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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SERVICE EMPLOYEES)
HEALTH & WELFARE TRUST FUND,)
et al.,)
Plaintiff(s),)
v.)
ADVANCE BUILDING)
MAINTENANCE,)
Defendant(s).)

No. C06-3078 CW (BZ)
**ORDER CERTIFYING FACTS
RE CONTEMPT**

Plaintiffs have moved the Court pursuant to 28 U.S.C. § 636(e)(6)(B)(iii) for an order certifying certain facts which they deem to constitute civil contempt of defendant Forrest I. Nolin. Having reviewed the voluminous papers filed by both sides in connection with this motion, I certify the following facts as evidencing acts of Nolin which constitute disobedience of court orders:

- 1. On April 5, 2010 I issued the Eleventh Discovery Order in this case, which directed Nolin to provide further discovery requests by April 30, 2010. Doc. No. 445.

1 2. On April 5, 2010 I issued the Twelfth Discovery Order
2 in this case which held that certain of Nolin's positions
3 lacked substantial justification, such that plaintiffs were
4 entitled to some attorney fees. Doc. No. 446. Plaintiffs
5 were ordered to submit a request for fees. Instead, the
6 parties stipulated and I ordered that Nolin personally pay
7 plaintiffs \$12,500 by April 30, 2010. Doc. No. 451. Nolin
8 did not pay the \$12,500 in attorney fees by April 30, 2010
9 citing financial hardship. I have found no evidence of
10 financial hardship to justify the late payment. Shortly after
11 plaintiffs filed their motion for contempt sanctions on May
12 28, 2010, Nolin paid \$4,000 on June 9, 2010 and the remainder
13 on July 1, 2010. The checks were issued by Advance Building
14 Maintenance, Inc., not by Nolin. Nolin has provided no reason
15 for having Advance pay rather than paying personally as
16 ordered.

17 3. In the Eleventh Discovery Order I ordered defendant
18 to "search for and provide responsive documents to RFP 1 Nos.
19 1-11 and RFP 2 Nos. 2-8 by **APRIL 30, 2010**. If defendant's
20 search reveals no responsive documents, he **SHALL** file a
21 declaration to that effect.¹" The documents sought were a
22 variety of financial records.

23 4. In response to the Eleventh Discovery Order Nolin
24 produced some account statements from First Private Bank &
25 Trust and Morgan Stanley by the deadline. One statement from
26 First Private Bank was produced late on June 2, 2010.

27
28 ¹ The disputed requests for production are restated on
pages 2-3 of plaintiffs' Motion.

1 5. RFP 2, No. 7 required Nolin to "produce all Form W-
2 2s and Form 1099s you received during the period of January 1,
3 2006 through December 31, 2007" by April 30, 2010. Nolin did
4 not produce the requested 1099s until July 13, 2010 and has
5 not produced the 2006 W-2 for Bartels' Harley Davidson.

6 6. In the Eleventh Discovery Order I ordered defendant
7 to "provide responses to Interrogatories Nos. 2-3 and 5-8 by
8 **APRIL 30, 2010.**" Doc. No. 445.

9 7. Interrogatory No. 2 requests that Nolin "state with
10 specificity what you used each distribution received by you
11 from Advance Building Maintenance, Inc. [for] during the
12 period January 1, 2006 through 2008." In response, Nolin
13 referred plaintiffs to 219 pages of documents which contain
14 bank records pursuant to Federal Rule 33(d). Nolin stated
15 that he would lodge copies of all 219 pages, which the Court
16 has not received. Opposition p. 12: 2-3. I find this
17 response to be inadequate as Nolin could have answered this
18 question much more directly by simply stating his expenditures
19 and it is much easier for him to review his bank records than
20 for plaintiffs.

21 Plaintiffs further request that I find the following
22 facts as a basis for contempt, which I decline to do.

23 1. Nolin did not produce personal tax returns in
24 response to the Twelfth Discovery Order. None of the RFPs
25 specifically demanded Nolin's tax returns.

26 2. In response to the request for financial records,
27 Nolin initially did not produce any documents beyond the date
28 of the original request, December 31, 2008. I do not find

1 that the Eleventh Discovery Order required him to produce
2 responsive documents which post-date the underlying discovery
3 request. Further, Nolin has subsequently produced records
4 from the subsequent two years.

5 3. RFP 2, No. 7 required Nolin to "produce all Form W-
6 2s and Form 1099s you received during the period of January 1,
7 2006 through December 31, 2007." The W-2s from Advance were
8 in plaintiffs' possession prior to filing the Eleventh
9 Discovery Order and Nolin's response is therefore adequate.

10 4. In the Eleventh Discovery Order I ordered defendant
11 to "provide responses to Interrogatories Nos. 2-3 and 5-8 by
12 **APRIL 30, 2010.**" Doc. No. 445.

13 5. Interrogatory No. 3 requests that "For each
14 distribution received by you from Advance Building
15 Maintenance, Inc. during the period January 1, 2006 through
16 2008, identify with specificity the name and address of the
17 bank or entity, the date of the deposit or transfer, and the
18 amount deposited or transferred of the distribution received
19 by you from Advance Building Maintenance, Inc. during the
20 period January 1, 2006 through 2008." Nolin responded by
21 listing the responsive details for three transactions, a
22 response which I find adequate.

23 6. Interrogatory No. 7 asks Nolin to "identify with
24 specificity all of your sources of income during the period
25 January 1, 2006 though today." Nolin adequately responded by
26 listing Advance and Bartels'. Plaintiffs provided no evidence
27 that Nolin received income from any other sources.


28 7. Interrogatory No. 8 asks Nolin "for each source of

1 income identified in your response to the preceding
2 interrogatory, state with specificity the amount of income
3 received by you for each year 2006, 2007, 2008." Nolin
4 responded by listing amounts for each employer identified in
5 Interrogatory No. 7 and did not detail dividend or interest
6 income from Bartels', Advance, or Morgan Stanley. Though
7 Nolin did not list dividend income, I do not find that the
8 Eleventh Discovery Order clearly and unambiguously required
9 him to do so.

10 8. Interrogatory No. 23 asks Nolin to "identify with
11 specificity all documents that support each response to each
12 of the preceding Interrogatories." Nolin responded pursuant
13 to Rule 33(d) by identifying documents, as I specifically
14 allowed him to do in the Eleventh Discovery Order. His
15 response is therefore adequate.

16 For the foregoing reasons, **IT IS HEREBY ORDERED** that
17 Defendant Nolin shall appear before Judge Wilkin at the time
18 scheduled by the Court to show cause why he should not be
19 adjudged in contempt of court or otherwise sanctioned for his
20 failures to comply with court orders, as specified herein.

21 Dated: September 2, 2010

22
23 
24 Bernard Zimmerman
25 United States Magistrate Judge

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