

TENTATIVE RULINGS

FOR: February 13, 2019

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

Special Note--Because of the court holiday on Tuesday, the Court is unable to field telephone calls for requests for oral argument. For this reason, appearances will be allowed for the posted court hearings without notifying the Court, provided a party notifies all other parties today (Monday) that the party intends to appear and argue. If notice of intent to appear has not been given to all parties, no oral argument will be permitted and the tentative ruling will become the Court's ruling.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. B (Historic Courthouse) at 8:30 a.m.

In the Matter of Annalise L. Liskey Special Needs Trust

16PR000058

REVIEW HEARING

APPEARANCE REQUIRED

.....
In the Matter of Taylor Wessel

17PR000138

PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM – PERSON WITH A DISABILITY

APPEARANCE REQUIRED
.....

Estate of Christopher R Desley

17PR000207

FIRST AND FINAL ACCOUNT AND REPORT OF ADMINISTRATOR, PETITION FOR SETTLEMENT, FOR ORDINARY COMPENSATION TO ATTORNEY, FOR REIMBURSEMENT OF EXPENSES TO ADMINISTRATOR, AND FOR FINAL DISTRIBUTION

TENTATIVE RULING: GRANT petition, including fees as prayed.

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In the Matter of Barbara G. Maher

18PR000171

STAUTS REVIEW: PETITION TO REMOVE CO-ATTORNEY-IN-FACT AND CONFIRM SUCCESSOR SOLE ATTORNEY-IN-FACT AND AWARD OF ATTORNEY’S FEES AND COSTS

APPEARANCE REQUIRED

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Estate of Barbara Ann Wright

18PR000280

PETITION FOR PROBATE OF WILL AND FOR LETTERS TESTAMENTARY AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: The Court continued this matter on January 8, 2019, due to several issues needing clarification. The Court construes the petition filed on January 17, 2019, as an addendum to the petition filed on December 24, 2018, as the new filing clarifies the issues identified in the January 8, 2019 Minute Order.

There is no proof of publication on file. If a proper proof of publication is filed prior to the hearing, the petition will be GRANTED. Otherwise, the petition will be DENIED without prejudice.

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Estate of Frank Pena

19PR000021

SPOUSAL PROPERTY PETITION

TENTATIVE RULING: The Petition is GRANTED without need for appearance.

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PETITION FOR LETTERS OF SPECIAL ADMINISTRATION AND AUTHORIZATION TO ADMINISTER UNDER THE INDEPENDENT ADMINISTRATION OF ESTATES ACT

TENTATIVE RULING: If a signed proof of service is filed before or at the hearing, the petition will be GRANTED. (Prob. Code, § 8541, subd. (a).) Otherwise, the petition will be DENIED without prejudice. If the proof of service is filed, petitioner shall file the proposed letters conforming to the petition.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. B (Historic Courthouse) at 8:30 a.m.

(1) MOTION TO DEEM ADMITTED REQUESTS FOR ADMISSIONS

TENTATIVE RULING: Cross-defendant Tyco Roofing, Co.’s (TRC) motion to deem admitted request for admissions (set one) as to cross-complainant Marc Brock is MOOT. TRC acknowledges it received written discovery responses from Brock. (Richardson Reply Decl., Ex. I.)

TRC’s request for monetary sanctions is DENIED. The Court must impose sanctions, without exception, against a party whose failure to serve timely responses to requests for admissions necessitated a motion to deem the requests admitted. (Code Civ. Proc., § 2033.280, subd. (c).) Brock failed to serve timely responses to the requests. However, Code of Civil Procedure section 2023.040 requires the moving party to support its motion with a memorandum of points and authorities. TRC, in its memorandum of points and authorities, supported its request for monetary sanctions with a misrepresentation of the law to the Court. (See Mem. at p. 4:10-14 [misquoting section 2033.280].) TRC, therefore, has not complied with section 2023.040 by properly supporting its request for monetary sanctions with its memorandum of points and authorities.

TRC additionally cites to Code of Civil Procedure section 2023.030 as authority for its request for monetary sanctions, which states the Court may impose monetary sanctions if a party misuses the discovery process. This code provision, however, makes clear that the Court’s authority to impose sanctions must be authorized by another provision of the Discovery Act. In this case, TRC moved for monetary sanctions under Code of Civil Procedure section 2033.280, but failed to support the request in its memorandum of points and authorities.

(2) MOTION TO COMPEL INITIAL RESPONSES TO SPECIAL INTERROGATORIES

(3) MOTION TO COMPEL INITIAL RESPONSES TO FORM INTERROGATORIES

TENTATIVE RULING: Cross-defendant Tyco Roofing, Co.’s (TRC) motions to compel initial responses to special interrogatories (set one) and form interrogatories (set one) as to cross-complainant Marc Brock are MOOT. TRC acknowledges it received initial responses from Brock. (Richardson Reply Decl., Exs. F-G.) The Court notes TRC incorrectly raised in its notices the statute permitting a motion to compel further responses to interrogatories when TRC seeks to compel initial responses.

TRC’s requests for monetary sanctions for bringing its motions to compel are DENIED. The Court shall impose sanctions when a party unsuccessfully opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., § 2030.290, subd. (c).) Brock did not oppose the motion, which means monetary sanctions are not appropriate. TRC additionally cites to Code of Civil Procedure section 2023.010 as authority for its request for monetary sanctions. Code of Civil Procedure section 2023.010 simply lists possible misuses of the discovery process. This code provision does not create an independent basis for awarding monetary sanctions. TRC’s reliance on Code of Civil Procedure section 2023.030 in its memorandum of points and authorities as a basis for sanctions is improper as it was not raised in the notice of motion.

TRC raises for the first time in its reply that it is seeking monetary sanctions under California Rules of Court, rule 3.1348 and *Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants* (2007) 148 Cal.App.4th 390. The Court declines to impose monetary sanctions under rule 3.1348 as it was not cited in the notice of motion as a basis for sanctions. Even though the Court may still award sanctions for serving initial responses after a motion to compel is filed under *Sinaiko*, because the Court has substantial discretion, the Court believes monetary sanctions are not appropriate under the circumstances.

(4) MOTION TO COMPEL INITIAL RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

TENTATIVE RULING: Cross-defendant Tyco Roofing, Co.’s (TRC) motion to compel initial responses to request for production of documents (set one) as to cross-complainant Marc Brock is MOOT. TRC acknowledges it received initial responses from Brock. (Richardson Reply Decl., Ex. H.) TRC notes Brock did not serve any documents responsive to its requests. But TRC did not move for the production of documents via this motion. (See Ntc. at p. 1:23 [moving to compel “full, complete, and verified responses”].)

TRC’s request for monetary sanctions for bringing its motion to compel is DENIED. The Court shall impose sanctions when a party unsuccessfully opposes a motion to compel a response to document requests, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., § 2031.300, subd. (c).) Brock did not oppose the motion, which means monetary sanctions are not appropriate. TRC additionally cites to Code of Civil Procedure section 2023.010 as authority for its request for monetary sanctions. Code of Civil Procedure section 2023.010 simply lists possible misuses of the discovery process. This code provision does not create an independent basis for awarding monetary sanctions. TRC’s reliance on Code of Civil

Procedure section 2023.030 in its memorandum of points and authorities as a basis for sanctions is improper as it was not raised in the notice of motion.

TRC raises for the first time in its reply that it is seeking monetary sanctions under California Rules of Court, rule 3.1348 and *Sinaiko Healthcare Consulting, Inc. v. Pac. Healthcare Consultants* (2007) 148 Cal.App.4th 390. The Court declines to impose monetary sanctions under rule 3.1348 as it was not cited in the notice of motion as a basis for sanctions. Even though the Court may still award sanctions for serving initial responses after a motion to compel is filed under *Sinaiko*, because the Court has substantial discretion, the Court believes monetary sanctions are not appropriate under the circumstances.

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Mattioli v. City of St Helena, et al.

18CV000236

DEFENDANT CITY OF ST HELENA’S NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO CITY’S FORM INTERROGATORIES (EMPLOYMENT), REQUEST FOR PRODUCTION OF DOCUMENTS, AND FORM INTERROGATORIES (GENERAL), AND TO COMPEL PRODUCTION OF DOCUMENTS, AND REQUEST FOR MONETARY SANCTIONS

TENTATIVE RULING: The notice of motion does not provide notice of the Court’s tentative ruling system as required by Local Rule 2.9. Defendant’s counsel is directed to contact Plaintiff’s counsel forthwith and advise Plaintiff’s counsel of Local Rule 2.9 and the Court’s tentative ruling procedure. If Defendant’s counsel is unable to contact Plaintiff’s counsel prior to the hearing, Defendant’s counsel shall be available at the hearing, in person or by telephone, in the event Plaintiff’s counsel appears without following the procedures set forth in Local Rule 2.9.

Defendant’s Motion to Compel Further Responses to Form Interrogatory Nos. 202.1, 203.1, 207.2, and 17.1 is GRANTED. Defendant’s Motion to Compel Further Responses to Requests for Production of Documents Nos. 1, 2, 4, 14, 15, 16, and 17 and to Compel Production of Documents is GRANTED. Defendant’s Motion to Compel Further Responses to Requests for Production of Documents Nos. 7, 12, and 13 and to Compel Production of Documents is GRANTED IN PART.

Plaintiff shall serve verified code compliant further responses and documents other than tax returns, without objections, within 10 calendar days of service of entry of order.

Defendant’s Motion for Monetary Sanctions against Plaintiff is GRANTED IN PART in the amount of \$3,785,000, payable to Defendants’ counsel within 20 calendar days of service of notice of entry of order.

A. Interrogatories

Responses to interrogatories must be “as complete and straightforward as the information reasonably available to the responding party permits.” (Code of Civ. Proc. § 2030.220, subd.

(a.) If an interrogatory requires the responding party make reference to a document, the responding party should identify and, if appropriate, summarize the document so the answer is fully responsive to the question. (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 784.) Finally, “[a] party may not deliberately misconstrue a question for the purpose of supplying an evasive answer.” (*Deyo v. Kilbourne, supra*, 84 Cal.App.3d at 783.)

In the context of a motion to compel, the responding party bears the burden of justifying any objection or failure fully to answer an interrogatory. (*Coy v. Super. Ct.* (1962) 58 Cal.2d 210, 220-21.) Generally, a party asserting objections to discovery requests must justify or defend the objections or the objections will be overruled. (*Fairmont Ins. Co. v. Super. Ct.* (2000) 22 Cal.4th 245, 254.)

Form Interrogatory Nos. 202.1 and 203.1: Plaintiff’s Further Amended Responses to Interrogatory No. 202.1 is deficient because Plaintiff fails to sufficiently respond to subpart (e). Plaintiff’s Further Amended Response to Interrogatory No. 203.1 is deficient because Plaintiff fails to sufficiently respond to subpart (f).

Interrogatory No. 202.1 relates to any contention by Plaintiff that “any ADVERSE EMPLOYMENT ACTION against you was discriminatory.” Subpart (e) calls for Plaintiff to identify all documents evidencing any of the facts Plaintiff sets out in response to subparts (a) through (d). Interrogatory No. 203.1 relates to any contention by Plaintiff that she was unlawfully harassed in her employment. Subpart (f) calls for Plaintiff to identify all documents evidencing any of the facts Plaintiff sets out in her Further Amended Response to subparts (a) through (e).

As an initial matter, in her Further Amended Response to Interrogatory No. 202.1, Plaintiff defines the phrase “Adverse Employment Action” in a specific limited way for purposes of responding to subdivision (a). But in an apparent effort to justify the relevance of her “Plaintiff identifies all of the emails and texts produced . . .” response, she applies an enormously broad definition. Similarly, Plaintiff’s Further Amended Response to Interrogatory No. 203.1, subpart (f) sets out a definition of relevant facts that is orders of magnitude broader than the facts set out in response to subparts (a) through (e).

In these ways, Plaintiff appears to be deliberately misconstruing the interrogatories for the purpose of supplying an evasive answer. (*Deyo v. Kilbourne, supra*, 84 Cal.App.3d at 783.)

In her Further Amended Responses, Plaintiff objects to each interrogatory on the ground that “Defendant is in possession of all of the sources of information from which the answer to this interrogatory would be gleaned . . .” She then states by way of response, “Plaintiff identifies all of the emails and texts produced by the parties as well as all of the performance reviews and performance related documents.”

