

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

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Case No. CV 03-05226-RMT (SSx)

Date: May 26, 2004

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Title: Gary Becker and Susan Becker v. John D. Walden, et al.

DOCKET ENTRY: MINUTE ORDER GRANTING IN PART PLAINTIFFS' MOTION TO COMPEL
PRESENT:

HONORABLE SUZANNE H. SEGAL, UNITED STATES MAGISTRATE JUDGE

Kimberly Carter
Deputy Clerk

N/A

Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:

ATTORNEYS PRESENT FOR DEFENDANT:

None

None

PROCEEDINGS: (IN CHAMBERS):

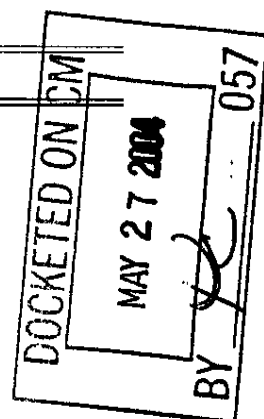
On April 27, 2004, Plaintiffs Gary Becker and Susan Becker ("Plaintiffs" or "Becker") filed a "Motion for Sanctions Against Defendant" and a "Joint Stipulation Re: Non-Compliance With Order To Produce Documents." In the Joint Stipulation, Plaintiffs note that this Court previously ordered Defendant to produce documents responsive to Request for Production No. 26. This request stated the following:

Please produce any and all pension plan statements, including but not limited to any bank statement for your pension plan, which shows that money Becker repaid on the notes was returned to your pension plan.

Plaintiffs contend that Defendant has stated in interrogatory responses and in documents that he told Becker he could not "compromise" the amount Becker owed to him because the money was "owed" to his pension plan. (Jt. Stip. at 2-3). Plaintiffs further contend that at Defendant's deposition, he testified that the funds received from Becker were "indirectly" returned to the pension plan. Request No. 26 therefore seeks documents pertaining to Defendant's contentions regarding the "indirect" return of funds to the pension plan.

Defendant has produced pension plan records dated from February 1997 through February 2001. (Jt. Stip. at 9). In addition, Defendant has produced Lots 4 Rent, Inc. statements (for account 9413872) dated from November 2001 through August 2002.¹ (Jt. Stip. at 9-10). Plaintiffs, however,

¹ Plaintiffs have had to persist in compelling Defendant's compliance with discovery. Defendant's first response was clearly inadequate. (Jt. Stip. at 7). Following Plaintiffs' multiple requests for more information, Defendant provided four more supplemental responses and additional documents. (Jt. Stip. at 8-9). A review of the written responses (as set forth in the Joint Stipulation),



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specifically seek records for the time period after December 2002. This is when Becker made a payment of \$160,000 to Defendant (in satisfaction of a debt) that Defendant alleges was somehow returned to his pension plan. Plaintiffs seek to determine whether Defendant has any records to establish the "indirect" return of the \$160,000 to his pension plan.

Defendant's counsel contended at the hearing on Plaintiffs' Motion that no pension plan statements exist for the relevant time period. He further contended that Defendant produced "actuarial" statements for the post-December 2002 time period, but did not clarify how those documents are evidence of the "indirect" repayment to the pension plan of \$160,000. He finally contended that Request No. 26 only asked for "statements" and therefore that Defendant has not failed to comply with the request as it is written.

The Court finds that a good faith interpretation of the request would require Defendant to produce any and all documents that demonstrate the "indirect" payment of the \$160,000 at issue to Defendant's pension plan. Defendant's hypertechnical interpretation of the request appears to the Court to be an evasive tactic, enabling Defendant to avoid addressing the true issue presented by the discovery request. As such, Plaintiffs' Motion is **GRANTED**.

Within fourteen (14) days of the date of this Order, Defendant shall provide to Plaintiffs any and all documents that evidence the repayment (directly or indirectly) of the \$160,000 (paid by Becker to Defendant in December 2002) to Defendant's pension plan. This Order requires Defendant to provide all documents that demonstrate what happened to the \$160,000 Defendant received from Becker in December 2002, i.e., where the money was deposited and when and how it was "indirectly" returned to the pension plan.

In the event that Defendant contends that no documentation exists to show what happened to the money, Defendant shall make such a statement under oath to Plaintiffs. In addition, Defendant shall provide by declaration all relevant facts to Plaintiffs that support his contention that the \$160,000 was "indirectly" returned to his pension plan. In the alternative, if Defendant erred at his deposition and now desires to change his testimony, he shall so state under oath and provide the relevant facts to Plaintiffs.

however, leads to the conclusion that even Defendant's supplemental responses were cursory and somewhat lacking in detail.

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Defendant has not offered substantial justification for the inadequacy of his discovery responses or for requiring Plaintiffs to elicit supplemental responses. The supplemental responses are inadequate and appear evasive. Defendant shall therefore pay Plaintiffs' fees and costs incurred by having to further seek the production of the requested information after the Court granted Plaintiffs' Motion to Compel as to Request No. 26 on February 27, 2004.

Plaintiffs seek \$3,938.00 in fees and costs. The Court finds this amount excessive for the work involved. In addition, although Plaintiffs' counsel submits a declaration stating that \$3938.00 was the amount of fees and expenses incurred, it is impossible to tell from the attached billing records what hours were actually spent in connection with the current motion. The records reflect entries that were clearly incurred in connection with the sanctions motion, entries that were not part of the sanctions motion and still other entries that are ambiguous. Accordingly, the Court reduces the amount of sanctions requested by 50%. Defendant shall pay the sum of \$1969.00 to Plaintiffs within fourteen (14) days of the date of this Order.

IT IS SO ORDERED.

cc: All Parties of Record

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