

CHAPTER 12

Motions for Orders of Compliance

Andrew M. Zeitlin

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DISCOVERY & DEPOSITIONS IN CONNECTICUT

Motions for Orders of Compliance

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Scope Note

This chapter discusses motions to compel compliance with discovery requests. It describes the conduct that is deemed sanctionable under the Connecticut Practice Book, the sanctions that are available, the standard for imposing sanctions, and the procedure for resolving discovery disputes and seeking sanctions. The chapter also includes as exhibits sample motions and objections, the statewide standing order concerning discovery disputes, and the court form necessary to seek adjudication of discovery disputes under the standing order.

§ 12.1 INTRODUCTION

Motions for orders of compliance (or motions to compel, as they are frequently called) are governed by Section 13-14 of the Connecticut Practice Book. As in many jurisdictions, judges in Connecticut generally prefer that parties and their counsel resolve discovery disputes without the need for judicial intervention. Accordingly, motions to compel, generally speaking, are discouraged.

Prior to making a motion to compel, it is a good idea to make every reasonable effort to resolve the discovery dispute. Perhaps more importantly, it is advisable to document the reasonableness of your position in attempting to resolve the dispute. Such documentation is usually very important when and if it becomes necessary to submit your dispute for adjudication. You will have a much better chance of having the dispute resolved in your client's favor if you can demonstrate the reasonableness of your client's position and your efforts to resolve the matter.

§ 12.2 SANCTIONABLE CONDUCT AND AVAILABLE SANCTIONS

Section 13-14 of the Connecticut Practice Book authorizes Connecticut state courts to issue sanctions for failing to comply with discovery in any of the following ways:

- failing to answer interrogatories, or to answer them fairly;
- intentionally answering interrogatories falsely or in a manner calculated to mislead;
- failing to respond to requests for production;
- failing to respond to requests for disclosure of the existence and contents of an insurance policy or the limits thereof;
- failing to submit to a physical or mental examination;
- failing to comply with a discovery order made pursuant to Section 13-3 of the Connecticut Practice Book, i.e., the rule addressing disclosure of assets when a prejudgment remedy is sought;
- failing to comply with Section 13-15 of the Connecticut Practice Book, i.e., the rule addressing a party's continuing obligation to disclose;
- failing to appear and testify at a deposition duly noticed; or
- failing substantially to comply with any other discovery order made pursuant to Sections 13-6 through 13-11 of the Connecticut Practice Book.

Conn. Prac. Bk. § 13-14(a).

The Connecticut Practice Book makes clear that it shall not be a defense to a motion made under Section 13-14 that the discovery requested is objectionable, absent the filing of written objections. Conn. Prac. Bk. § 13-14(c).

Section 13-14 authorizes a wide array of sanctions for any of the foregoing conduct, including

- entry of nonsuit or default;

- an award of the costs of the motion, including a reasonable attorney fee;
- an order that the matters regarding which the discovery was sought, or other facts, shall be taken to be established for purposes of the action;
- an order precluding the party who failed to comply with the discovery requests from introducing certain matters into evidence; or
- entry of a judgment of dismissal.

Conn. Prac. Bk. § 13-14(b).

§ 12.3 STANDARD FOR IMPOSING SANCTIONS

While, generally speaking, sanctions are reserved for parties who disobey court orders compelling compliance with discovery requests, courts have also imposed sanctions based on a party's refusal to comply with discovery requests, even absent a court order. In *Pavlinko v. Yale-New Haven Hospital*, 192 Conn. 138 (1984), for example, the Connecticut Supreme Court affirmed the trial court's dismissal of the plaintiff's malpractice lawsuit following the plaintiff's repeated refusal to answer questions at deposition regarding hospital records. During the plaintiff's deposition, he was asked numerous questions about records missing from the defendant hospital for a two-year period, and refused to answer them, invoking the privilege against self-incrimination. While the court acknowledged the plaintiff's right to invoke that privilege, it held that he could not fairly maintain his lawsuit while denying the defendants discoverable information pertaining to their defense.

Suffice it to observe at this point that if the disobedient party's refusal to testify is intentional, if a sufficient need for the information requested is shown by the opposing party, and if it does not appear that the disobedient party, having failed to comply with the order embodied in the rules, is inclined to change his position, then dismissal is an appropriate sanction.

Pavlinko v. Yale-New Haven Hosp., 192 Conn. at 145.

Notwithstanding *Pavlinko*, a court is more likely to issue sanctions for discovery misconduct when that misconduct involves a violation of a discovery order issued by the court. In *Millbrook Owners Ass'n, Inc. v. Hamilton Standard*, 257

Conn. 1 (2001), the Connecticut Supreme Court set forth a three-part test for imposing sanctions based on the violation of a discovery order, as well as appellate review of such sanctions: *first*, the order to be complied with must be reasonably clear; *second*, the record must establish that the order was, in fact, violated; and *third*, the sanction must be proportional to the violation. *Millbrook Owners Ass'n, Inc. v. Hamilton Standard*, 257 Conn. at 17–18.

In *Millbrook*, the trial court had entered an order requiring the plaintiff to make certain disclosures, including expert disclosures, by a specified date. Some ambiguity existed as to whether the experts were to be disclosed as experts expected to testify at trial or as nontestifying experts. When the plaintiff failed to disclose the experts pursuant to the rules governing testifying experts, the trial court entered an order of dismissal. On appeal, the Connecticut Supreme Court reversed. In so doing, the court first explained that courts have the inherent power to issue sanctions, as well as authority from Connecticut Practice Book Section 13-14, which is part of the rules of practices adopted by the judges of the Superior Court pursuant to their inherent rule-making authority. *Millbrook Owners Ass'n, Inc. v. Hamilton Standard*, 257 Conn. at 9–10. The court then reviewed the abuse of discretion standard and the factors traditionally considered in determining whether a trial court properly imposed sanctions, including the factors considered in *Pavlinko*:

- whether noncompliance with the discovery order was willful or motivated by bad faith,
- whether noncompliance caused prejudice to the other party, and
- the appropriateness and severity of the sanction.

Millbrook Owners Ass'n, Inc. v. Hamilton Standard, 257 Conn. at 15. In announcing the new three-part test, the court noted the policy preference to have cases determined on the merits, where that can be done “with due regard to necessary rules of procedure.” *Millbrook Owners Ass'n, Inc. v. Hamilton Standard*, 257 Conn. at 16 (citations and quotation marks omitted). In reversing and remanding, the court held that the sanction the trial court issued failed the first prong of the three-part test, in that the discovery order violated was not reasonably clear.

Following *Millbrook*, courts have continued to issue sanctions—up to and including dismissal—for violations of discovery rules in the Connecticut Practice Book, as well as discovery orders. In *Stanley Shenker & Associates, Inc. v. World Wrestling Federation Entertainment, Inc.*, No. X05-CV-000180933S, 2003 Conn. Super. LEXIS 2873, at *1 (Conn. Super. Ct. Oct. 16, 2003), then–Superior Court Judge (now Chief Justice) Rogers dismissed the plaintiff’s lawsuit, with

prejudice, after the named plaintiff's president admitted to giving perjured deposition testimony and interrogatory answers; fabricating evidence; assisting with the destruction of evidence; and concealing evidence. The court noted the long-established principle authorizing sanctions where a litigant abuses the judicial process to such a degree, "whether through flagrant discovery violations or through other serious litigation misconduct." *Stanley Shenker & Assocs., Inc. v. World Wrestling Fed'n Entm't, Inc.*, 2003 Conn. Super. LEXIS 2873, at *21. In addition to dismissing the named plaintiff's claims, the court entered a default judgment against it on the defendant's counterclaims. See *Stanley Shenker & Assocs., Inc. v. World Wrestling Fed'n Entm't, Inc.*, 2003 Conn. Super. LEXIS 2873, at *34; see also *Forster v. Gianopoulos*, 105 Conn. App. 702, 712 (2008) (entry of judgment was proper where defendants repeatedly failed to produce documents concerning their assets; noncompliance with discovery was willful; and plaintiff would have been prejudiced absent such sanction).

Sanctions of dismissal are, generally speaking, the exception. Courts more readily issue lesser sanctions. In *Evans v. General Motors Corp.*, 277 Conn. 496 (2006), the plaintiffs sued General Motors for, among other claims, theft of trade secrets. Shortly before trial, the defendant requested an immediate conference, during which it notified the court of its discovery that certain deposition testimony and documents produced by two of its employees were false. The trial court granted the plaintiffs' motion to reopen discovery to explore the extent of the corporate defendant's involvement in fabricating evidence. It then denied the plaintiffs' requested sanction for a judgment of default based on the employees' misconduct, instead awarding costs and attorney fees of more than \$500,000 incurred by the plaintiffs as a result of responding to the defendant's fraudulent evidence. On appeal, the Connecticut Supreme Court affirmed the sanctions ruling. In affirming, the court credited the defendant's counsel for coming forward with the issue, and noted the policy preference to determine cases on the merits when possible. *Evans v. Gen. Motors Corp.*, 277 Conn. at 523–24; see also *ARB Constr., LLC v. Pinney Constr. Corp.*, 75 Conn. App. 151, 161–63 (2003) (trial court properly precluded defendant from introducing into evidence site plans, which plaintiff had requested but not produced during discovery).

In determining which sanction is appropriate for discovery abuses, courts have repeatedly emphasized that sanctions must be proportionate to the discovery violation. See *Usowski v. Jacobson*, 267 Conn. 73, 85–86, 95–96 (2003) (appellate court properly reversed order of monetary sanctions where plaintiff complied with trial court's instruction to modify interrogatory response, but improperly affirmed dismissal of action where plaintiff did not engage in contumacious conduct); *Tuccio v. Garamella*, 114 Conn. App. 205, 208–10 (2009) (trial court's dismissal of action was unduly harsh sanction where record was insufficient to conclude that plaintiff's failure timely to answer interrogatories was willful, or

that defendant was prejudiced by such conduct); *Blinkoff v. O & G Indus., Inc.*, 89 Conn. App. 251, 257–59 (2005) (sanction of nonsuit held to be disproportionate, where plaintiff had complied with discovery order several months before nonsuit motion was filed).

§ 12.4 **PROCEDURE FOR RESOLVING DISCOVERY DISPUTES OR SEEKING SANCTIONS**

Generally speaking, an application to compel discovery or for sanctions is made by a simple motion to the court. *See* Conn. Prac. Bk. § 11-1 et seq. While it is advisable in appropriate circumstances, no separate memorandum of law is required. (Sample motions are included as **Exhibits 12A–12G.**)

Pursuant to a statewide standing order, effective October 26, 2010, any discovery motion filed within six months of the trial date shall be heard promptly by the presiding judge (or a designee) of the judicial district where the case is pending. The standing order is included as **Exhibit 12H.** The motion shall be accompanied by a Request for Adjudication of Discovery or Deposition Dispute (Form JD-CV-119). *See* **Exhibit 12I** for a copy of this form. The form contains an affidavit of counsel, which must be completed, certifying that the discovery motion was filed within six months of trial and that bona fide attempts were made, prior to filing the motion, to resolve the matter at issue. The affidavit must include a description of the communications held or attempted in attempting to resolve the matter, including the date, time, and participants in each communication. Under the same standing order, a party seeking resolution of a deposition dispute may request a telephone conference with the presiding judge (or a designee) by checking the appropriate box on the Request for Adjudication. If the telephone conference does not resolve the dispute, a hearing shall be held promptly. The standing order specifically provides that judges hearing such discovery or deposition disputes may make any appropriate order, including the imposition of sanctions pursuant to Connecticut Practice Book Section 13-14.

**EXHIBIT 12A—Defendants’ Motion to Compel
Production of Medical Records**

DOCKET NO.: : SUPERIOR COURT
:
PLAINTIFF : JUDICIAL DISTRICT OF
:
v. : AT
:
DEFENDANTS : DATE

**DEFENDANTS’ MOTION TO COMPEL
PRODUCTION OF MEDICAL RECORDS**

Pursuant to Connecticut Practice Book § 13-14, Defendants respectfully move the Court for an order compelling Plaintiff to produce certain medical records, as he represented he would in his discovery responses four months ago. In support of this Motion, Defendants state the following:

1. The operative complaint in this action alleges claims of intentional and negligent infliction of emotional distress caused by _____.

2. Defendants propounded their First Set of Interrogatories on [date].

3. Defendants’ Interrogatory No. 1 requested information about each health care provider with whom Plaintiff consulted in connection with his claim for emotional distress. Defendants’ Interrogatory No. 2 requested the production of information regarding any health provider from whom Plaintiff sought treatment for any type of emotional condition.

4. In his responses, dated [date], Plaintiff represented that he sought treatment from a Dr. _____ for his emotional distress and he provided no other information to identify Dr. _____ or his whereabouts. Plaintiff further represented that he would produce medical records reflecting such treatment. (*See* relevant portions of Plaintiff’s responses to Defendants’ First Set of Interrogatories, attached hereto as Exhibit A.)

5. Although Plaintiff committed to producing these records four months ago, he has not done so to date. The undersigned has made repeated efforts by telephone and e-mail to obtain the records from counsel for Plaintiff, to no avail.

**ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED**

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6. The discovery deadline in this action is [date].

7. Because Defendants do not have access to the medical records that go to the very heart of Plaintiff's claims, Defendants have been unable to conduct Plaintiff's deposition.

WHEREFORE, Defendants respectfully move the Court for an Order compelling Plaintiff to produce the medical records described above, no later than 10 days from the date of the granting of this Motion, or such other date as the Court may designate.

DEFENDANTS,

[signature block]

MOTIONS FOR ORDERS OF COMPLIANCE

ORDER

The foregoing Motion to Compel having been heard by the Court, it is hereby ORDERED: GRANTED / DENIED.

BY THE COURT,

Judge/Clerk

Dated:

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CERTIFICATE OF SERVICE

This is to certify that on this [date], a copy of the foregoing was mailed, via U.S. mail, postage prepaid, to:

EXHIBIT 12B—Defendant’s Motion to Compel Plaintiff’s Signature on Authorization Forms Required to Obtain Plaintiff’s Updated Medical Records

DOCKET NO.: : SUPERIOR COURT
:
PLAINTIFF : JUDICIAL DISTRICT OF
:
v. : AT
:
DEFENDANT : DATE

**DEFENDANT’S MOTION TO COMPEL
PLAINTIFF’S SIGNATURE ON AUTHORIZATION FORMS
REQUIRED TO OBTAIN PLAINTIFF’S UPDATED MEDICAL RECORDS**

Pursuant to Connecticut Practice Book §§ 13-14 and 13-15, Defendant moves this Court for an order requiring Plaintiff to sign updated authorization forms permitting Defendant to obtain Plaintiff’s up-to-date medical records. Plaintiff claims that she suffered a plethora of medical injuries due to the treatment rendered by Defendant. Plaintiff is already obligated, pursuant to Practice Book § 13-15, to disclose updated or new information responsive to Defendant’s Interrogatories and Requests for Production. With regard to medical records, Plaintiff is required to provide valid authorizations by which Defendant may obtain these records. This duty is ongoing up to and through trial. Trial is imminent, as jury selection is to commence on [date]. Plaintiff has seen numerous doctors since Plaintiff executed the first set of authorizations. Given Plaintiff’s long history of extensive and frequent medical treatment, it is reasonable to believe that there are doctors, besides the ones that have recently been identified through deposition, that Plaintiff continues to see. However, Defendant has not received a signed health care records authorization from Plaintiff to obtain updated medical records since [date]; prior to that, a number of authorizations were signed in [date], over two years ago.

A number of Plaintiff’s providers have refused to provide additional medical records to Defendant without the provision of a new, signed health care records release authorization from Plaintiff. Therefore, Defendant hereby respectfully moves this Court for an order requiring Plaintiff to sign, within two business days of the granting of Defendant’s Motion, updated authorization forms permitting Defendant to obtain updated medical records from her myriad providers. The up-

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dated authorization forms are attached to this Motion as Exhibit A, for the Court's reference.

Without updated medical records authorizations, Defendant is unable to obtain plaintiff's most recent medical records, and is therefore unable to prepare a proper defense. In addition, Plaintiff is in violation of her ongoing duty to disclose information, as required by Practice Book § 13-15. Accordingly, this Court should compel Plaintiff's signature on the authorization forms. Should Plaintiff fail to supply immediately signed copies of the attached authorizations, Defendant respectfully requests that the Court preclude Plaintiff from introducing any evidence regarding her medical and/or dental injuries and require Plaintiff to pay the reasonable expenses, including attorneys' fees, in making this Motion, pursuant to Practice Book § 13-14(a).

DEFENDANT

[signature block]

MOTIONS FOR ORDERS OF COMPLIANCE

ORDER

The foregoing Motion to Compel Plaintiff's Signature on Authorization Forms, having been presented to the Court, it is hereby ORDERED:

GRANTED/DENIED.

Judge/Clerk

Dated:

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Defendant's Motion to Compel Plaintiff's Signature has been forwarded via first class U.S. mail, postage prepaid, on this [date], to the following counsel of record:

**EXHIBIT 12C—Plaintiff’s Motion to Compel
and for Sanctions**

DOCKET NO.: : SUPERIOR COURT
:
PLAINTIFF : JUDICIAL DISTRICT OF
:
v. : AT
:
DEFENDANTS : DATE

PLAINTIFF’S MOTION TO COMPEL AND FOR SANCTIONS

Pursuant to Practice Book § 13-14, Plaintiff respectfully moves for an Order to compel the specific discovery described below, and/or for sanctions, against Defendants. In support of this motion, the undersigned respectfully represents:

The Document Request

1. Plaintiff duly served a Request for the Production of Documents on Defendants on [date] (the “Request”).
2. Defendants filed a request for extension of time, to and including [date], to respond to Plaintiff’s Request.
3. Defendants failed to respond to Plaintiff’s Request by [date].
4. On [date], the undersigned counsel attempted to contact counsel for Defendants by email, seeking a response to Plaintiff’s Request. Counsel for Defendants failed to reply to the undersigned.
5. Since the time, as extended, for Defendants to respond to Plaintiff’s Request had expired, Plaintiff filed a Motion for Sanctions and to Compel, dated [date] (the “First Motion to Compel”), seeking, inter alia, an Order (1) compelling Defendants to produce the requested documents by a date certain, set by the Court; and/or (2) prohibiting the introduction into evidence of any documents by Defendants that are within the scope of Plaintiff’s document request; and/or (3) awarding Plaintiff the costs of this motion, including a reasonable attorney’s fee.

**ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED**

6. In response to Plaintiff’s First Motion to Compel, Defendants pledged to respond to the Request by [date]. The undersigned, in an effort to be reasonable

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and to avoid judicial intervention, agreed to a production deadline of [date]. The First Motion to Compel was therefore never adjudicated.

7. Rather than responding to the Request by [date], Defendants sought yet another extension of time, until [date]. Again, the undersigned cooperated and agreed to the extension.

8. However, on [date], counsel for Defendants notified the undersigned that again, Defendants would not be complying with their own deadline. Instead, Defendants requested their fourth extension of time to respond to the Requests. Finally, the undersigned informed counsel for Defendants that Plaintiff will not consent to another extension.

9. On [date], Defendants filed a Cover Sheet, with responses and objections to Plaintiff's Requests. However, as explained above, Defendants have repeatedly allowed their deadline to interpose objections to lapse. Defendants are woefully out of time to object. Their objections are therefore a nullity.

The Deposition

10. On [date], Plaintiff duly noticed the deposition of [Witness] for [date].

11. On [date], counsel for Defendants notified the undersigned that [Witness] was unavailable on [date], and requested alternative dates.

12. On [date], the undersigned responded to counsel for Defendants, and proposed alternative dates for the deposition. Having received no response from Defendants' counsel, with respect to those suggested alternative dates, the undersigned again attempted to contact counsel for Defendants by email, on [date], in an effort to arrange a workable deposition date.

13. Counsel for Defendants failed to respond, and the duly noticed date for the subject deposition passed, without any compliance or explanation.

14. Accordingly, the undersigned filed the First Motion to Compel, seeking, *inter alia*, an Order (1) compelling Defendants to produce [Witness] for deposition on a date certain, set by the Court; and/or (2) prohibiting testimony by [Witness] at any hearing or trial.

15. In response to the First Motion to Compel, counsel for Defendants stated that [Witness] would be available to be deposed on [date], and, on consent, the deposition was duly re-noticed for that date. As explained above, the First Motion to Compel was never adjudicated.

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16. However, Defendants failed to produce the documents requested, and the deposition of [Witness] was again rescheduled.

17. Counsel for Defendants then stated that [Witness] would be available to be deposed on [date], and the deposition was again duly re-noticed for that date. However, Defendants again failed to meet the deadline to produce the requested documents, and indicated that the deposition of [Witness] could not proceed as planned. Indeed, defense counsel has announced that the deponent now refuses to appear for deposition on the foregoing, consensually noticed date.

18. Finally, defense counsel has now advised the undersigned that Defendants will purportedly commit to produce documents by [date] and to produce [Witness] for deposition on [date]. Assuming that the putative document production is complete—and that no documents are withheld under claim of any objection—the immediately foregoing schedule would be acceptable to the undersigned. However, in light of Defendants' repeated disregard of their own agreements, as described above, Plaintiff has no comfort that such schedule will be met and/or such conditions complied with. Accordingly, Plaintiff is hereby seeking judicial assistance, in a way that provides meaningful sanctions if, yet again, Defendants disregard the deadlines that they themselves have requested.

WHEREFORE, Plaintiff respectfully moves the Court for an Order:

1. Compelling Defendants to (a) produce the requested documents on or before [date]; and (b) produce [Witness] for deposition on or before [date]; and
2. Prohibiting Defendants from objecting to any of the requests contained in Plaintiff's document request; and
3. Prohibiting the introduction into evidence of any documents by Defendants that are within the scope of Plaintiff's document request, and prohibiting any testimony by [Witness], if Defendants should fail to comply with the deadlines set forth immediately, above; and
4. Awarding Plaintiff such other and further relief as the Court deems just and proper.

Respectfully Submitted,

[signature block]

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ORDER

The foregoing Motion, having been considered by the Court, it is hereby ORDERED: GRANTED / DENIED

BY THE COURT

Judge/Clerk

Dated:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent via first class mail, postage prepaid, this [date] to:

DISCOVERY & DEPOSITIONS IN CONNECTICUT

MOTIONS FOR ORDERS OF COMPLIANCE

EXHIBIT 12D—Motion for Order of Compliance

DOCKET NO.: : SUPERIOR COURT
:
PLAINTIFF : JUDICIAL DISTRICT OF
:
v. : AT
:
DEFENDANT : DATE

MOTION FOR ORDER OF COMPLIANCE

Pursuant to Connecticut Practice Book § 13-14, Plaintiff respectfully moves for an Order of Compliance against Defendant, as a result of its failure to respond to Plaintiff’s First Set of Interrogatories to Defendant, dated [date] (“Plaintiff’s Interrogatories”), and Plaintiff’s First Request for Production of Documents to Defendant, dated [date] (“Plaintiff’s Request for Production”), within the time allowed.

In support of this motion, the undersigned attorney for Plaintiff respectfully represents:

1. Plaintiff served Plaintiff’s Interrogatories and Plaintiff’s Request for Production upon Defendant on [date]. A copy of Plaintiff’s Interrogatories is annexed as Exhibit A hereto, and a copy of Plaintiff’s Request for Production is annexed as Exhibit B hereto.

2. Pursuant to Practice Book § 13-7, Plaintiff’s Interrogatories and Plaintiff’s Request for Production require that responses be served no later than [date]. As of the date of this motion, Defendant has failed to respond in any manner to Plaintiff’s Interrogatories or Plaintiff’s Request for Production.

3. By virtue of the foregoing, Defendant has shown a cavalier disregard for its discovery obligations. Accordingly, Plaintiff respectfully moves the Court for an order imposing one or more of the sanctions enumerated below.

**ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED**

DISCOVERY & DEPOSITIONS IN CONNECTICUT

WHEREFORE, Plaintiff respectfully moves for the following relief:

1. The entry of a default judgment against Defendant and assignment of this case for a trial in damages as against Defendant; and/or
2. The entry of an Order precluding Defendant from offering at trial any and all evidence relating to those matters upon which discovery was sought by Plaintiff's Interrogatories or Plaintiff's Request for Production; and/or
3. The entry of an Order compelling Defendant to comply fully with each and every part of Plaintiff's Interrogatories and Plaintiff's Request for Production, on a date certain, which date shall be no later than ten days after entry of such Order; and/or
4. The award of the costs of this motion, including a reasonable attorney's fee, to Plaintiff; and
5. Such other and further relief as the Court deems proper.

PLAINTIFF,

[signature block]

MOTIONS FOR ORDERS OF COMPLIANCE

ORDER

The foregoing motion, having been presented to the Court, it is hereby ORDERED: GRANTED / DENIED. It is further ORDERED that:

1. A default judgment shall enter against Defendant, and Plaintiff may proceed to a trial in damages as against Defendant;

2. Defendant is hereby precluded from offering at trial any and all evidence relating to those matters upon which discovery was sought by Plaintiff's First Set of Interrogatories or Plaintiff's First Request for Production of Documents;

3. Defendant shall fully comply with each and every part of Plaintiff's First Set of Interrogatories and Plaintiff's First Request for Production of Documents, on or before _____; and/or

4. Defendant shall pay Plaintiff's costs of this motion, including its reasonable attorney's fees, as quantified by a supplemental submission that Plaintiff may make within twenty-one days of the date of this Order.

BY THE COURT:

Judge/Clerk

Dated:

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CERTIFICATION

This is to certify that a copy of the foregoing Motion for Order of Compliance was sent on this [date], via First Class U.S. Mail, postage prepaid, to the following counsel of record:

EXHIBIT 12E—Objection to Motion to Compel

DOCKET NO.: : SUPERIOR COURT
:
PLAINTIFF : JUDICIAL DISTRICT OF
:
v. : AT
:
DEFENDANT : DATE

OBJECTION TO MOTION TO COMPEL

Defendant hereby respectfully objects to Plaintiff’s Motion to Compel Discovery, dated [date] (the “Motion to Compel”). Plaintiffs’ Motion to Compel should be denied in its entirety because it is rendered moot by the agreement reached by counsel for Defendant and Plaintiff regarding Defendant’s production of documents responsive to certain of the subject requests therefor; and because Defendant should not be required to produce the subject documents without the protection of a confidentiality order.

In support hereof, the undersigned counsel for Defendant respectfully represents as follows:

1. Shortly after receiving the Motion to Compel, Defendant’s undersigned counsel and counsel for Plaintiff conferred by telephone regarding the Motion to Compel. During this telephone conversation, Attorney _____ and Attorney _____ reached an accord on the scope of documents to be produced by Defendant. Specifically, those attorneys agreed that Defendant will produce documents responsive to Plaintiff’s request for documents relating to [insert description of topics]. *See* Motion to Compel, p. 1

2. In that conversation, Attorney _____ further agreed not to mark ready the Motion to Compel.

3. In a subsequent conversation held shortly thereafter, Attorney _____ and Attorney _____ also agreed that, in order to protect the sensitive information contained in Defendant’s documents, Plaintiff and Defendant would enter into a stipulated confidentiality agreement. Obviously, any such confidentiality agreement must precede Defendant’s document production.

**ORAL ARGUMENT NOT REQUESTED
TESTIMONY NOT REQUIRED**

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4. In accordance with that agreement, on [date], Attorney _____ sent two signed originals of a Stipulated Confidentiality Agreement to Attorney _____ for approval and execution.

5. Despite the foregoing, Attorney _____ informed Attorney _____ on [date], that Plaintiff was marking ready the Motion to Compel.

6. The Motion to Compel is rendered moot by the parties' foregoing agreement to produce responsive documents. Therefore, the motion should be denied in its entirety. Indeed, it is disingenuous for Plaintiff to feign distress at purported delay in the discovery process, because Plaintiff waited more than four months—from [date] when Defendant filed his objections to the requests for production until [date] when Plaintiff filed the Motion to Compel—to communicate with Defendant's counsel regarding discovery at all.

7. Moreover, and in any event, Defendant's responsive documents contain confidential information. Defendant should not be required to produce such documents without the protection of a confidentiality order. *See* Practice Book § 13-5. Despite Defendant's proposing—and signing, through counsel—such a protective mechanism, Plaintiff has ignored that proposal and cavalierly, but improperly, chosen instead to prosecute this motion. Such tactics should not be permitted.

WHEREFORE, Defendant respectfully requests that this Objection be sustained, and Plaintiff's Motion to Compel Discovery be denied in its entirety, together with such other and further relief as this Court deems proper.

DEFENDANT

[signature block]

MOTIONS FOR ORDERS OF COMPLIANCE

ORDER

The foregoing Objection, having been presented to the Court, it is hereby ORDERED: SUSTAINED / OVERRULED.

BY THE COURT

Judge/Clerk

Dated:

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CERTIFICATE OF SERVICE

This is to certify that on this [date], a copy of the foregoing Defendant's Objection to Motion to Compel Discovery was sent, via First Class U.S. Mail, postage prepaid, to:

EXHIBIT 12F—Defendants’ Objection to Motion to Compel Production

DOCKET NO.: : SUPERIOR COURT
:
PLAINTIFFS : JUDICIAL DISTRICT OF
:
v. : AT
:
DEFENDANT : DATE

**DEFENDANT’S OBJECTION TO
MOTION TO COMPEL PRODUCTION**

Defendant hereby objects to Plaintiffs’ Motion to Compel Production, dated [date]. In support of its objection, Defendant states as follows:

1. By its motion, Plaintiffs seek an order requiring Defendant to produce certain documents. Plaintiffs’ motion should be denied. As discussed herein, the document request at issue was served after the deadline for completion of discovery, and is therefore untimely. In addition, and as Plaintiffs concede, Defendant has already produced certain documents responsive to the subject discovery requests. To the extent Plaintiffs seek an order compelling Defendant to produce additional documents, their motion should be denied. The requested documents are duplicative of documents already produced and/or in Plaintiffs’ possession. Further, the documents requested are not relevant to any issue in this action, nor are they reasonably calculated to lead to the discovery of admissible evidence. Accordingly, they are not within the scope of discovery, as required by Practice Book § 13-2.

2. By this Court’s Order, dated [date], fact discovery was to be completed by [date]. Plaintiffs did not serve their document request until [date].

3. Despite the untimely nature of Plaintiffs’ discovery request, counsel for the parties discussed the request in a good faith effort to resolve Defendant’s objections to the request while satisfying Plaintiffs’ need for the requested materials.

**ORAL ARGUMENT REQUESTED
TESTIMONY NOT REQUIRED**

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4. With respect to the first paragraph of the request, Defendant's counsel reminded Plaintiffs' counsel that the requested files and data were materials in Plaintiffs' possession. Accordingly, that paragraph of the request appears to be moot.

5. With respect to the second paragraph of Plaintiffs' document request, Defendant produced, on a confidential basis, [insert description of documents]. As Defendant's counsel informed Plaintiffs' counsel, Defendant believes that the other documents requested are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

6. Plaintiffs' Motion to Compel fails to describe how the materials requested are relevant to any issue in dispute. Defendant respectfully submits that they are not.

WHEREFORE, Defendant respectfully requests that its objection be sustained, and Plaintiffs' Motion to Compel Production be denied in its entirety, together with such other and further relief as this Court deems proper.

DEFENDANT

[signature block]

MOTIONS FOR ORDERS OF COMPLIANCE

ORDER

The foregoing Objection having been heard by the Court, it is hereby ORDERED: SUSTAINED / OVERRULED.

BY THE COURT

Judge/Clerk

Dated:

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CERTIFICATION

This is to certify that on [date], a copy of the foregoing Defendant's Objection to Motion to Compel was sent via U.S. Mail, postage prepaid, to:

**EXHIBIT 12G—Affidavit in Support of Defendant’s
Objection to Motion to Compel Discovery**

DOCKET NO.: : SUPERIOR COURT
:
PLAINTIFFS : JUDICIAL DISTRICT OF
:
v. : AT
:
DEFENDANT : DATE

**AFFIDAVIT OF _____ IN SUPPORT OF
DEFENDANT’S OBJECTION TO MOTION TO COMPEL DISCOVERY**

STATE OF CONNECTICUT :
: ss.: [City]
COUNTY OF FAIRFIELD :

_____, being duly sworn, on oath deposes and says:

1. I am an attorney admitted to practice before this Court and an attorney with the firm _____, attorneys for Defendant.
2. I submit this affidavit in support of Defendant’s Objection to Motion to Compel Discovery.
3. Shortly after receiving Plaintiffs’ Motion to Compel Discovery, dated [date] (the “Motion to Compel”), I conferred by telephone with Attorney _____, counsel for Plaintiffs, regarding the more specific requests for production set forth in the Motion to Compel and the subject matter of Defendant’s written objections.
4. During this telephone conversation, Attorney _____ and I reached an accord on the scope of Defendant’s production of documents.
5. Specifically, I, on behalf of Defendant, agreed to produce documents responsive to the more specific, narrow requests for production set forth in the Motion to Compel, namely documents relating to [insert description of topics]. See Motion to Compel, p. 1.
6. Attorney _____ agreed that he would not mark ready Plaintiffs’ Motion to Compel.