Plaintiff estimates there are 23,000 pages of documents produced in this matter. She objects that the information sought is as readily available to Defendant as to Plaintiff, citing *Alpine Mutual Water Co. v. Super. Ct. for Ventura Co.* (1968) 259 Cal.App.2d 45, 54. *Alpine* is not controlling. That case involved interrogatories that sought information that required research

into the public record. The court held, “such information is as readily available to the defendants as it is to the plaintiffs, and no perceivable purpose consonant with the discovery laws is served by compelling one party to search public records, compile the results and furnish them to his opponent.” (*Id.*)

Here, Defendant is not attempting to shift to Plaintiff the burden of researching public records, or similar information repositories maintained by non-parties. Rather, Defendant seeks an identification of documents that Plaintiff believes or understands relate to her allegations of discriminatory and/or harassment action. Plaintiff’s response is inconsistent with the “complete and straightforward” mandate of Code of Civ. Proc. § 2030.220, subd. (a), and Plaintiff’s obligation to specifically identify all relevant documents. (*Deyo v. Kilbourne, supra*, 84 Cal.App.3d at 783.)

Plaintiff’s equally-available-to-Defendants objection is therefore overruled. Plaintiff fails to justify or defend her other objections to Interrogatory Nos. 202.1 and 203.1, and therefore all such objections are overruled. (*Fairmont Ins. Co. v. Super. Ct., supra*, 22 Cal.4th at 254.)

Form Interrogatory No. 207.2: This interrogatory seeks information relating to any complaints Plaintiff may have made to Defendant relating to unlawful action alleged in the pleadings. Plaintiff’s Further Amended Response to Interrogatory No. 207.2 is deficient as to subparts (b), and (e) through (j) as described in Defendant’s Separate Statement. Plaintiff’s objection to subparts (e) through (j) is without merit or support in authority, and in any event, Plaintiff fails to reassert it, or any other objection to this interrogatory in her Opposition, and all objections are therefore overruled. (*Fairmont Ins. Co. v. Super. Ct., supra*, 22 Cal.4th at 254.)

Form Interrogatory No. 17.1: Plaintiff’s Response to Interrogatory No. 17.1 is deficient as to subparts (c) and (d). Subpart (c) requires Plaintiff to identify persons with knowledge of facts asserted in Plaintiff’s replies to Requests for Admissions. Plaintiff’s statement, “Witnesses who have knowledge of these facts include anyone who is aware of the details of Plaintiff’s wages and benefits package when she was working for Defendant as well as anyone who is aware of the details of Plaintiff’s wages and benefits package working for her current employer.”

This answer appears purposefully evasive.

Similarly, subpart (d) requires Plaintiff to identify documents and tangible things supporting her responses to requests for admissions. Plaintiff responded, “Documents include any wage and benefits information associated with Plaintiff with Plaintiff’s position at the time she left Defendant’s employ as well as any wage and benefits information associated with Plaintiff’s current position.”

This answer appears purposefully evasive.

Plaintiff’s response to this interrogatory is wholly deficient pursuant to Code of Civ. Proc. § 2030.230 (requiring specification of documents in response to interrogatory necessitating preparation or making of compilation to “be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the

answer may be ascertained”) and *Deyo v. Kilbourne*, *supra*, 84 Cal.App.3d at 783 (holding where an interrogatory requires the responding party make reference to a document, the responding party should identify and, if appropriate, summarize the document so the answer is fully responsive to the question.)

Plaintiff fails to justify or defend her objections to Interrogatory No. 17.1, and therefore all such objections are overruled. (*Fairmont Ins. Co. v. Super. Ct.*, *supra*, 22 Cal.4th at 254.)

B. Requests for Production

It is axiomatic that discovery is available on any subject that is reasonably calculated to lead to the discovery of admissible evidence. (*Lipton v. Super. Ct.* (1996) 48 Cal.App.4th 1599, 1612. This phrase, “makes it clear that the scope of discovery extends to any information that reasonably might lead to other evidence that would be admissible at trial.” (*Id.*) The “relevance to the subject matter” and “reasonably calculated to lead to discovery of admissible evidence” standards are applied liberally with any doubt generally resolved in favor of discovery. (*Colonial Life & Acc. Ins. Co. v. Super. Ct.* (1982) 31 Cal.3d 785, 790.)

In a motion for order compelling further responses to requests for inspection, the burden is on the moving party to “set forth specific facts showing good cause justifying the discovery sought by the demand.” (Code of Civ. Proc. § 2031.310, subd. (b)(1). Where the moving party shows such good cause, the burden shifts to the responding party to justify any objections made to document disclosure. (*Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) Generally, a party asserting objections to discovery requests must justify or defend the objections or the objections will be overruled. (*Fairmont Ins. Co. v. Super. Ct.* (2000) 22 Cal.4th 245, 254.)

Request for Production Nos. 1, 2, and 4: Each of Plaintiff’s Amended Responses to Request for Production Nos. 1, 2, and 4 is deficient in that each fails to identify “with particularity” the documents and/or tangible things to which an objection is being made, and “set forth clearly the extent of, and the specific ground for, the objection.” (Code of Civ. Proc. § 2031.240, subd. (b).)

In her opposition, Plaintiff explains in detail that her objection to each of these Requests was based on relevance.

The Court finds that Defendant has shown that each of the categories of documents sought through Request Nos. 1, 2, and 4 are reasonably calculated to lead to the discovery of admissible evidence. Each of Plaintiff’s objections to these Requests on this ground are therefore overruled. (*Fairmont Ins. Co. v. Super. Ct.* (2000) 22 Cal.4th 245, 254.)

Plaintiff fails to justify or defend her other objections to Requests for Production Nos. 1, 2, and 4, and therefore all such objections are similarly overruled. (*Fairmont Ins. Co. v. Super. Ct.*, *supra*, 22 Cal.4th at 254.)

Request for Production Nos. 7, 12, and 13: Each of Plaintiff’s Responses to Request for Production Nos. 7, 12, and 13 is deficient in that each fails to identify “with particularity” the

documents and/or tangible things to which an objection is being made, and “set forth clearly the extent of, and the specific ground for, the objection.” (Code of Civ. Proc. § 2031.240, subd. (b).)

Plaintiff asserts “Plaintiff’s objections on the basis of financial privacy are necessary and proper.” (Opposition at p. 12:21-22.) Plaintiff argues that the privilege against disclosure of tax returns and information contained therein is applicable here. (*Id.* at p. 13:1-11.) The Court concurs that Plaintiff’s federal and state tax returns are privileged from discovery in this matter. (*Webb v. Standard Oil Co. of Calif.* (1957) 49 Cal.2d 509, 513-14.)

Plaintiff fails to justify or defend her other objections to Requests for Production Nos. 7, 12, and 13, and all such objections, including any based on the right to privacy outside the context of tax returns, are therefore overruled. (*Fairmont Ins. Co. v. Super. Ct., supra*, 22 Cal.4th at 254.)

Request for Production No. 14: This request seeks documents that Plaintiff believes support her claim for general damages. Plaintiff’s Response is deficient in that it fails to identify “with particularity” the documents and/or tangible things to which an objection is being made, and “set forth clearly the extent of, and the specific ground for, the objection.” (Code of Civ. Proc. § 2031.240, subd. (b).)

Plaintiff titles a section of her opposition papers, “Plaintiff Has a Financial Right to Privacy and She Has Not Waved the Health Care Provider/Patient Privilege Thus Her Objections to RFP No. 14 Are Necessary and Proper.” (Opposition at p.13:18-20.) However, Plaintiff does not discuss either Financial Right to Privacy or Health Care Provider / Patient Privilege as it relates to Request No.14. She provides neither authority for nor analysis of any such right to privacy or privilege. Because Plaintiff fails to justify or defend her objections to Request for Production No. 14, all such objections are overruled. (*Fairmont Ins. Co. v. Super. Ct., supra*, 22 Cal.4th at 254.)

Request for Production No. 15: Request 15 seeks documents relating to communications with media regarding Defendant and Plaintiff’s employment. Plaintiff’s Response is deficient in that it fails to identify “with particularity” the documents and/or tangible things to which an objection is being made, and “set forth clearly the extent of, and the specific ground for, the objection.” (Code of Civ. Proc. § 2031.240, subd. (b).) Plaintiff fails to justify or defend her objections to Request for Production No. 15, and all such objections are therefore overruled. (*Fairmont Ins. Co. v. Super. Ct., supra*, 22 Cal.4th at 254.)

Request for Production No. 16: This request seeks documents relating to medical treatment Plaintiff has received “RELATING TO the ‘humiliation, mental anguish and emotional and physical distress’” she specifically alleged in her complaint. Plaintiff’s Amended Response to Request for Production No. 7 is deficient in that it fails to comply with Code of Civ. Proc. § 2031.240, subd. (a) and separately subd. (b)(1) and (2).

Plaintiff objects based on her right to privacy. Defendants counter that Plaintiff waived her right to privacy over the narrow scope of matters directly relevant to plaintiff’s claims. (*Britt v. Super Ct.* (1978) 20 Cal.3d 844, 859.) Plaintiff, “may not withhold information which relates

to any physical or mental condition which they have put in issue by bringing this lawsuit” (*Id.* at p. 864.)

Plaintiff’s reliance on *Vinson v. Super. Ct.* (1987) 43 Cal.3d 833 is misplaced. While that case involved a motion to compel plaintiff’s psychiatric exam, its holding supports Defendants position here. The court held that because plaintiff “haled defendants into court and accused them of causing her various mental and emotional ailments,” her mental condition was “indubitably in dispute” and good cause existed to allow defendants to conduct the requested examination. (*Vinson v. Super. Ct.* (1987) 43 Cal.3d 833, 840-841.)

Plaintiff’s privacy objection to Request No. 16 is overruled. Plaintiff fails to justify or defend her other objections to Request for Production No. 16, and all such objections are also overruled. (*Fairmont Ins. Co. v. Super. Ct.*, *supra*, 22 Cal.4th at 254.)

Request for Production No. 17: This request seeks documents relating to Plaintiff’s responses to Special Interrogatories. Plaintiff’s Amended Response to Request for Production No. 7 is deficient in that it fails to comply with Code of Civ. Proc. § 2031.240, subd. (a) and separately subd. (b)(1) and (2).

Plaintiff raises the identical objection based on her right to privacy that she raised in relation to Request No. 16.¹ For the reasons set forth herein above, Plaintiff’s objection fails. Plaintiff fails to justify or defend her other objections to Request for Production No. 16, and all such objections are also overruled. (*Fairmont Ins. Co. v. Super. Ct.*, *supra*, 22 Cal.4th at 254.)

C. Request for Monetary Sanctions

The Court shall impose monetary sanctions against any party, person, or attorney who unsuccessfully opposes a motion to compel further responses to interrogatories, unless it finds that the one subject to sanctions acted with substantial justification. (Code Civ. Proc. § 2030.300, subd. (d).) Similarly, The Court shall impose monetary sanctions against any party, person, or attorney who unsuccessfully opposes a motion to compel further responses to requests for documents, unless it finds that the one subject to sanctions acted with substantial justification. (Code Civ. Proc. § 2031.310, subd. (h).)

Defendants’ request for monetary sanctions is GRANTED IN PART against Plaintiff in the amount of \$3,785.000, payable to Defendants’ counsel within 20 calendar days of service of notice of entry of order. (Code Civ. Proc., §§ 2030.300, subd. (d) [interrogatories], 2031.310, subd. (h) [document requests].) The amount awarded represents counsel’s time preparing the motion and accompanying documents: 14 hours at \$250 per hour, plus one hour at \$285 per hour. All other amounts requested are speculative and therefore not appropriate.



¹ In fact, Plaintiff presents a single argument in opposition to both Request No. 16 and Request No. 17. (Opposition at p. 14:17 – 16:6.)

MOTION FOR ORDER COMPELLING FURTHER RESPONSES TO IDENTIFICATION, INSPECTION, AND PRODUCTION OF DOCUMENTS AND FOR SANCTIONS

TENTATIVE RULING: The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Plaintiff's counsel is directed to contact Defendant's counsel forthwith and advise Defendant's counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Plaintiff's counsel is unable to contact Defendant's counsel prior to the hearing, Plaintiff's counsel shall be available at the hearing, in person or by telephone, in the event Defendant's counsel appears without following the procedures set forth in Local Rule 2.9.

Plaintiff's Motion for Order Compelling Further Responses to Request for Identification, Inspection and Production Nos. 5 and 9 is **GRANTED** in part. Defendant Tina L. Huff (Huff) shall serve verified code compliant further responses and documents, consistent with the terms of the present order, within 10 calendar days of service of notice of entry.

Plaintiff's Motion for Order Compelling Further Responses to Request for Identification, Inspection and Production Nos. 11, 12, and 13 is **DENIED**.

Each party's request for monetary sanctions is **DENIED**.

The requirements for responding to requests for discovery by inspecting, copying, testing or sampling documents and tangible things is governed by Code of Civil Procedure § 2031 *et seq.* "On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply: (1) A statement of compliance with the demand is incomplete; (2) A representation of inability to comply is inadequate, incomplete, or evasive; (3) An objection in the response is without merit or too general." (Code Civ. Proc. § 2031.310, subd. (a).) Such motion "shall set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc. § 2031.310, subd. (b).)

Request Nos. 5 and 9. Request No. 5 seeks statements made by Huff related to the accident at issue. Request No. 9 seeks documents that Huff contends support allegations that Plaintiff contributed, was negligent in regard, or assumed risk in regard to the collision.

Huff's responses to each request include a privilege log identifying documents described as "CSAAs file notes with respect to the incident." Huff claims that these documents are shielded from disclosure pursuant to the attorney-client privilege. Specifically, Huff's response claims, "Documents prepared in the course of defendant's communications with her insurance carrier and in the course of preparation for litigation are privileged." (Plaintiff's Separate Statement at p. 8:20.)

In support of this claim of privilege, Huff cites *Nacht v. Lewis Architects, Inc.* (1996) 47 Cal.App.4th 214, 217-18; *Payless Drug Stores, Inc. v. Super. Ct.* (1976) 54 Cal.App.3d 988, and *Sierra Vista Hospital v. Super. Ct.* (1967) 248 Cal.App.2d 359. None of the cited cases involve

communications with insurance carriers. Therefore, none are directly applicable to Huff's objections. Huff's opposition papers do not address this issue.

For the foregoing reasons, Plaintiff's motion for further response to Request Nos. 5 and 9 is GRANTED. Huff shall produce the documents identified in the privilege log within ten days of entry of the Court's order.

The Court finds that, except as particularly set forth herein above, Huff's second amended response to Request Nos. 5 and 9 is adequate. In particular, Huff has produced documents in response to each request and affirmed a diligent search and reasonable inquiry. Further, Huff does not claim an inability to comply, and therefore the representations relating thereto set forth in Code of Civ. Proc. § 2031.230 are not required.

Request No. 11. This Request seeks witness statements. The Court finds that Huff's amended response to Request No. 11 is adequate. Huff identifies a statement and affirms a diligent search and reasonable inquiry. Huff does not claim an inability to comply, and therefore the representations relating thereto set forth in Code of Civ. Proc. § 2031.230 are not required.

Request No. 12. This Request seeks documents identified by Huff in response to interrogatories. The Court finds that Huff's amended response to Request No. 12 is adequate. Huff identifies and has produced documents and affirms a diligent search and reasonable inquiry. Huff does not claim an inability to comply, and therefore the representations relating thereto set forth in Code of Civ. Proc. § 2031.230 are not required.

Request No. 13. This Request seeks documents that identify witnesses to the subject collision. The Court finds that Huff's amended response to Request No. 12 is adequate. Huff identifies and has produced documents and affirms a diligent search and reasonable inquiry. Huff does not claim an inability to comply, and therefore the representations relating thereto set forth in Code of Civ. Proc. § 2031.230 are not required.

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Marisella Romaine v. Lawrence Michael Coomes, et al.

18CV001642

DEFENDANT QUEEN OF THE VALLEY MEDICAL CENTER'S MOTION TO STAY
ACTION ON GROUNDS OF ANOTHER SIMILAR ACTION PENDING

TENTATIVE RULING: The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Defendant's counsel is directed to contact Plaintiffs' counsel forthwith and advise Plaintiffs' counsel of Local Rule 2.9 and the Court's tentative ruling procedure. If Defendant's counsel is unable to contact Plaintiffs' counsel prior to the hearing, Defendant's counsel shall be available at the hearing, in person or by telephone, in the event Plaintiffs' counsel appears without following the procedures set forth in Local Rule 2.9.

The Court notes that the outcome of Defendant Queen of the Valley Medical Center's pending Motion for Summary Judgment in *David v. Queen of the Valley Medical Center*, Case

No. 26-67321 is potentially relevant to the present motion in this matter. Hearing on the matter is therefore continued to March 7, 2019, at 8:30 a.m. in Dept. A.

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In the Matter of Angelica Escareno

18CV001753

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

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In the Matter of Katharine Maligie O'Brien

19CV000029

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

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In the Matter of Kristi J. Machon Forestier

19CV000031

PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

**CIVIL LAW & MOTION CALENDAR – Hon. Raymond Guadagni, Dept. G
(Criminal Courts Bldg.-1111 Third St.)**

Gerald L. Nunn, et al. v. JPMorgan Chase Bank, N.A., et al.

26-56767

PLAINTIFFS' MOTION TO COMPEL FURTHER RESPONSES AND DOCUMENTS TO FORM INTERROGATORIES, SPECIAL INTERROGATORIES, REQUESTS FOR ADMISSIONS, AND REQUESTS FOR PRODUCTION OF DOCUMENTS

TENTATIVE RULING: Plaintiffs Gerald L. Nunn and Judith L. Nunn's motion to compel further responses and documents responsive to form interrogatory number 17.1, special interrogatories numbers 1, 3, 6, 10, 12-14, 16, 22, 29, 32, 34-49, 51, 53, 55, 61, and 63-68, request for admissions numbers 4-5, 7, 10, 12-15, 17-20, 22, 30, 34, and 36, and request for

production of documents numbers 5-9, 14, 17, 19-20, and 24-28 is DENIED.² The Court will not reach the merits because a review of the declarations reveals the meet-and-confer process was not exhausted prior to the filing of this motion.

Defendant JPMorgan Chase Bank N.A. agreed to supplement various responses following a meet-and-confer conference call, including for example, request for admission number 36, which is the subject of this motion. (Freshman Decl., Ex. 9 at p. 2.) Chase also agreed to supplement various responses if plaintiffs clarified or modified certain requests. (*Id.*, Ex. 9.) After trading emails, plaintiffs finally offered on January 11 to provide Chase with 15 days to serve supplemental responses, which Chase accepted. (Freshman Decl., ¶ 17, Ex. 11; Hartford Decl., ¶ 20, Ex. 14.) On January 14, 2019, Chase stated it would serve responses within 15 days (by January 29) and would extend plaintiffs' deadline to file a motion until February 12. (Freshman Decl., Ex. 11.) Later that day, plaintiffs retracted the extension of time and decided to file a motion to compel. (Freshman Decl., ¶ 19, Ex. 12; Hartford Decl., ¶ 20, Ex. 14.) Plaintiffs filed the motion to compel the next day on January 15. Based on this record, this motion is premature.

Although the motion is denied, the Court orders Chase to file whatever supplemental responses it intends to file by March 5, 2019. The Court notes several current responses, such as special interrogatory number 1, are not code-compliant. Chase should review its responses for code-compliance. Once Chase serves its supplemental responses, if plaintiffs believe the responses remain deficient, the parties shall meaningfully meet-and-confer to resolve the dispute before resorting to further motion practice. The Court also notes several requests raised in the instant motion never were discussed in the meet-and-confer correspondence. Failure to discuss requests during the meet-and-confer process is grounds for denial of the motion as to those requests. Moreover, Chase is encouraged to provide paper copies of the 4,278 pages already produced via an electronic link to plaintiffs' prior counsel who passed away. Producing paper copies of these records should help narrow or avoid future disputes.

Plaintiffs' request for monetary sanctions for bringing their motion and Chase's request for monetary sanctions for opposing the motion are DENIED. Even though monetary sanctions could be imposed against plaintiffs for failing to exhaust the meet-and-confer process, the Court finds imposing monetary sanctions under the circumstances would be unjust.

The matter is set for a case management conference on April 12, 2019, at 8:30 a.m. in Dept. A.

² California Rules of Court, rule 3.1345(d), requires a motion concerning interrogatories, inspection demands, or admission requests to identify the interrogatories, demands, or requests by set and number. Plaintiffs need to include this information in the notice of motion for future discovery motions.