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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID DECRISTOFORO, JR.,

Plaintiff,

No. CIV S-08-0933 JAM EFB

vs.

REXON INDUSTRIAL CORP.; POWER
TOOLS SPECIALISTS, INC.; and
SEARS ROEBUCK & CO.,

Defendants.

ORDER

_____ /

On September 2, 2009, the court heard plaintiff’s motion to compel defendant Sears Roebuck & Co. (“Sears”) to respond to certain interrogatories and requests for production of documents that plaintiff served upon Sears on April 15, 2009. Dckt. No. 47. Attorney Kieran Ringgenberg appeared on behalf of plaintiff; attorneys Andrea Miller, Andrew Sclar, and Craig MacGlashan appeared on behalf of Sears; and attorneys Andrea Miller and Craig MacGlashan appeared on behalf of defendant Rexion Industrial Corp.

For the reasons stated on the record and with the limitations stated on the record, plaintiff’s motion to compel, Dckt. No. 47, is granted.

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1 Not addressed at the September 2, 2009, hearing was plaintiff's related request for
2 sanctions. Dckt. No. 47-2 at 13. Federal Rule of Civil Procedure 37(a)(5)(C) provides that if a
3 motion to compel discovery "is granted in part and denied in part, the court *may* . . . apportion
4 the reasonable expenses for the motion." Fed. R. Civ. P. 37(a)(5)(C) (emphasis added).
5 Additionally, Rule 37(a)(5)(A) provides that a court *must not* award expenses if, among other
6 things, "the opposing party's nondisclosure, response, or objection was substantially justified; or
7 . . . other circumstances make an award of expenses unjust." Fed. R. Civ. P. 37(a)(5)(A).
8 Although Sears was often dilatory and less than forthcoming in its responses to plaintiff's
9 discovery requests, the court declines to award expenses in this matter because plaintiff's motion
10 to compel was granted only in part (as noted on the record, several limitations were imposed on
11 the scope of plaintiff's discovery requests), and because Sears' objections to many of the
12 discovery requests (specifically, Sears' objections to plaintiff's requests for information and
13 documents about table saws other than the saw at issue in this action) raised reasonable questions
14 that justified obtaining the court's ruling. Even though the court ultimately determined that
15 information and documents regarding table saws which are similar to the saw at issue in this
16 action are discoverable, the issue was subject to legitimate dispute.¹ Therefore, plaintiff's
17 request for sanctions is denied.

18 For the foregoing reasons, IT IS HEREBY ORDERED that:

19 1. For the reasons stated on the record and with the limitations stated on the record,
20 plaintiff's motion to compel, Dckt. No. 47, is granted; and,

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26 ¹ Additionally, plaintiff failed to provide the court with any evidence, or even argument,
regarding the expenses he incurred in bringing the motion to compel.

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2. Plaintiff's request for sanctions contained therein is denied.

SO ORDERED.

DATED: September 3, 2009.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE