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Alpha Omega Services v. Dyncorp International, LLC

United States District Court, E.D. Virginia, Alexandria Division

April 9, 2014

ALPHA OMEGA SERVICES, Plaintiff,

v.

DYNCORP INTERNATIONAL, LLC, Defendant.

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ORDER

ANTHONY J. TRENGA, District Judge.

This matter is before the Court on the Report and Recommendations of the Magistrate Judge [Doc. No. 77] with respect

to the Motion of defendant DynCorp international, LLC, for Sanctions for Plaintiffs Failure to Comply With This Court's Discovery Order [Doc. No. 54] ("Motion for Sanctions") and also plaintiff sMotion for Voluntary Dismissal [Doc. No. 61].

On January 3, 2014, plaintiff filed its Motion for Voluntary Dismissal [Doc. No. 61], requesting that the Court dismiss the present case without prejudice. Also on January 3, 2014, defendant filed its Motion for Sanctions [Doc. No. 54] based on plaintiffs failure to produce certain of its employees for deposition as ordered by the Magistrate Judge on December 6, 2013. See Doc. No. 47. A hearing on defendant's Motion for Sanctions was held before the Magistrate Judge on January 10, 2014. The Magistrate Judge did not consider plaintiffs Motion for Voluntary Dismissal.

On February 11, 2014, the Magistrate Judge issued his Report and Recommendation with respect to the defendant's Motion for Sanctions [Doc. No. 77], in which he recommended, based on findings of fact, that defendant's Motion for Sanctions be granted in part and denied in part. Specifically, the Magistrate Judge recommended plaintiffs claims be dismissed without prejudice, together with an award of attorney's fees and costs incurred in connection with defendant's Motion to Compel [Doc. No. 37], its Opposition to plaintiffs Motion to Extend Discovery Period for Limited Purpose the time for discovery [Doc. No. 66], its Motion for Sanctions [Doc. No. 54] and in answering any subsequently filed complaint by the plaintiff.

On February 21, 2014, plaintiff filed its Objection to the Report and Recommendation [Doc. No. 81] and Memorandum in Support [Doc. No. 82], in which it requested that defendant's Motion for Sanctions be denied in its entirety. Also on February 21, 2014, defendant filed its Memorandum of Points and Authorities Objecting to the Magistrate Judge's Report and Recommendation, and in Opposition to Plaintiffs Motion for Voluntary Dismissal [Doc. Nos. 79, 80] and also its Reply to AOS' Memorandum of Law in Support of AOS' Objection to Report and Recommendation of the Honorable Magistrate Judge Davis [Doc. No. 83]. In its Objection and Reply, defendant requests a dismissal of this action with prejudice, rather than without prejudice, and also an award of all fees and expenses incurred in defending this action. In light of the objections and the case-dispositive sanction adopted by the Magistrate Judge, the Court will review the Magistrate Judge's findings of fact and conclusions of law *de novo*. See Fed. Rule Civ. P. 72(b)(3).

After its *de novo* review of the record, the Court hereby adopts the Magistrate Judge's findings of fact set forth in his Report and Recommendation, which are fully supported by the record. The Court has also reviewed *de novo* the applicable law and its application to the Court's findings of fact. Based on that *de novo* review, the Court concludes that defendant's Motion for Sanctions [Doc. No. 54] should be granted for the reasons set forth in the Report and Recommendation. The Court also concludes based on its *de novo* review that, under the facts and circumstances of this case, including the relief to be awarded herein in connection with plaintiffs Motion for Voluntary Dismissal, the appropriate Rule 37 sanction is dismissal without prejudice, together with an award of attorney's and costs, but only those incurred in connection with defendant's Motion for Sanctions [Doc. No. 54], to be determined and awarded by separate order. In reaching this conclusion, the Court has reviewed and applied those factors and considerations set forth in *United States v. Shaffer Equipment Co.*, 11 F.3d 450, 461-63 (4th Cir. 1993).

As to plaintiffs Motion for a Voluntary Dismissal [Doc. No. 61], the Court has reviewed the relevant considerations and concludes that the motion should be granted and the case dismissed without prejudice, but only on certain terms and conditions, as authorized under Fed.R.Civ.P. 41(a)(2), specifically, that plaintiffs hall re-file any claims asserted in this action only in this division of this District and that before filing, plaintiffs hall have paid to defendant 50% of defendant's attorney's fees and expenses incurred inconnection with this action, to be determined and awarded by separate order.

Wherefore, for the above reasons, it is hereby

ORDERED that Defendant's Motion for Sanctions [Doc. No. 54] be, and the same, hereby is, GRANTED in part and DENIED in part. The Motion is GRANTED to the extent that this action shall be dismissed without prejudice, together withan award of attorney's fees incurred in connection with defendant's Motion for Sanctions [Doc. No. 54] and is

otherwise DENIED; and it is further



ORDERED that plaintiffs Motion for Voluntary Dismissal [Doc. No. 61] be, and the same hereby is, GRANTED and this action be, and the same hereby is, dismissed without prejudice on the following terms: (1) plaintiffs shall re-file any claims asserted in this action only in this division of this District; and (2) before re-filing any such action, plaintiff shall have paid to defendant 50% of defendant's attorney's fees and expenses incurred in connection with this action; and it is further

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ORDERED that defendant shall file its itemization of attorney's fees and costs, as awarded herein, on or before May 12, 2014, as to which the plaintiff shall file any objections on or before June 9, 2014, with any reply thereto filed on or before June 16, 2014, following which the ...

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