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

MICHAEL LESSARD and ROBERT L.
REAGAN for themselves and on behalf
of all other similarly situate employees,

Plaintiffs,

No. 2:10-cv-01262 MCE KJN

v.

TRINITY PROTECTION SERVICES,
INC., a Maryland Corporation, and
DOES 1 through 50, inclusive,

Defendants.

ORDER

_____/

Presently before the court are plaintiffs’ motions to: (1) compel answers to
interrogatories and requests for production served prior to, and subsequent to, the removal of this
case to federal court (Dkt. No. 35); and (2) compel further answers to plaintiffs’ first set of
request for admissions (Dkt. No. 58).¹ The undersigned heard this matter on its law and motion
calendar on June 16, 2011. (Minutes, Dkt. No. 97.) Attorney S. Ward Heinrichs appeared on
behalf of plaintiffs via telephone. Attorney Carolyn B. Hall appeared on behalf of defendant.

The parties’ joint statement re discovery disagreement and plaintiffs’ counsel’s

¹ This matter proceeds before the undersigned pursuant to Eastern District of California
Local Rule 302(c)(1) and 28 U.S.C. § 636(b)(1).

1 representations at the hearing clarify that, as a result of events occurring after the filing of
2 plaintiffs' motions to compel, the discovery dispute presently before the court is limited to two
3 issues: (1) whether, in light of the initial scheduling order entered in this case (Dkt. No. 27),
4 plaintiffs were permitted to propound ten special interrogatories pursuant to Federal Rule of Civil
5 Procedure 33, which seek information regarding the affirmative defenses asserted by defendant;
6 and (2) whether either party is entitled to discovery expenses or sanctions in regards to the
7 motions to compel pursuant to Federal Rule of Civil Procedure 37.

8 For the reasons stated on the record at the hearing on plaintiffs' motions to
9 compel, IT IS HEREBY ORDERED that:

10 1. Plaintiffs' motion to compel (Dkt. No. 35) is denied as moot to the extent
11 that it seeks responses to plaintiffs': (1) first set of requests for production of documents served
12 while this case was pending in state court; (2) first set of general form interrogatories served
13 while this case was pending in state court; (3) first set of employment-related form
14 interrogatories served while this case was pending in state court; (4) first set of special
15 interrogatories, numbered 1 through 26, served while this case was pending in state court; and
16 (5) plaintiff's first set of request for production of documents served pursuant to Federal Rule of
17 Civil Procedure 34 after removal of the action. Plaintiffs' motion to compel is denied on the
18 merits to the extent that it concerns plaintiffs' first set of special interrogatories served pursuant
19 to Federal Rule of Civil Procedure 33; plaintiffs' set of ten interrogatories was served in violation
20 of the initial scheduling order in this case.

21 2. Plaintiffs' motion to compel further answers to plaintiffs' first set of
22 request for admissions (Dkt. No. 58) is denied as moot.

23 3. Plaintiffs' request for the award of reasonable expenses pursuant to
24 Federal Rule of Civil Procedure 37(a)(5) is granted with respect to its motion to compel
25 responses to the various requests for production and interrogatories served in state and federal
26 court, except with regard to the special interrogatories discussed above. Regarding plaintiffs'

1 requests for production and interrogatories other than the ten special interrogatories served in
2 violation of the initial scheduling order in this case, defendant only responded to discovery after
3 plaintiffs were forced to file their motion to compel. See Fed. R. Civ. P. 37(a)(5) (providing that
4 “if the disclosure or requested discovery is provided after the motion was filed . . . [,] the court
5 must, after giving an opportunity to be heard, require the party or deponent whose conduct
6 necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s
7 reasonable expenses incurred in making the motion, including attorney’s fees”). In consideration
8 of plaintiffs’ counsel’s declarations, plaintiff is awarded \$6,000 as reasonable expenses pursuant
9 to Rule 37(a)(5).² Defendant shall pay the award directly to plaintiffs or to plaintiffs’ counsel
10 within 45 days of the date of this order and notify the court in writing within seven days of such
11 payment.³

12 4. Plaintiffs’ request for an award of reasonable expenses or sanctions in
13 connection with their motion to compel further answers to plaintiffs’ first set of request for
14 admissions is denied.

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19 ² Plaintiffs seek a total of \$12,923.33 as reasonable expenses for filing and pursuing both
20 motions to compel. (Suppl. Heinrichs Decl. ¶ 18, Dkt. No. 96, Doc. No. 96-1.) In light of the
21 rulings above, plaintiffs are not entitled to an award in that amount. Instead, the undersigned has
22 made the award above in light of the representations made in plaintiffs’ counsel’s declarations
and in an effort to avoid any additional expenses for plaintiffs and defendants in further
contesting or parsing the matter of reasonable expenses.

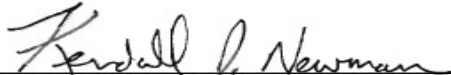
23 ³ It is apparent from the documents filed by the parties and the parties’ joint statement
24 that the problems attendant to defendant’s responses to discovery in this case may be largely
25 attributable to the conduct of defendant’s former counsel, Mr. Na’il Benjamin. However, the
26 award of reasonable expenses is made only against defendant, as opposed to defendant *and* Mr.
Benjamin, because it is not at all clear to the court whether Mr. Benjamin was acting on his own
accord or upon defendant’s direction. The court leaves it to defendant, Mr. Benjamin, and Ms.
Hall to determine how, if at all, to apportion responsibility for the award. In any event, defendant
shall make a timely payment of the award consistent with this order.

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5. Defendant's request for the award of reasonable expenses and/or sanctions is denied.

IT IS SO ORDERED.

DATED: June 17, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE