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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SEANLIM YITH, SEAK LEANG YITH,

Case No. 1:14-cv-01875-LJO-SKO

Plaintiffs,

v.

ORDER REGARDING INFORMAL
DISCOVERY DISPUTE CONFERENCE

KIRSTJEN NIELSEN, ET AL.,

Defendants.

_____ /

ORDER

On May 24, 2019, the parties appeared telephonically for an informal discovery dispute conference. Attorney Bruce Leichty appeared on behalf of Plaintiffs Seanlim Yith and Seak Leang Yith, and attorney Anthony Bianco appeared on behalf of Defendants.

After reviewing the parties' submissions and hearing the parties' arguments, the Court makes the following findings and orders:

1. Production of Written Response and Responsive Documents Including Emails

Plaintiffs contend that they served requests for production of documents on March 7, 2019, and Defendants have not served a complete production of documents¹ or any written response or

¹ Plaintiffs asserted in two separate disputes that Defendants have not served a complete production of documents generally and have not served a complete production of responsive emails. Because the disputes are so related, the Court will address both at the same time.

1 objections, and due to the delay Plaintiffs believe a “conditional” monetary sanction is
2 appropriate. Plaintiffs request that Defendants be directed to produce a written response, with
3 objections deemed waived, and produce the remaining responsive documents by May 31, 2019.
4 Defendants do not dispute that they failed to serve a written response or propound objections by
5 the April 6, 2019 deadline, but contend that they have produced all responsive documents in their
6 possession.

7 “It is well established that a failure to object to discovery requests within the time required
8 constitutes a waiver of any objection.” *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d
9 1468, 1473 (9th Cir. 1992) (citing *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir. 1981)).
10 Written responses and objections to requests for production are due 30 days after service of the
11 requests, and any objection “must state with particularity whether any responsive materials are
12 being withheld on the basis of that objection.” Fed. R. Civ. P. 34(A), (C).

13 It is undisputed that Defendants failed to serve a written response and failed to assert
14 objections to Plaintiffs’ requests for production within the time required. Accordingly, the Court
15 **GRANTS** Plaintiffs’ request that Defendants produce a written response with all objections to the
16 production of requested documents deemed waived. As Defendants represent that they have
17 produced all responsive documents, the Court **DENIES without prejudice** Plaintiffs’ request for
18 an order directing production of all remaining responsive documents. The Court declines to
19 impose a “conditional” monetary sanction for potential future non-compliance and **DENIES**
20 **without prejudice** Plaintiffs’ request for sanctions. Defendants shall serve a written response to
21 Plaintiffs’ requests for production **on or before May 31, 2019**, and the parties shall meet and
22 confer to determine whether any documents are missing from Defendants’ production **on or**
23 **before June 7, 2019**.

24 **2. Redaction of Produced Documents**

25 Plaintiffs contend Defendants produced documents that redacted critical information
26 regarding investigative details without offering any justification for the redactions. Plaintiffs
27 request that Defendants be required to produce un-redacted copies of previously produced
28 documents. Defendants respond that the documents were appropriately redacted to protect

1 information covered by the Privacy Act of 1974 and the “law enforcement privilege.” Defendants
2 assert that they proposed a protective order at the beginning of the case, but the parties could not
3 come to an agreement.

4 The appropriate method for protecting confidential information exchanged in discovery is
5 to seek a protective order in accordance with the Local Rules. *See* E.D. Cal. Local Rule
6 141.1(a)(1); Fed. R. Civ. P. 26. The Privacy Act of 1974 protects from public disclosure, among
7 other things, information disclosed at meetings of federal agencies that may disclose
8 “investigatory records compiled for law enforcement purposes” in some circumstances. 5 U.S.C.
9 § 552b(c)(7). “Privileges are narrowly construed, because they impede the full and fair discovery
10 of the truth.” *Brooks v. County of San Joaquin*, 275 F.R.D. 528, 529 (E.D. Cal. 2011) (citing
11 *Eureka Financial Corp. v. Hartford Acc. and Indemnity Co.*, 136 F.R.D. 179, 183 (E.D. Cal.
12 1991)). The party asserting the privilege has the burden of establishing its applicability. *Id.*
13 (citing *United States v. O’Neill*, 619 F.2d 222, 227 (3rd Cir. 1980)). The “law enforcement
14 privilege” protects disclosure of law enforcement techniques and procedures; identities of
15 witnesses, law enforcement personnel, individuals involved in an investigation, sources, and
16 informants; and otherwise applies to “prevent interference with an investigation.” *Brooks*, 275
17 F.R.D. at 529 (quoting *In re Dept. of Investigation of City of New York*, 856 F.2d 481, 483-84 (2d
18 Cir. 1988)).

19 The Court is unable to determine the applicability of asserted privileges and the propriety
20 of the redactions without examining the un-redacted documents *in camera*. As the parties now
21 have tangible discovery materials to examine and the case has proceeded for months since the
22 parties last discussed the possibility of a protective order, the Court **DENIES without prejudice**²
23 Plaintiffs’ request that Defendants produce the un-redacted documents and directs the parties to
24 meet and confer regarding a mutually agreeable protective order **on or before May 31, 2019**. If
25 Defendants intend to redact documents despite a protective order, Defendants must set forth the
26 basis for each redaction and serve a list that includes each redaction *and* the basis for each

27 ² Defendants’ counsel is advised that if the parties are unable to meaningfully meet and confer and agree on terms of a
28 protective order, Defendants will be required to submit all produced documents for *in camera* review with a privilege
log identifying the reason for each redaction for the Court to determine the propriety of the redactions.

1 redaction on Plaintiffs **on or before June 7, 2019.**

2 **3. Production of Exhibits Attached to July 31, 2015 Report of Investigation**

3 Finally, Plaintiffs contend that in April 2019, Defendants produced a report dated July 31,
4 2015 that referenced certain exhibits, but failed to produce the exhibits attached to the report.
5 Defendants contend that the exhibits are not within the scope of discovery as they involve
6 individuals other than Plaintiffs. Defendants admit, however, that the report is relevant to the
7 case. Plaintiffs contend Defendants have waived any objection to production of the exhibits and
8 request that Defendants be directed to produce the exhibits by May 31, 2019.

9 As noted above, failure to object to discovery requests within 30 days constitutes a waiver
10 of any objection. *See Richmark*, 959 F.2d at 1473; Fed. R. Civ. P. 34(A), (C). Defendants
11 admittedly failed to object to the production of these documents within the time required. Thus,
12 the Court **GRANTS** Plaintiffs' request that Defendants produce the exhibits. Defendants shall
13 produce the exhibits attached to the July 31, 2015 Report of Investigation **on or before May 31,**
14 **2019.**

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16 IT IS SO ORDERED.

17 Dated: May 28, 2019

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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