UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, **Petitioner,** **v.** **FIRST SOURCE FINANCIAL USA, INC.,** **Respondent**	**HUDALJ 07-028-MR** **OGC Case No. 06-6009-MR** **Decided: October 12, 2007**

Melissa B. Silverman, Esq.
For the Government

Joseph Guiliano, President
For Respondent

BEFORE: CONSTANCE T. O'BRYANT
Administrative Law Judge

DEFAULT DECISION AND ORDER

This matter is before the Court on a motion by the U.S. Department of Housing and Urban Development's ("HUD" or "the Government") for a default judgment against Respondent First Source Financial USA, Inc. ("Respondent") as a sanction for failing to participate in discovery and to defend against charges in the Complaint filed by HUD in the above-entitled matter. The motion will be GRANTED.

This action commenced on April 11, 2007, with the filing of a Complaint by the Government and Respondent's Answer/Request for Hearing dated April 3, 2007. Pursuant to

23 C.F.R. § 30.35, the Mortgagee Review Board may initiate an action for civil money penalties against any mortgagee or lender who knowingly and materially violates provisions listed in 12 U.S.C. § 1735f-14(b). The Complaint alleges that Respondent, a mortgagee or lender, knowingly and materially violated the following statutory provisions:

a. Submission to the Secretary of information that was false, in connection with any mortgage insured under this [Act] . . .12 U. S. C. § 1735f-14(b)(1)(D).
b. Falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity. . . 12 U. S. C. § 1735f-14(b)(1)(F) and
c. Failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to –
    (i) the application of a mortgagee or lender for approval by the Secretary; or
    (ii) the notification by a mortgagee or lender to the Secretary concerning establishment of a branch office. . . 12 U. S. C. § 1735f-14(b)(1)(G).

The 147 paragraphs of the Complaint which detail the violations and Respondent's role with regard thereto are hereby incorporated into this default judgment and order.

Respondent's Failure to Comply with Discovery Requests

On April 27, 2007, this Court set a hearing date for August 28, 2007, and ordered discovery to be completed by August 3, 2007.

The facts leading up to the current motion, as represented by the Government, have not been contested by Respondent and are accepted as true for the purposes of this determination. These include the fact that the Government served the *Government's First Request for Production of Documents to Respondent First Source Financial USA, Inc.* (the "Requests for Production") and *The Government's First Interrogatories to First Source Financial USA, Inc.* (the "Interrogatories"), respectively (collectively, the "Discovery Requests"), upon Respondent on May 17 and May 18, 2007. The Government requested that Respondent respond to the Discovery Requests within 20 days of service.

For the next three months Respondent failed to provide any documents or information responsive to the Government's Discovery Requests and ignored nearly all communications by the Government. *To wit*: On June 14, 2007, after numerous attempts by the Government to communicate with Respondent to coordinate the transmission of documents responsive to the Discovery Requests, Respondent's counsel, Eric Easterly, informed the Government, via a telephone message, that Respondent did not intend to respond to the Discovery Requests. On June 14, 2007, following additional efforts by the Government to communicate with Mr. Easterly to address Respondent's failure and refusal to respond to the Discovery Requests, Mr. Easterly informed the Government that Respondent was out of business and that he expected to withdraw as legal representative of Respondent.

On June 18, 2007, the Government filed a Motion to Compel Respondent to meet its discovery obligations. The Government's need for documents and testimony was particularly important, it said, because of the paucity of information contained in Respondent's Answer to the Complaint. Respondent did not respond to the Motion to Compel.

On July 9, 2007, I issued an Order compelling Respondent to respond to the Government's Discovery Requests. Respondent's compliance was required by July 19, 2007. The Order provided that if Respondent was unable to comply with the Discovery Requests within that period after making a good faith effort to do so, Respondent was to inform the Government of the reason for the inability to comply and a date when full compliance might be expected.

