to defendant Byron Fitchpatrick, by U.S. Mail, addressed as follows:

Byron D. Fitchpatrick
#19365-031
FCI El Reno
Federal Correctional Institution
P.O. Box 1500
El Reno, OK 73036

IT IS SO ORDERED.

s/ DONALD W. BOSTWICK
Donald W. Bostwick
U.S. Magistrate Judge