

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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 situated employees,

Plaintiffs,

No. 2:10-cv-01262 MCE KJN

v.

ORDER

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

Defendants.

_____ /

Presently before the court is defendant’s motion for a protective order, which is set for hearing on July 22, 2010.¹ (Dkt. No. 9.) Having concluded that oral argument would not assist the court, the undersigned hereby submits defendant’s motion on the briefs and record on file. For the reasons that follow, the undersigned will deny defendant’s motion and the parties’ respective requests for fees and costs.

Plaintiffs filed this action in state court and propounded discovery on defendant that is the subject of defendant’s motion. Defendant removed this action to federal court prior to

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

1 answering, objecting to, or otherwise seeking resolution of plaintiffs' discovery requests. Shortly
2 after removing this action, defendant filed a motion to dismiss and/or strike plaintiffs' complaint
3 pursuant to Federal Rule of Civil Procedure 12, which is pending before the United States
4 District Judge assigned to this case and is set for hearing on July 22, 2010. (Dkt. No. 7.) Shortly
5 after filing its motion to dismiss, defendant filed a motion for a protective order pursuant to
6 Federal Rule of Civil Procedure 26(c), which seeks an order protecting defendant from
7 responding to plaintiffs' discovery requests that were propounded prior to defendant's removal of
8 this action. (See Dkt. No. 9.)

9 Based on the record before the court, it is apparent to the undersigned that both
10 parties agree that plaintiffs' discovery was prematurely propounded in that it was served before
11 the parties had conducted a Rule 26(f) conference. See Fed. R. Civ. P. 26(d).² Accordingly, the
12 undersigned will deny defendant's motion for a protective order because the discovery dispute
13 that existed at the time defendant filed its motion no longer exists.

14 It appears that after defendant filed its motion and after plaintiffs filed their
15 opposition brief, the parties conducted a Rule 26(f) conference and discussed discovery at some
16 length. The Joint Statement re Discovery Disagreement filed by defendant indicates that the
17 parties agreed to review one another's initial disclosures, which do not appear to have been
18 exchanged yet, "and then serve discovery requests only after making an initial informal effort to
19 obtain additional discoverable information." (Joint Statement at 2:7-9.) Despite this plan,
20 defendant left its motion on calendar and seeks premature resolution of several discovery
21 disagreements. Because resolution of these disagreements would amount to an advisory opinion,

22
23 ² District courts within the Ninth Circuit may also permit expedited discovery prior to the
24 Rule 26(f) conference upon a showing of "good cause." See, e.g., In re Countrywide Fin. Corp.
25 Derivative Litig., 542 F. Supp. 2d 1160, 1179 (C.D. Cal. 2008) (citing Semitoool, Inc. v. Tokyo
26 Electron Am., Inc., 208 F.R.D. 273 (N.D. Cal. 2002)). "Good cause exists where the need for
expedited discovery, in consideration of the administration of justice, outweighs the prejudice to
the responding party." Id. (citation and internal quotation marks omitted). Plaintiff does not
argue that good cause supported expedited discovery requests.

1 the undersigned will not address them in this order. To the extent that these disputes persist after
2 the parties have completed their planned disclosures, and after the court has resolved defendant's
3 pending motion to dismiss/strike, the parties may file additional noticed motions consistent with
4 the Federal Rules of Civil Procedure and the court's Local Rules.

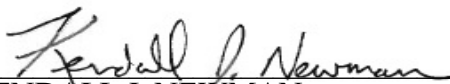
5 The undersigned will also deny the parties' respective requests for attorneys' fees
6 and costs, as such an award to either party would be unjust. The parties have demonstrated a
7 clear inability to communicate with one another in clear and reasonable terms, and this is what
8 exacerbated this dispute. Both parties are equally blameworthy for the unnecessary escalation of
9 this dispute and, accordingly, it would be unjust to award fees and costs.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Defendant's motion for a protective order (Dkt. No. 9) is denied.
- 12 2. The parties' respective requests for fees and costs are also denied.

13 IT IS SO ORDERED.

14 DATED: July 19, 2010

15
16 
17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE
19
20
21
22
23
24
25
26