According to the evidence submitted with its motion for sanctions, the Government took additional steps after filing its June 18, 2007 motion to compel, to try to obtain discovery from Respondent. On June 19, 2007, Mr. Easterly informed the Government that he no longer represented Respondent and suggested that the Government should thenceforth contact

Respondent's President, Guiliano, directly to discuss all matters relating to this proceeding. Following that date, the Government engaged in unsuccessful attempts to communicate with Respondent's President. The Government sent letters, including letters concerning the Government's need to schedule depositions, and served documents upon Guiliano and Respondent's CFO, Gary Stanco (collectively "the Officers"), at Respondent's primary place of business *via* facsimile, overnight mail, and electronic mail, and at the Officers' homes. The addressees received the facsimile and overnight mail packages but did not respond. (*See* Exhibit "A" to the Government's motion, showing an index of the Government's efforts at communication, with the letters and emails and notices of their receipt attached.) The Government's counsel also attempted to contact the Officers via telephone, placing calls to Respondent as well as to the Officers' cellular telephones. The Government's counsel left messages on the Officers' cellular telephones and office voice mail recorders (after learning from Respondent's receptionist that the Officers' presence in the office was unpredictable). The Officers did not respond. On June 28, 2007, the Government discovered that Respondent had terminated its electronic mail server and that Respondent's facsimile machine and website were no longer accessible. On June 29, 2007, the Government's counsel sent a letter via overnight and electronic mail to Guiliano and Stanco, as Respondent's agents, to request Respondent's cooperation and to express the Government's grave concern that given Respondent's refusal to furnish discovery or even to communicate with the Government, the Government would be forced to seek relief from the Court, including sanctions. (*See* Exs.A-36 to A-45 to the Government's motion.) The letter was delivered to Respondent's office address (evident from the signature obtained from the recipient's front desk clerk by the carrier [at Ex.A-42 to the Government's motion]) and to the residential addresses of Guiliano and Stanco.[1] No response was received.

[1] The Government subsequently was able to communicate via telephone with Stanco. Stanco asserts that he is not

Further, on or about July 1, 2007, the Commissioner of the Nevada Mortgage Lending Division informed Government counsel that Respondent's mortgage broker's license in Nevada—the site of Respondent's headquarters--had expired without renewal.[2]

On Monday, July 23, 2007, approximately one week before discovery was scheduled to conclude, Guiliano contacted the Government counsel purportedly for settlement discussions, which, ultimately, were brief and non-productive. Finally, in late July 2007 an agent for the Nevada Mortgage Lending Division informed Government counsel that Guiliano had contacted the Nevada Mortgage Lending Division concerning Respondent's inability or unwillingness to continue paying for storage of its mortgage documents and Respondent's request that the Mortgage Lending Division send a truck to Respondent's storage facilities to take over Respondent's files to either store them or shred them. The Government, fearing that destruction of the documents was imminent filed an Emergency Motion for an Order Preserving Documents and Request for Status Conference (filed on August 8, 2007). The Motion to order Respondent to preserve the documents was denied. The request for status conference was denied, as well, due to inability of this Court to contact a representative of Respondent to arrange a teleconference.

On August 30, 2007 the Government filed the instant motion for sanctions alleging that Respondent had not responded to the Discovery Requests in violation of the Court's Order of July 9, 2007 and Respondent's discovery obligations. The Government requested that Respondent's Answer to the Complaint be stricken and that a default judgment and order be issued against Respondent. In the alternative, the Government sought the issuance of an Order to Show Cause

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and was not an officer of Respondent. Because of this assertion, the Government directed its subsequent communications to Respondent's President, Secretary, Treasurer and CEO, Joseph Guiliano.

[2] According to the Government, Respondent's abandonment of its Nevada mortgage agency license does not affect Respondent's corporate existence in Nevada, which remains active; does not affect Respondent's corporate existence in the more than twenty states where Respondent remains an active foreign corporation; and does not affect Respondent's ability to legally originate mortgage loans in any state other than Nevada.

why such sanctions should not be issued against Respondent. The Government further sought a stay of the discovery period in this action pending the Court's adjudication of the Motion.

On August 31, 2007, I granted the Government's alternate motion and reserved a decision on the motion for sanctions. I issued an Order to Respondent to show cause, on or before September 14, 2007, why Respondent's Answer to the Complaint should not be stricken and a default judgment and order issued against Respondent for failure to defend in the above-entitled matter. Highlighted in the Order was the following statement: ***Respondent's failure to respond to this Show Cause Order shall be deemed evidence that it does not intend to defend the charges and its consent to the entry of a default judgment.*** Respondent has failed to respond to the Show Cause Order even to this date.

To date Respondent has not responded to the Government's Discovery Requests or efforts to schedule depositions and has evaded nearly all attempts by the Government to communicate with Respondent. After one week of discussions with Guiliano concerning his interest in resolving this case, Guiliano informed the Government that he would not settle and might hire a lawyer. The Government has received no subsequent communication from Guiliano or any person representing Respondent.

Upon consideration of all the circumstances in the case, I conclude that Respondent's failure to respond to the Show Cause Order constitutes persuasive evidence that Respondent does not intend to defend the charges in HUD's Complaint in the instant case. Accordingly, I grant the Government's motion for sanctions.

Authority to Impose Sanctions

This Court may sanction a party for, *inter alia*, "failing to comply with an order, rule, or procedure governing the proceeding" and "failing to prosecute or defend an action," pursuant to

24 C.F.R. §§ 26.36 and 26.41(d).[3] The Government urges sanctions on the basis of Respondent's complete disregard for this Court's direct order compelling Respondent to produce discovery responses and Respondent's failure and refusal to defend its case or even communicate with the Government for most of the discovery period allotted by this Court.

A. Respondent Has Failed and Refused to Comply with an Order of this Court And, Therefore, is Subject to Sanctions

The evidence shows that throughout this litigation, the Government has been accommodating to Respondent, allowing extra time for Respondent to comply with its discovery obligations before filing the Motion to Compel; attempting to communicate with Respondent's officers to try to schedule depositions (*see, inter alia*, G's Ex. A-15 through A-16; A-23 through A-24; A-35); and offering to review and copy documents at Respondent's office to minimize the amount of time and money Respondent might otherwise have to spend copying and shipping documents (G's Ex. A-1 and A-4). Respondent's misconduct has prejudiced the Government by hindering the Government's ability to prepare its case and has needlessly caused the Government to incur additional costs and expend resources pursuing this action against Respondent.

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[3] 24 C.F.R. § 26.36 provides, in pertinent part:

(a) The ALJ may sanction a person, including any party or representative, for failing to comply with an order, rule, or procedure governing the proceeding; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly or fair conduct of the hearing.

(b) Any sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) *Failure to comply with an order.* When a party fails to comply with an order, including an order compelling discovery, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admissions, regard each matter about which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with the order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; or

(4) Strike any part of the pleadings or other submission of the party failing to comply with the request.

(d) If a party fails to prosecute or defend an action under this part, the ALJ may dismiss the action or may issue an initial decision against the respondent.

24 C.F.R. § 26.41(d), *Motions to Compel*, provides, in pertinent part: "The ALJ may issue an order compelling a response, issue sanctions pursuant to 26.36, or issue a protective order."

Respondent has now flouted this Court's July 9, 2007 Order Granting the Government's Motion to Compel Discovery.

Judicial and quasi-judicial forums have the inherent power to protect the integrity of their processes and the public from abuse of the process. *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976), *reh'g denied*, 429 U.S. 874 (1976).[4] In the context of administrative proceedings, administrative law judges ("ALJs") bear the important responsibility of insuring that proceedings, including the discovery phase of proceedings, are expeditiously and fairly conducted. *See* 24 C.F.R. § 26.29. Consequently, ALJs have the discretion to control the course of proceedings (*see e.g.*, 24 C.F.R. § 26.29) and to impose sanctions to enforce compliance with its discovery rulings. *Atlantic Richfield Company v. United States Department of Energy*, 769 F.2d 771, 795 (D.C. Cir. 1984) ("[E]videntiary sanctions for recalcitrance in discovery are part and parcel of the power conferred upon the Secretary of Energy to adjudicate the factual issues related to remedial orders . . . Without an adequate evidentiary sanction, a party served with a discovery order in the course of an administrative adjudicatory proceeding has no incentive to comply, and oft times has every incentive to refuse to comply.")

I have considered that Respondent may be *pro se* in this matter.[5] However, the Government made innumerable good faith efforts to communicate with Respondent via means

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[4] The United States Supreme Court has made it clear that the sanction of dismissal is an important means of compelling parties present and putative to recognize and respect the authority of the Court:

> But here, as in other areas of the law, the most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent. [I]t might well be that these respondents would faithfully comply with all future discovery orders entered by the District Court in this case. But other parties to other lawsuits would feel freer than we think Rule 37 contemplates they should feel to flout other discovery orders of other district courts. *National Hockey League v. Metropolitan Hockey Club, supra*, at 643.

[5] It is unclear whether FSF is currently represented by counsel. As set forth herein, Giuliano, on or about July 27, 2007, informed the Government's counsel that he had obtained funds and would hire a lawyer to replace Mr. Easterly as counsel for FSF in this proceeding. Neither Giuliano nor any person purporting to represent FSF has contacted the Court or the Government counsel since that representation was made.

including U.S. and overnight mail, electronic mail, facsimile, and telephone. The Government has a duty to the public to bring actions it determines to be warranted. Respondent has not shown an abuse of this duty. The Government is therefore entitled to responses to its Discovery Requests (pursuant to 24 C.F.R. § 26.41(a) and (c)). Moreover, this Court must not tolerate Respondent's willful disobedience of this Court's Order. Respondent has given no reason whatsoever for its failures to comply with this Court's Order compelling discovery responses, and the failure continues even to this day.

B. Respondent Has Failed and Refused to Defend This Action and, Therefore, is Subject to Sanctions

Respondent, as set forth herein, has evidenced an unwillingness to defend against the present action. While Respondent filed an Answer to the Complaint, that Answer was general and incomplete, stating only that "Respondent denies the same" in response to 112 of the 147 paragraphs of allegations, including denials of basic statements concerning loan closing dates, when/whether a loan went into default and/or foreclosure, and whether certain branch offices established by Respondent were approved by HUD.[6] Additionally, Respondent's lack of communication with the Government, as set forth herein, can be seen to signify a refusal to participate in the litigation.[7] Respondent's failure to respond to the Government's Discovery Requests and to this Court's Order compelling Respondent to respond or to explain the inability to do so also reflects a refusal to defend this action. More recently, Respondent, through Guiliano, failed to return numerous telephone messages by the clerk of this Court, who was attempting to schedule a teleconference with the parties.

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[6] The remaining 35 paragraphs of "responses" include 17 instances where Respondent "realleges" its answers and 5 instances where Respondent states that it "is without knowledge or information sufficient to form a belief as to the truth" of the Government's allegations.

[7] In fact, Respondent's message to Mr. Easterly, its counsel, before terminating his employment, suggests some expectation that FSF might passively await a judgment against FSF. In a letter dated June 19, 2007 (See G's Ex. 6) Guiliano, on behalf of Respondent, stated that he was fully aware that the termination of Respondent's counsel "may result in the entry of orders and judgments adverse to First Source."

failed to return numerous telephone messages by the clerk of this Court, who was attempting to schedule a teleconference with the parties.

Respondent was warned in my Order of August 31, 2007, in no uncertain terms, that failure to respond to the Order to Show Cause would be deemed evidence of its failure to defend and its consent to entry of a default judgment, to wit: ***Respondent's failure to respond to this Show Cause Order shall be deemed evidence that it does not intend to defend the charges and its consent to the entry of a default judgment.*** Respondent has failed to respond to the Show Cause Order even to this date. Accordingly, I conclude that Respondent's failure constitutes conclusive evidence of its intent to abandon any defense against the charges alleged in this Complaint.

