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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CAROLINA CASUALTY INSURANCE  
COMPANY,

Plaintiff,

v.

OAHU AIR CONDITIONING SERVICE,  
INC. dba OAHU AIR CONDITIONING  
CO., et al.,

Defendants.

No. 2:13-cv-01378-WBS-AC

ORDER

On September 17, 2014, the undersigned issued an order granting in part and denying in part defendant Pacific Commercial Services, LLC’s (“Pacific”) motion to compel. ECF No. 79. On September 24, 2014, Pacific filed a motion for reconsideration and clarification of the court’s order. ECF No. 80. On September 26, 2014, plaintiff Carolina Casualty Insurance Company (“CCIC”) filed an opposition to Pacific’s motion. ECF No. 81. The court has reviewed Pacific’s motion and, for the reasons set forth below, now GRANTS IN PART AND DENIES IN PART the motion.

LEGAL STANDARDS

Generally stated, reconsideration is appropriate where there has been an intervening change in controlling law, new evidence has become available, or it is necessary to correct clear error or prevent manifest injustice. See Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.,

1 5 F.3d 1255, 1263 (9th Cir. 1993).

2 In the absence of new evidence or a change in the law, a party may not use a motion for  
3 reconsideration to raise arguments or present new evidence for the first time when it could  
4 reasonably have been raised earlier in the litigation. Carroll v. Nakatani, 342 F.3d 934, 945 (9th  
5 Cir. 2003); see also Orange Street Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). Motions  
6 to reconsider are also “not vehicles permitting the unsuccessful party to ‘rehash’ arguments  
7 previously presented.” United States v. Navarro, 972 F. Supp. 1296, 1299 (E.D. Cal. 1997), rev’d  
8 on other grounds, 160 F.3d 1254 (9th Cir. 1998). Ultimately, a party seeking reconsideration  
9 must show “more than a disagreement with the Court’s decision, and recapitulation of the cases  
10 and arguments considered by the court before rendering its original decision fails to carry the  
11 moving party's burden.” United States v. Westlands Water Dist., 134 F. Supp. 2d 1111, 1131  
12 (E.D. Cal. 2001).

### 13 ANALYSIS

14 In the instant motion, Pacific seeks the following relief: (1) reconsideration of the court’s  
15 denial of Pacific’s motion to compel responses to interrogatory numbers 7–15; (2) clarification of  
16 the court’s order compelling CCIC to serve amended responses to certain requests for admissions  
17 and interrogatories; and (3) clarification to the extent the court’s order does not address whether  
18 Pacific is entitled to monetary sanctions. ECF No. 80 at 2. Each issue is addressed in turn below.

#### 19 A. Interrogatory Nos. 7–15

20 In its September 17, 2014 order on Pacific’s motion to compel, the court granted, *inter*  
21 *alia*, Pacific’s motion as to request for admission numbers 7, 8, 11, 12 and 13. ECF No. 79 at 5–  
22 14. The court denied Pacific’s motion to compel responses to interrogatory numbers 7–15 on the  
23 grounds that Pacific failed to reproduce the interrogatories and Pacific’s arguments were vague  
24 and conclusory. Id. at 16.

25 Pacific seeks reconsideration of the court’s order denying its request to compel detailed  
26 and complete responses to interrogatory numbers 7–15, arguing in part that it was excusable  
27 neglect to present the objected-to responses in a summary chart format. ECF No. 80 at 5. Pacific  
28 points out correctly that it reproduced the interrogatories in the joint statement, see ECF No. 69 at

1 10, and argues that the court erred in denying its motion to compel on this ground. However,  
2 while the interrogatories are in fact reproduced in the joint statement, Pacific’s arguments that the  
3 court should compel responses remain vague and conclusory. Local Rule 251 provides in part  
4 that the joint statement shall specify with particularity “[t]he contentions of each party as to each  
5 contested issue, including a memorandum of each party’s respective arguments concerning the  
6 issues in dispute and the legal authorities in support thereof.” L.R. 251(c)(3). In the joint  
7 statement, Pacific argued as follows regarding interrogatory numbers 7–15:

8           Furthermore, the Court should compel Plaintiff to serve amended  
9 responses to the corresponding Interrogatories, which Plaintiff  
10 likewise failed to answer. Those responses should be complete and  
11 detailed, and specify all facts that support Plaintiff’s contentions.  
To the extent Plaintiff chooses to identify business records under  
FRCP 33(d), it must identify the specific documents in which the  
facts are to be found.

