

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

TAE-SI KIM, *et al.*, )  
vs. )  
ADAM B. KEARNEY, *et al.*, )  
Plaintiffs, )  
Defendants. )  
)  
Case No. 2:09-cv-02008-PMP-PAL  
**ORDER**  
(Mot Compel Deposition - Dkt. #88)  
(Mot for Sanctions - #89)

The court conducted a hearing on October 5, 2010 at 9:15 a.m. on Plaintiff's Motion to Compel and for Sanctions for Discovery Violations Against Defendant Adam Kearney (Dkt. ##88, 89). Steven Gibson appeared on behalf of the Plaintiffs. Zach Thompson, Andres Camacho and James Fairbanks appeared on behalf certain of the Defendants. Mr. Kearney, who is appearing in this matter pro se, did not file a response to the motion or appear.

Plaintiff seeks to compel Defendant Kearney to serve initial disclosures, respond to written discovery served July 26, 2010, and be compelled to attend his deposition. Counsel for Plaintiff represents that he spoke with Mr. Kearney in July and August 2010, to obtain his cooperation in responding to outstanding discovery and to appear for deposition. Although Mr. Kearney agreed to appear for a deposition on August 25, 2010, he did not appear. Plaintiffs therefore seek attorney's fees and costs for the necessity of filing this motion, and for attending the deposition at which Mr. Kearney failed to appear; and that Mr. Kearney be compelled to respond to initial disclosures and Plaintiffs' Request for Production of Documents, and to attend his deposition.

As indicated, Mr. Kearney did not file a response to the motion, and did not appear at the hearing. Pursuant to Local Rule 7-2(d) “[t]he failure of an opposing party to file points and authorities in response to a motion shall constitute a consent to granting the motion.” The court appreciates the

1 difficulties a pro se Defendant faces in attempting to defend himself in a federal lawsuit. However, he  
2 is required by the Federal Rules of Civil Procedure to participate in discovery, provide opposing parties  
3 with basic information needed to bring this case to resolution, and appear for his deposition to submit to  
4 questioning under oath. Failure to meet these obligations will result in sanctions up to and including  
5 case dispositive sanctions, which may include an order striking his answer, and entry of a Default  
6 Judgment against him. Thus, it is imperative that Mr. Kearney provide his initial disclosures, respond  
7 to Plaintiffs' Requests for Production of Documents, and attend his deposition. If Defendant Kearney  
8 has no documents responsive to the Plaintiffs' document requests, he need only state so in his response.  
9 Accordingly,

10 **IT IS ORDERED** that:

- 11 1. Plaintiffs' Motion to Compel and for Sanctions (Dkt. ##88, 89) is **GRANTED**.
- 12 2. Defendant Kearney shall have until October 20, 2010 to serve the Plaintiffs with the  
13 initial disclosures required by Rule 26(a)(1).
- 14 3. Defendant Kearney shall have until October 20, 2010 in which to serve the Plaintiffs  
15 with full and complete responses to the requests for production of documents served July  
16 26, 2010.
- 17 4. Defendant Kearney shall have until October 20, 2010 in which to provide counsel for  
18 Plaintiffs, counsel for the co-Defendants, and the court, with a mailing address for  
19 receipt of pleadings and papers in this case.
- 20 5. Counsel for Plaintiffs shall, no later than 14 days from entry of this order, serve and file  
21 a memorandum, supported by the affidavit of counsel, establishing the amount of  
22 attorneys' fees and costs incurred in bringing its motion. The memorandum shall  
23 provide a reasonable itemization and description of the work performed, identify the  
24 attorney(s) or other staff member(s) performing the work, the attorney(s) or staff  
25 member(s) customary fee for such work, and the experience, reputation and ability of the  
26 attorney performing the work. The attorney's affidavit shall authenticate the information  
27 contained in the memorandum, provide a statement that the bill has been reviewed and  
28 edited, and a statement that the fees and costs charged are reasonable.

6. Defendant Kearney shall have 14 days from service of the memorandum of costs and attorneys' fees in which to file a responsive memorandum addressing the reasonableness of the costs and fees sought, and any equitable considerations deemed appropriate for the court to consider in determining the amount of costs and fees which should be awarded.
7. Counsel for Plaintiffs shall serve Defendant Kearney with a copy of this order at the e-mail address Mr. Kearney has provided to accept notices in this case, and shall further attempt to reach him telephonically to notify him of the entry of this order, and shall file a certificate of compliance outlining the efforts to serve this order on Defendant Kearney.
8. Defendant Kearney's failure to timely comply with the provisions of this order will result in the imposition of sanctions up to and including a recommendation to the district judge of case dispositive sanctions for his failure to engage in discovery, and failure to comply with the court's order.

Dated this 6<sup>th</sup> day of October, 2010.

Peggy A. Leen  
Peggy A. Leen  
United States Magistrate Judge