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E-FILED 5/5/2009

NOT FOR CITATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LEONARDO ESPINOZA and SERGIO
ROQUE, individually and on behalf of other
similarly situated,

Plaintiffs,

v.

C&C SECURITY PATROL, INC.,
HERMENEGILDO COUOH, MARCEL
LOPEZ, GILBERT MARTINEZ,

Defendants.

No. C08-01522 JW (HRL)

**ORDER (1) GRANTING DEFENDANT
COUOH'S MOTIONS TO COMPEL;
AND (2) GRANTING IN PART AND
DENYING IN PART DEFENDANT
COUOH'S MOTIONS FOR SANCTIONS**

[Re: Docket Nos. 25, 29, 32, 35]

This is a putative class action for alleged wage and hour violations. Before this court is defendant Couoh's motions to compel each of the plaintiffs to answer interrogatories. Couoh also moves for payment of \$5,050 in attorneys' fees and costs incurred in bringing the instant motions. Plaintiffs took no action in response to these motions, except to file a belated and inchoate one-page objection on the eve of the motion hearing and to appear for oral argument. Upon consideration of the moving papers, as well as the arguments of counsel, this court grants the motions to compel. Couoh's motions for payment of his fees and costs are granted in part.

Couoh served interrogatories on each plaintiff in November 2008. Plaintiffs' respective answers were due in December 2008. Plaintiffs have yet to serve their answers. They claim that they never received these interrogatories or defense counsel's January 6, 2009 meet-and-

1 confer letter because their attorney moved his office from one suite to another in the same
2 building. However, at the motion hearing, plaintiff’s counsel acknowledged that he received
3 the interrogatories in question when defendant filed the instant discovery motions on February
4 27, 2009. Plaintiffs nonetheless failed to do anything about the interrogatories or the motions.
5 This court finds that the interrogatories in question seek relevant information and that there was
6 no good cause for plaintiffs’ failure to respond. Accordingly, defendant Couoh’s motions to
7 compel are granted. All objections to the interrogatories have been waived. FED.R.CIV.P.
8 33(b)(4) (“Any ground not stated in a timely objection is waived, unless the court, for good
9 cause, excuses the failure.”); Richmark Corp. v. Timber Falling Consultants, 959 F.2d 1468,
10 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within
11 the time required constitutes a waiver of any objection.”) (citing Davis v. Fendler, 650 F.2d
12 1154, 1160 (9th Cir. 1981)). Plaintiffs’ respective interrogatory answers shall be served
13 forthwith, and in any event, no later than **May 9, 2009** – the date they represent to the court that
14 their answers will be ready.

15 Defendant Couoh’s motions for fees and costs is granted in part. It is true that the
16 court’s Civil Local Rules require more than sending written correspondence to satisfy “meet
17 and confer” obligations. See Civ. L.R. 1-5(n). Nevertheless, as noted above, plaintiffs’ counsel
18 admittedly failed to take any action with respect to the subject interrogatories or the instant
19 motions even after he had notice of them on February 27, 2009. Nor did he have a satisfactory
20 explanation as to the failure to respond. Accordingly, plaintiffs’ counsel shall pay \$1200 for
21 defendant Couoh’s attorneys’ fees and costs incurred. See FED.R.CIV.P. 37(d)(3). Payment
22 shall be made to defendant Couoh no later than **May 15, 2009**.

23 SO ORDERED.

24 Dated: May 5, 2009



HOWARD B. LLOYD
UNITED STATES MAGISTRATE JUDGE

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5:08-cv-1522 Notice has been electronically mailed to:

Adam Wang adamqwang@gmail.com, alpedersen@gmail.com, rosilenda@gmail.com

Mark A. Hagopian mhagopian@mmker.com

Sejal Ojha sxo@mmker.com

Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.