12 ECF No. 69 at 22–23. Pacific failed to set forth with particularity any argument or legal authority  
13 in support of its request to compel further responses to interrogatory numbers 7–15. Indeed,  
14 Pacific failed to provide the amended responses submitted by CCIC in the joint statement, which  
15 would have enabled the court to make a more informed decision regarding the reasonableness of  
16 CCIC’s responses. See Tate Decl. Ex. B, ECF No. 71. While Pacific pointed out in the instant  
17 motion that CCIC’s amended response to, for example, interrogatory number 9 identifies over  
18 11,500 pages of documents, ECF No. 80 at 6, this interrogatory-specific argument was not  
19 sufficiently articulated in the joint statement as required by the Local Rules. While Pacific  
20 addressed some of the individual interrogatories in the joint statement, Pacific did not meet its  
21 burden of informing the court, for each disputed response to interrogatory numbers 7–15, why  
22 CCIC’s responses were not justified. As the court stated in its order, “[t]he court will not  
23 undertake an examination of each interrogatory and glean from the joint statement Pacific’s  
24 arguments in support of a motion to compel responses to these interrogatories.” ECF No. 79 at  
25 16. Accordingly, Pacific’s motion for reconsideration of the court’s order regarding interrogatory  
26 numbers 7–15 is DENIED.

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1 B. Deadline for CCIC to Serve Amended Responses

2 Next, Pacific requests clarification regarding CCIC's deadline for serving amended  
3 responses. Pacific's request is GRANTED. To the extent CCIC has not responded, CCIC will be  
4 ordered to serve amended responses within fourteen days from the date of this order.

5 C. Request for Costs for Filing the Motion

6 Finally, Pacific seeks clarification regarding whether it is entitled to its costs for bringing  
7 the motion to compel under Federal Rule of Civil Procedure 37. ECF No. 80 at 7.

8 On August 15, 2014, Pacific filed its motion to compel under Federal Rules of Civil  
9 Procedure 36(a)(6) and 37(a). ECF No. 68. The parties filed a joint statement on September 3,  
10 2014 setting forth their contentions regarding their discovery dispute. ECF No. 69. Pacific also  
11 submitted a proposed order via e-mail to the court. The proposed order included the following  
12 paragraph: "Pursuant to Fed. R. Civ. P. 37(a)(5), PCS shall be awarded its costs in making the  
13 Motion." Pacific did not present any information in the joint statement regarding monetary  
14 sanctions, including the amount of fees, the number of hours expended on the motion or Pacific's  
15 counsel's hourly rate. CCIC made the following argument regarding costs in the joint statement:

16 In its proposed order PCS requests an award of costs pursuant to  
17 FRCP 37(a)(5). PCS doesn't disclose the costs requested or  
18 attempt to justify whatever those costs might be. This entire motion  
19 by PCS was premature and unnecessary, and the primary order that  
20 PCS seeks, that the Court order objections and denials of requests  
21 for admissions be deemed admissions, isn't legally or factually  
22 supported. PCS had determined to bring the motion prior to the  
23 telephone meet and confer. Tate Decl. While the telephone  
24 conference was fairly long, it was only long because counsel for  
25 CCIC truly wanted to meet and confer, whereas counsel for PCS  
26 quickly after 10-15 minutes inquired whether there was agreement  
27 that the meet and confer had been satisfied. Counsel for CCIC  
28 responded no, that there was a lot more to meet and confer about.  
Tate Decl.