Appropriate Sanction

On the basis of Respondent's failure to defend the charges, as described herein, this Court may determine that sanctions are warranted in the form of a default decision against Respondent. See 24 C.F.R. § 26.36(a) and (d).

This Court's power to sanction includes the power to enter a default judgment against a respondent who will not comply with an order of this Court. *See* 24 C.F.R. § 26.36(c)(4). The sanctioning power set forth in 24 C.F.R. § 26.36(c) is akin to the power of the federal courts, pursuant to Federal Rules of Civil Procedure Rule 37(b), to issue sanctions for failure to obey a court order.[8] *See e.g., In the Matter of Automotive Breakthrough Sciences, Inc., ABS Tech Sciences, Inc., et al.*, 1996 FTC LEXIS 470 (FTC 1996)(wherein the Federal Trade Commission

[8] F.R.C.P. Rule 37(b) sets forth the sanctions for certain failures to obey court orders regarding discovery.

Pursuant to F.R.C.P. 37(b), courts have a number of remedial options, including treating facts which were the object of the discovery as established in the lawsuit; prohibiting the disobedient party from supporting or opposing certain claims or introducing certain matters into evidence or striking parts of its pleadings; staying further proceedings until the original discovery order is obeyed; dismissing all or part of the action; or entering judgment by default against the disobedient party. The court may also hold the disobedient party in contempt or require the party failing to obey the order (or its attorney, or both) to pay the opponent's reasonable expenses, including attorney's fees, caused by the failure.

invoked F.R.C.P. Rule 37, along with F.R.C.P. Rule 55, when determining that it would issue a judgment against respondents who failed to answer a complaint, failed to respond to discovery requests served upon them, and failed to appear at a deposition).[9]

However extreme the sanction of default may appear, it is well established that "defaults or dismissals are considered appropriate sanctions where the failure to comply with discovery is attributable to the 'willfulness, bad faith or fault' of the party." *Charles L. Dick and Wilma N. Dick v. Chicago Commodities Inc., Rosenthal & Co., Diana Watt And Donald W. Adams*, 1986 CFTC LEXIS 798, at *5 (CFTC 1986)("Sanctions must be 'just' given the circumstances of the sanctioned behavior.") *Charles L. Dick*, *supra*, at 5, citing *National Hockey League v. Metro Hockey Club*, *supra*, at 640 (failure to respond to court order for written interrogatories despite numerous admonitions and extensions justified dismissal of action on account of respondents' "flagrant bad faith"). In this context, "[w]illfulness has been defined as the conscious disregard of a court's orders or deliberate malfeasance." *Charles L. Dick*, *supra*, at 6, citing *Fjelstad v. American Honda Motor Corp.*, 762 F.2d 1334, 1340 (9th Cir. 1984); *see also Affanto v. Merrill Bros.*, 547 F.2d 138 (1st Cir. 1977). Respondent's misconduct, as described herein, presents precisely the sort of willful misconduct that warrants the severe sanction of a judgment against Respondent.

The United States Supreme Court in *National Hockey League v. Metropolitan Hockey Club*, *supra*,[10] specifically warned that leniency in issuing sanctions could cause "other parties to

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[9] The FCC relied upon two FCC Rules, including:

(i) FCC Rule 3.12(c), providing that the failure of a respondent to file an answer to a complaint "authorize[s] the Administrative Law Judge, without further notice to the respondent, to find the facts to be as alleged in the complaint and to enter an initial decision containing such findings, appropriate conclusions and order"; and

(ii) FCC Rule 3.38(b)(5), providing that if a party fails to comply with a subpoena, or with an order for the production of documents or the answering of interrogatories, the Administrative Law Judge may rule that a "decision of the proceedings be rendered against the party." Id., at *8.

In construing those Rules, however, the FCC looked to F.R.C.P. Rules 37 and 55(b), after which the FCC Rules 3.12(c) and 3.38(b)(5), according to the Court, were "modeled closely." *Id.* at *9.

other lawsuits [to] feel freer than we think Rule 37 contemplates they should feel to flout other discovery orders....." *Id.*, at 643, citing *Dellums v. Powell*, 566 F.2d 231, 235-236 (D.C. Cir. 1977)("If parties are allowed to flout their obligations, choosing to wait to make a response until a trial court has lost patience with them, the effect will be to embroil...judges in day-to-day supervision of discovery, a result directly contrary to the overall scheme of the federal discovery rules."); *see also In re Pyramid Energy, Ltd. v. Heyl & Patterson, Inc.*, 869 F.2d 1058, 1062 (7th Cir. 1989)(courts are "entitled to say, under proper circumstances, that enough is enough...and less severe sanctions than dismissal need not be imposed where the record of dilatory conduct is clear.")

At least one federal agency has looked to Rule 55 of the Federal Rules of Civil Procedure when considering whether to issue a judgment against a recalcitrant party. *See APCC Services, Inc., Data Net Systems, LLC, Davel Communications, Inc., Jaroth, Inc. dba Pacific Telemanagement Services, and Intera Communications Corp. v. TS Interactive, Inc.*, 17 FCC RCD 25523, 25526-25527 (FCC 2002); *see also Matter of Automotive Breakthrough Sciences, Inc., ABS Tech Sciences, Inc., et al., supra.* In *APCC Services, Inc., et al.*, a Federal Communications Commission (FCC) Enforcement Bureau Judge entered a judgment against a respondent who participated in the pre-answer stage of the proceeding (by making an initial settlement proposal and requesting an extension of time to file its answer) and eventually "indicat[ing]" to FCC staff "in a telephone conference that it did not intend to take part further in th[e] proceeding...." *Id* at 25524. The Court relied upon F.R.C.P. Rule 55, providing that a default judgment may be entered against a party against whom a judgment for affirmative relief is sought when the party has failed to plead or otherwise defend. The FCC considered such factors as:

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[10] The purpose of default sanction is: (i) to punish those whose conduct is sufficiently flagrant, (ii) to serve as general deterrence and (iii) to protect the diligent party at 643.

> whether the facts alleged in the complaint state a valid claim; whether the defendant has clearly failed to defend; whether the defendant's failure to defend has continued for a significant period of time; whether the defendant's failure to defend derives from excusable neglect or a good faith mistake; whether the defendant's failure to defend has substantially prejudiced the plaintiff's rights; whether the plaintiff has prosecuted the matter properly; whether the claim concerns important matters of public policy; and whether the claim seeks substantial monetary damages.

Id. at 25526-25527, citing10a Charles A. Wright, Arthur R. Miller & Mary K. Kane, *FEDERAL PRACTICE AND PROCEDURE* § 2685 (1998). The FCC also noted that federal courts construing F.R.C.P. Rule 55 have held that they have broad discretion in determining the appropriateness of entering a default judgment. *Id*, at 25527.

Based upon the factors set forth in APCC Services, Inc., *et al.*, *supra*, the Government is entitled to a judgment against Respondent. Respondent has clearly failed to defend the present action. Respondent has not responded to the Government's Discovery Requests, Requests to Admit or efforts at scheduling depositions; has not complied with this Court's Order compelling compliance with the Government's Discovery Requests; has not responded to the Government's Emergency Motion or to this Court's effort to schedule a teleconference relating to the Emergency Motion. Respondent's failure to defend has continued for the majority of the discovery time allotted to the development of this action.

It is clear that Respondent's failure to defend does not derive from excusable neglect or a good faith mistake. Respondent plainly received timely notice of the facts and issues set forth in the Complaint by and through good service of the Complaint and by notices dating back more than two years from the Government's initiation of the present action (as set forth in the Government's Emergency Motion). Moreover, Respondent's counsel participated in the early stages of this proceeding, filing an Answer (however insufficient), participating in a scheduling conference with this Court, and notifying the Government that Respondent would not be responding to the

Government's Discovery Requests (as set forth *supra*). Respondent thereafter simply ceased participating, communicating a conscious intent not to take part in this proceeding, and, consistent with this position, failed to respond to the Government's Document Requests, Interrogatories, Requests to Admit, efforts to schedule depositions, Motion to Compel, Emergency Motion to Preserve Documents and efforts by this Court to schedule a teleconference relating to the Government's Emergency Motion to Preserve Documents. Respondent's clear, knowing and repeated failure to defend or even to participate in this action has lasted for months and Respondent has not offered any rationale for its failure to participate.

Additionally, the Government has been substantially prejudiced by the Respondent's delays and failure to defend in this action. The Government has properly prosecuted this case, complied with this Court's formal rules, and invested valuable time and resources into its innumerable attempts to communicate with Respondent and into preparing discovery requests and related motions to this Court.

Moreover, the present case does not present an important matter of public policy; rather, it is a straightforward dispute relating to Respondent's failure to comply with the Government's requirements and the amount sought by the Government, i.e., $258,000, under the circumstances is not so large as to preclude a judgment against Respondent. *APCC Services, Inc., et al* at 25528-25529. It appears to the Court that no remedy short of a judgment against Respondent would be a sufficient sanction in this case. This Court has already offered, in its Order Granting Motion to Compel, an opportunity for Respondent to communicate any inability to participate in discovery, and Respondent blatantly ignored that opportunity. Respondent has also demonstrated that it is uninterested in even participating in a teleconference arranged by the Court looking toward setting a satisfactory discovery process. The Government should not have to continue to await

participation in this proceeding from an unresponsive party. *See Malone v. United States Postal Service*, 833 F.2d 128, 132 (9th Cir. 1987)("we have never held that explicit discussion of alternatives is necessary for an order of dismissal to be upheld.")

Finally, Respondent was clearly warned that its failure to satisfy the Order to Show Cause could lead to the issuance of a default judgment. The Order stated: ***Respondent's failure to respond to this Show Cause Order shall be deemed evidence that it does not intend to defend the charges and its consent to the entry of a default judgment.*** Respondent has failed to respond to the Show Cause Order even to this date.

Because of Respondent's failure to comply with the Order of this Court of August 10, 2007, this Court shall grant Government's motion and sanction Respondent by striking its Answer to the Complaint and entering a default judgment against Respondent in the amount sought in the Complaint. *See* 24 C.F.R. § 26.36(c)(4).

CONCLUSION AND ORDER

By virtue of its failure to defend the charges in the instant Complaint, I find that Respondent committed knowing and material violations of provisions listed in 12 U.S.C. §1735f-14(b), to wit:

> = submission to the Secretary of information that was false, in connection with any mortgage insured under this [Act] . . .12 U. S. C. § 1735f-14(b)(1)(D);
>
> = falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity . . . 12 U. S. C. § 1735f-14(b)(1)(F); and for
>
> = failure to comply with an agreement, certification, or condition of approval set forth on, or applicable to –
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> (iii) the application of a mortgagee or lender for approval by the Secretary; or
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> (iv) the notification by a mortgagee or lender to the Secretary concerning establishment of a branch office. . . 12 U. S. C. § 1735f-14(b)(1)(G).

Pursuant to 24 C.F.R. §§ 25.12, 26.37, 26.39, 30.35, and 30.90, **IT IS HEREBY ORDERED** that:

1. The Government's Motion for Default Judgment is granted;

2. First Source Financial USA, Inc. shall pay to the Secretary of HUD the total civil money penalty of $258,000. This amount is immediately due and payable by First Source Financial USA, Inc. without further proceedings; and

3. In accordance with the regulation codified at 24 C. F.R. § 26.39, this Order shall constitute the final agency action in this matter.

Constance T. O'Bryant

CONSTANCE T. O'BRYANT
Administrative Law Judge

Dated: October 12, 2007