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7. Attorney _____ and I also agreed that, in order to protect sensitive information contained in those documents responsive to the requests for production set forth in the Motion to Compel, the parties would enter into a stipulated confidential agreement governing Defendant's document production in this case.

8. In accordance with this agreement, on [date], I sent an original of the parties' Stipulated Confidentiality Agreement to Attorney _____ for his signature.

9. Despite my agreement with Attorney _____, on [date], Attorney _____ informed me by telephone that Plaintiffs intended to mark ready the Motion to Compel.

Sworn to before me this
_____ day of _____.

Notary Public/Commissioner of the Superior Court
My commission expires on: _____

EXHIBIT 12H—Discovery and Deposition Dispute Order

Civil Matters—Statewide Standing Orders

Discovery and Deposition Dispute Order

Revised October 26, 2010

When a civil case has been assigned for trial, any Practice Book Chapter 13 motion directed to discovery or deposition issues filed within six months of the trial date shall be heard forthwith by the presiding judge of the judicial district or a designee upon the filing of a Request for Adjudication of Discovery or Deposition Dispute (form JD-CV-119) by the party seeking resolution of the discovery or deposition dispute.

The Request for Adjudication must contain an affidavit of counsel certifying that the Practice Book Chapter 13 motion was filed within six months of the trial date, bona fide attempts have been made to resolve the matter(s) at issue and the participants were not able to reach an accord. The affidavit shall detail the communications held or attempted in an effort to resolve the issue including the date, time and participants in each such communication.

A party seeking resolution of a deposition dispute may request assistance with the resolution of the deposition dispute via teleconference with the presiding judge of the judicial district or a designee by checking “yes” in Section 2 of the Request for Adjudication. If the parties are unable to resolve the dispute after such telephone conference with the presiding judge or a designee, a hearing shall be held as soon as possible.

The judicial authority hearing such disputes may make any appropriate order including the imposition of sanctions pursuant to Connecticut Practice Book Section 13-14. Failure to abide by such orders shall subject the offending party to the entry of a nonsuit or default. Outstanding discovery or depositions shall not delay the commencement of the trial.

Hon. Barbara M. Quinn
Chief Court Administrator

Hon. Linda K. Lager
Chief Administrative Judge, Civil Division

DISCOVERY & DEPOSITIONS IN CONNECTICUT

MOTIONS FOR ORDERS OF COMPLIANCE

EXHIBIT 12I—Request for Adjudication of Discovery or Deposition Dispute (Form JD-CV-119)

REQUEST FOR ADJUDICATION OF DISCOVERY OR DEPOSITION DISPUTE UNDER STATEWIDE STANDING ORDER
 JD-CV-119 New 10-10

STATE OF CONNECTICUT
JUDICIAL BRANCH
 www.jud.ct.gov

For Court Use Only
REQADD



Instructions

1. Fill out the form in full and file it with the clerk's office in the judicial district where the case is assigned.
2. In all cases that require e-filing, the Request For Adjudication Discovery Or Deposition Dispute must be e-filed by attorneys not excluded from e-filing and the filer must select "Request For Adjudication Discovery Or Deposition Dispute" when naming the form in e-filing.

Judicial District	Name of Case	Docket number
Check whichever applies <input type="checkbox"/> Discovery dispute <input type="checkbox"/> Deposition dispute		Trial date

Section 1 — Discovery Dispute

Specify motion number(s) or objection number(s) and titles to be decided and any related motion number(s) or related objection number(s) and titles:

Section 2 — Deposition Dispute

Specify motion number(s) or objection number(s) and titles to be decided and any related motion number(s) or related objection number(s) and titles:

Request telephone conference (*For deposition dispute only*): Yes No

Section 3 — Affidavit

I certify the motion(s) or objection(s) or both specified above was or were filed within six months of the trial date and that bona fide attempts have been made to resolve these dispute(s) and counsel, or counsel and self-represented parties, or both, have been unable to reach an agreement.

Describe the communications held or attempted in trying to resolve these dispute(s) including the date, time and the persons who took part in each communication:

I certify that the statement above is true and accurate to the best of my knowledge and belief.

Subscribed and sworn to before me on:	Date	Signed (Affiant)	Signed (Notary, Comm. of Superior Court, Assistant Clerk)
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Certification

I certify that a copy of this motion was mailed or delivered to all counsel and self-represented (*pro se*) parties of record on:

Date	Signed (Attorney or self-represented party)	Print name of person signing at left
Address (Number, street, town, state, zip code)		Telephone number (Include area code)
Email address		Fax number (Include area code)
Name of each party this copy was mailed or delivered to*		Address of each party this copy was mailed or delivered to*

*If needed, attach additional sheet with name and address of each party this motion was mailed or delivered to.

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