24 ECF No. 69 at 46.

25 While Pacific did not provide an affidavit supporting a request for a fee award with the  
26 joint statement, it provided one with the instant motion for reconsideration. Pacific estimates that  
27 it expended approximately \$7,000 in bringing its motion to compel. Johnson Decl. ¶ 4, ECF No.  
28 80 at 10. CCIC opposes Pacific's request for clarification, arguing that the court discussed costs

1 and Pacific did not meet and confer in good faith. ECF No. 81 at 2. Pacific is correct in that the  
2 court did not address whether fees would be awarded in its order on Pacific's motion to compel.  
3 Accordingly, Pacific's request for clarification is GRANTED.

4 Federal Rule of Civil Procedure 37(a)(5) provides that if the court grants a motion to  
5 compel discovery, it "must" order the non-moving party to pay the moving party's "reasonable  
6 expenses incurred in making the motion." Fed. R. Civ. P. 37(a)(5)(A). However, the Rule  
7 recognizes a number of exceptions, such as where a motion to compel "is granted in part and  
8 denied in part, the court . . . may, after giving an opportunity to be heard, apportion the reasonable  
9 expenses for the motion." Fed. R. Civ. P. 37(a)(5)(C). Accordingly, the determination of the  
10 propriety of awarding attorneys' fees is within the discretion of the court. The Local Rules are  
11 not explicit with regard to when a motion for an award of fees under Rule 37 must be brought.

12 Here, Pacific argues that the court should clarify whether it is entitled to costs for bringing  
13 its motion to compel, which was granted in part and denied in part. Pacific's counsel estimates  
14 his firm expended approximately \$7,000 in fees and expenses based upon 37 hours of work at  
15 \$175 per hour plus expenses of approximately \$500. Johnson Decl. ¶ 4. Pacific's counsel states  
16 that its "formal request for fees will be based on actual invoices sent to the client for payment."  
17 Id. Pacific further argues that "considering that of the 17 Requests at issue, the Court granted  
18 relief as to 10 (i.e., ~59%), [Pacific] is willing to accept an award of 50% of its costs." ECF No.  
19 80 at 8. In light of the court's order granting in part and denying in part Pacific's motion to  
20 compel, the court is inclined to apportion Pacific's reasonable expenses for the motion after  
21 giving CCIC an opportunity to be heard.<sup>1</sup> Fed. R. Civ. P. 37(a)(5)(A). Pacific shall have seven  
22 days from the date of this order to file a letter brief in support of its request for expenses, not to  
23 exceed four pages. Within seven days thereafter, CCIC may file a reply letter brief, not to exceed

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24 <sup>1</sup> While CCIC has on two separate occasions addressed Pacific's request for fees, the court finds  
25 it has not been afforded a meaningful opportunity to respond. First, when CCIC opposed  
26 Pacific's fee request in the joint statement, Pacific had not yet articulated or itemized the amount  
27 of fees sought. Second, CCIC's opposition to the instant motion for reconsideration is based on  
28 Pacific's request for clarification, which states Pacific will file a "formal request for fees."  
Johnson Decl. ¶ 4. Pacific's request suggests that it is merely seeking permission from the court  
to file a subsequent "formal" request for expenses incurred in connection with the motion to  
compel. For these reasons, the court will provide CCIC an additional opportunity to be heard on  
the matter of Pacific's request for expenses.

1 four pages. The request for expenses will thereafter stand submitted.

2 CONCLUSION

3 For these reasons, IT IS HEREBY ORDERED that:

4 1. Pacific's motion for reconsideration, ECF No. 80, is GRANTED IN PART AND  
5 DENIED IN PART as set forth in this order;

6 2. To the extent CCIC has not served amended responses as ordered by the court on  
7 September 17, 2014, CCIC is ordered to serve amended responses within fourteen days from the  
8 date of this order; and

9 3. Pacific shall have seven days from the date of this order to file a letter brief in  
10 support of its request for expenses incurred in connection with the motion to compel, not to  
11 exceed four pages. Within seven days thereafter, CCIC may file a reply letter brief, not to exceed  
12 four pages.

13 DATED: December 12, 2014

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15 ALLISON CLAIRE  
16 UNITED STATES MAGISTRATE JUDGE  
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