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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

On December 2, 2011, the court granted defendants’ unopposed motion to compel discovery responses and the production of documents in its entirety; ordered plaintiffs to comply with the court’s order no later than December 15, 2011; and ordered plaintiffs to show cause why, among other things, they completely failed to participate in the resolution of the underlying discovery dispute and why their counsel should not be ordered to personally pay defendants’ expenses incurred in bringing the motion to compel, see Fed. R. Civ. P. 37(a)(5)(A).¹ (See Order & Order to Show Cause (“OSC”), Dec. 2, 2011, Dkt. No. 41.) On December 16, 2011, plaintiffs filed a two-page response to the OSC that did not materially address all of the aspects of the OSC, and which was filed one day late (Dkt. No. 42). Plaintiffs seek a one-week extension 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 time to comply with the court's order.

2 In short, plaintiffs' counsel state in their response to the OSC that they prioritized
3 another case ahead of this one and were thus inattentive to plaintiffs' discovery obligations in this
4 case. Plaintiffs' counsel's reasons for their complete lack of participation and communication
5 with defendants' counsel are wholly inadequate and in no way mitigate plaintiffs' complete
6 failure to participate in resolution of the underlying discovery dispute. Despite plaintiffs'
7 counsel's contrition expressed in response to the OSC, their conduct in regards to this discovery
8 dispute has been completely deficient.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Pursuant to Federal Rule of Civil Procedure 37(a)(5)(A), defendants are
11 awarded their reasonable expenses incurred in connection with pursuing their motion to compel.
12 On or before January 5, 2012, defendants shall submit a declaration substantiating the expenses
13 incurred by defendants in moving to compel plaintiffs' compliance with their discovery
14 obligations. Because plaintiffs and their counsel have already been given an opportunity to
15 respond to a potential award of expenses pursuant to Rule 37(a)(5)(A), no further response by
16 plaintiffs or their counsel will be considered.

17 2. After the court determines the amount of the award to which defendants
18 are entitled, plaintiffs' counsel, Timothy S. Thimesch and Gene Farber, shall *personally* pay the
19 amount of the award to defendants. Messrs. Thimesch and Farber shall also file a declaration,
20 signed by both attorneys under penalty of perjury, confirming that they personally paid the award
21 and that their clients in no way, either directly or indirectly, incurred the cost of that award.

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3. Plaintiffs' request for a one-week continuance in which to comply with the court's December 2, 2011 order is granted. Plaintiffs shall completely comply with that order no later than December 22, 2011, at 5:00 p.m. If plaintiffs fail to timely comply with the court's order in its entirety, plaintiffs and their counsel shall be subject to additional sanctions, monetary or otherwise.

IT IS SO ORDERED.

DATED: December 19, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE