

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

SANDIP KUMAR TANDEL, et al.,

Plaintiffs,

No. 2:10-cv-03027 LKK KJN

v.

KINGS ARCO ARENA LIMITED
PARTNERSHIP, et al.,

Defendants.

ORDER & ORDER TO SHOW CAUSE

Presently before the court is defendants’ unopposed motion to compel further responses to various discovery requests served on plaintiffs (Dkt. No. 34).¹ Specifically, defendants’ motion concerns the following interrogatories and requests for production, which were initially served on plaintiffs in June 2011:

1. Defendant City of Sacramento’s First Set of Interrogatories to Plaintiffs, Interrogatories 1-3, 5-7, 9-10, 13-16, 19-25;
2. Defendant Kings Arco Arena Limited Partnership’s First Set of Interrogatories to Plaintiffs, Interrogatories 1-3, 6-7, 9, 12, 14-22;
3. Defendant Royal Kings Arena Limited Partnership’s First Set of

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 Interrogatories to Plaintiffs, Interrogatories 1-25;

2 4. Defendant Gavin Maloof’s First Set of Interrogatories to Plaintiffs,
3 Interrogatories 1-3; and

4 5. Defendants’ Demand for Identification, Production, and Inspection of
5 Documents and Other Tangible Things, Set One (FRCP 34), Requests 1-4,
6 8-25, 27-29, 33-35.

7 The court heard plaintiff’s motion to compel on its law and motion calendar on
8 December 1, 2011. Attorneys Christopher Onstott and Jennifer Espanol appeared on behalf of
9 defendants. Plaintiffs’ counsel, Timothy S. Thimesch and Gene A. Farber, failed to appear at the
10 hearing and did not communicate with the court or plaintiffs’ counsel in advance of the hearing
11 regarding their non-appearance. No other appearance was made on plaintiffs’ behalf.

12 Additionally, as amply demonstrated by Mr. Onstott’s declaration in support of the motion to
13 compel (Dkt. No. 36) and defendants “Affidavit on Non-Cooperation Re: Joint Statement
14 Pursuant to Local Rule 251” (Dkt. No. 39), Mr. Thimesch and Mr. Farber materially failed to
15 meet and confer with defendants’ counsel in good faith regarding the pending discovery dispute,
16 and also completely failed to participate in, or otherwise materially communicate with
17 defendants’ counsel about, preparation of the joint statement re discovery disagreement (“Joint
18 Statement”) required by this court’s Local Rule 251. Accordingly, the undersigned summarily
19 grants defendants’ motion to compel pursuant to Local Rule 251(d).² Additionally, the
20

21 ² This court’s Local Rule 251(d) addresses a party’s failure to participate in the drafting of
22 a joint statement and provides:

23 **Failure to Meet or Obtain Joint Statement.** If counsel for the moving party
24 is unable, after a good faith effort, to secure the cooperation of counsel for the
25 opposing party in arranging the required conference, or in preparing and
26 executing the required joint statement, counsel for the moving party may file
and serve an affidavit so stating, setting forth the nature and extent of
counsel’s efforts to arrange the required conference or procure the required
joint statement, the opposing counsel’s responses or refusals to respond to
those efforts, the issues to be determined at the hearing, and the moving

1 undersigned orders Mr. Thimesch and Mr. Farber to show cause in writing why they: (1) failed to
2 meet and confer with defendants' counsel in good faith regarding the underlying discovery
3 dispute; (2) completely failed to participate in the drafting of the Joint Statement; (3) failed to
4 appear at the scheduled court hearing on December 1, 2011; and (4) should not be personally
5 ordered to pay to defendants the reasonable expenses, including attorneys' fees, incurred by
6 defendants in pursuing the motion to compel, or be otherwise sanctioned, pursuant to Federal
7 Rule of Civil Procedure 37 and Local Rule 110.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Defendants' motion to compel (Dkt. No. 34) is granted in its entirety.

10 2. *On or before December 15, 2011*, plaintiffs shall further respond to
11 defendants' subject discovery requests as follows:

12 a. Plaintiffs shall provide further, complete, and coherent responses to
13 defendant City of Sacramento's First Set of Interrogatories to Plaintiffs, Interrogatories 1-3, 5-7,
14 9-10, 13-16, 19-25.

15 b. Plaintiffs shall provide further, complete, and coherent responses
16 to defendant Kings Arco Arena Limited Partnership's First Set of Interrogatories to Plaintiffs,
17 Interrogatories 1-3, 6-7, 9, 12, 14-22.

18 c. Plaintiffs shall provide further, complete, and coherent responses to
19 Defendant Royal Kings Arena Limited Partnership's First Set of Interrogatories to Plaintiffs,
20 Interrogatories 1-25.

21 d. Plaintiffs shall provide further, complete, and coherent responses
22 to Defendant Gavin Maloof's First Set of Interrogatories to Plaintiffs, Interrogatories 1-3.

23 _____
24 party's contentions with regard to the issues, including any briefing in respect
25 thereto. Refusal of any counsel to participate in a discovery conference, or
26 refusal without good cause to execute the required joint statement, shall be
grounds, in the discretion of the Court, for entry of an order adverse to the
party represented by counsel so refusing or adverse to counsel. See L.R. 110.


1 e. Plaintiffs shall provide all documents and things responsive to
2 defendants' Demand for Identification, Production, and Inspection of Documents and Other
3 Tangible Things, Set One (FRCP 34), Requests 1-4, 8-25, 27-29, 33-35.³

4 3. *On or before December 15, 2011*, plaintiffs' counsel, Timothy S.
5 Thimesch and Gene A. Farber, shall file a writing with the court showing good cause why they:
6 (1) failed to meet and confer with defendants' counsel in good faith regarding the discovery
7 dispute; (2) failed to participate in the drafting of the Joint Statement; (3) failed to appear at the
8 scheduled court hearing on December 1, 2011; and (4) should not be personally ordered to pay to
9 defendants the reasonable expenses, including attorneys' fees, incurred by defendants in pursuing
10 the motion to compel, or be otherwise sanctioned, pursuant to Federal Rule of Civil Procedure 37
11 and Local Rule 110.

12 4. After Mr. Thimesch and Mr. Farber file their response to the order to show
13 cause, the court may direct defendants to address in further briefing the amount of reasonable
14 expenses that they incurred in connection with pursuing their motion to compel. See Fed. R. Civ.
15 P. 37(a)(5).

16 IT IS SO ORDERED.

17 DATED: December 2, 2011

18
19 
20 KENDALL J. NEWMAN
21 UNITED STATES MAGISTRATE JUDGE
22
23
24

25
26 ³ Plaintiffs shall respond to plaintiffs' request for production 1 as narrowed by defendants
in their meet and confer letter and their portion of the Joint Statement filed with the court.