

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

**DON MURRELL,**

**Plaintiff,**

**v.**

**HEATING PLUMBING ENGINEERS, INC.,**

**Defendant.**

**Case No. 15-1045-JTM-GLR**

**MEMORANDUM & ORDER**

This case is before the Court on Defendant's Motion to Compel Discovery Responses and for Costs (ECF 24), filed on October 19, 2015. Defendant states that it served Plaintiff with its discovery requests on August 19, 2015. Plaintiff's deadline to respond to those requests was September 18, 2015, but Defendant did not receive any response, nor did Plaintiff serve its own discovery requests. Defendant attempted to reach Plaintiff's counsel on numerous occasions by telephone and by e-mail (ECF 24-3, 24-4), but received no response to those communications. Defendant now requests that Plaintiff be ordered to respond to Defendant's discovery requests and that Defendant be awarded attorney's fees and costs incurred in preparing the present motion. For the reasons set forth below, the Court grants Defendant's motion.

Fed. R. Civ. P. 37(a) permits a party to move for an order compelling discovery after attempting to confer with the other party in good faith. When the Court grants such a motion, Rule 37(a)(5) obliges the Court to require the non-moving party to pay the movant's reasonable expenses and attorney's fees incurred in bringing the motion. Before awarding such fees and expenses, the Court gives the non-moving party an opportunity to be heard to contest the motion.

In this case, Plaintiff, the non-moving party, failed to oppose or respond in any way to Defendant's motion to compel, and thus the Court grants the motion as unopposed.<sup>1</sup>

**IT IS THEREFORE ORDERED** that Plaintiff is to respond to Defendant's discovery requests within 14 days of the filing of this Order. Also within 14 days, Defendant shall file a memorandum with its specific dollar request for fees and costs, including an itemized accounting of the time and expense incurred in bringing this motion. Plaintiff will have 14 days after service of Defendant's memorandum within which to file a responsive memorandum.

Dated this 10<sup>th</sup> day of November in Kansas City, Kansas.

s/Gerald L. Rushfelt  
U.S. Magistrate Judge

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<sup>1</sup> In addition to requesting that Plaintiff be compelled to respond to Defendant's discovery requests and pay fees and costs for necessitating this motion, Defendant also asks the Court to find that Plaintiff has waived any objections to Defendant's requests. The Court declines to make such a finding at the present time.