SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 2, Honorable Drew C. Takaichi, Presiding
Audrey Nakamoto, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS
DATE: July 18, 2024 TIME: 10:00 A.M.

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LINE #	CASE #	CASE TITLE	RULING
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Case Name: *Maria Elena Benitez and Rufo B. Rodriguez v. El Culichi VIP Restaurant et. al*
Case No.: 20CV366400
Hearing date, time, and department: July 18, 2024 at 10:00 a.m. in Department 2

INTRODUCTION

On August 17, 2021, plaintiffs Maria Benitez and Rufo Rodriguez ("Plaintiffs") filed the operative first amended complaint ("FAC") against defendants El Culichi VIP Restaurant ("Restaurant"), Michelle Rodriguez, Capitol Commercial Center ("Business Park"), James Teng, Chask Teng and Security Guard Services Company, for the wrongful death of their son, Rulfino Benitez ("Decedent"), alleging negligence-unprofessional inadequate security, commercial premises liability, and failure to warn of dangerous conditions on business premises.

According to the allegations of the FAC, on or about May 5, 2018, security personnel of the Restaurant witnessed attacks unfolding inside the Restaurant's premises involving Decedent and an alleged assailant. (Complaint, ¶ 24.) Security personnel instructed Decedent and the alleged assailant to "take it outside" and "take it elsewhere." (Id., ¶¶ 10, 11.) The Decedent and alleged assailant left the Restaurant's premises and then left the Business Park where the Restaurant was located, in separate cars. (Id., ¶ 12.) Thereafter, a short distance away from Restaurant, the assailant allegedly shot and killed the Decedent. (Ibid.)

On February 15, 2024, Plaintiffs issued a subpoena to nonparty City of San Jose ("City") to produce full crime reports for 198 listed cases/incidents and synopsis of crimes for 448 listed cases/incidents ("Subpoena"). On March 7, 2024, the City filed a motion to quash, or alternatively, for a protective order against the Subpoena. On March 22, 2024, Plaintiffs filed a motion for an order directing the City's compliance with the Subpoena. On April 10, 2024, the City filed an opposition to Plaintiffs' motion and on April 16, 2024, Plaintiffs filed their reply. On May 4, 2024, the court signed an order ("Order") granting the City's motion to quash the subpoena and denying Plaintiffs' motion to compel compliance with the subpoena.

Currently before the court is Plaintiffs' motion for reconsideration of the Order granting the City's motion to quash and denying Plaintiffs' motion to compel compliance with the subpoena. The City has opposed the motion for reconsideration and Plaintiffs have filed a reply.

DISCUSSION

I. Request for Judicial Notice

Plaintiffs have submitted a request for judicial notice with their motion for reconsideration. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307, citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2.) It is the court, and not

the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

Citing California Evidence Code section 452, subsection (a)(d) and section 453, subsection (a)(b),[1] Plaintiffs request the court judicially notice Exhibits D, E, and F to their motion for reconsideration. The City does not oppose the request. Exhibits D-1, D-2, and D-3 are Plaintiffs' motion to compel, the City's opposing papers, and Plaintiffs' reply. Exhibits E-1, E-2, and E-3 are the City's motion quash the Subpoena, Plaintiffs' opposition, and the City's reply. Exhibit F is the FAC.

The court GRANTS Plaintiffs' request to judicially notice Exhibits D, E, and F pursuant California Evidence Code section 452, subsection (d), which permits a court to judicially notice "records of any court of this state." (See *Mai v. HKT Cal, Inc.*, (2021) 66 Cal. App. 5th 504, 524 [the "case law is quite clear that the court can take judicial notice of documents in the court file."].) However, the court notes that it will not take judicial notice of the hearsay records contained in those documents. (See *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.)

II. Legal Standard

"Section 1008, subdivision (a) requires that a motion for reconsideration be based on new or different facts, circumstances, or law. A party seeking reconsideration also must provide a satisfactory explanation for the failure to produce the evidence at an earlier time. [Citation.]" (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) "The burden under section 1008 is comparable to that of a party seeking a new trial on the ground of newly discovered evidence: the information must be such that the moving party could not, with reasonable diligence, have discovered or produced it at the trial. [Citation.]" (*Id*. at pp. 212-213.)

Thus, a court properly granted a motion to reconsider where the motion was supported by newly-produced documents which had been requested but not produced at the time of the earlier hearing. (*Hollister v. Benzl* (1999) 71 Cal.App.4th 582, 585.) "New circumstances" were shown by evidence a court failed to consider a timely-filed memorandum of points and authorities in its prior ruling. (Johnston v. Corrigan (2005) 127 Cal.App.4th 553, 556.)

III. Merits of the Motion

Plaintiffs argue new circumstances and facts have arisen giving rise to the present motion for consideration. (See Memorandum of Points and Authorities in Support of Plaintiffs' Application for Reconsideration, at pp. 3-6 ("Plaintiffs' MPA").) First, Plaintiffs now seek ten crime reports discussing crimes committed on Defendants' property, whereas Plaintiffs originally requested a total of 646 crime reports occurring at and in proximity to defendants' property. (Id. at p. 3:22-26.) Second, the City's attorney and counsel for Plaintiffs have reached a "tentative" agreement, not yet finalized, for the City to produce ten crime reports total describing crimes occurring at or on the Business Park's premises. (*Id.* at p. 4:20-21.)

[1] The court assumes Plaintiff meant to refer to Evidence Code sections 452, subdivision (a) and (d) and 453, subdivisions (a) and (b).

The City opposes, contending that Plaintiffs have failed to present new facts or circumstances justifying consideration. (Defendant City of San Jose's Opposition to Plaintiff's Application for Reconsideration, at p. 3:11-12.) According to the City, if the court thought it permissible for Plaintiffs to seek police reports under a more limited request, the court would have previously ordered the City to produce it in the Order, given that counsel for Plaintiffs informed the court that they would agree to limit their subpoena to the "identical scope raised by this motion." (*Id*. at p. 2:3-4.)

The court agrees with the City. Plaintiffs admit that they informed the court of their request for only ten crime reports from the City during oral argument and in their reply brief responding to the City's opposition to the original motion to compel. (Plaintiffs' MPA at p. 4:4-10.) It is clear from the Order that the court considered Plaintiffs' reply. The court noted that the reply had been filed on April 16, 2024. (Order at p. 2, ln. 17.) Nonetheless, the court still denied their motion to compel, finding that Plaintiffs already have access to certain crime data and that Plaintiffs failed to show the requisite need for the items in light of the privacy concerns discussed by the court. Plaintiffs' narrowed proposal does not constitute new circumstances or facts. (See *Pazderka v. Caballeros Dimas Alang, Inc*. (1998) 62 Cal. App. 4th 658, 670 ["a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances, or law.' [Citation.]"].)

Nor does the "tentative agreement" between the City's counsel and Plaintiffs' counsel constitute new facts or circumstances sufficient for the court to grant this motion to reconsider. Whether the parties have negotiated a tentative agreement does not impact the reasoning of the Order or the outcome of Plaintiffs' prior motion. In denying Plaintiffs' motion to compel, the court balanced the right to privacy against the need for disclosure and found there was an objectively reasonable privacy expectation of the persons identified in the police reports. (Order at pp. 3-4.) Furthermore, the court found that Plaintiffs already possessed crime data of incidents that occurred in the general area of the restaurant for thirty years prior to the incident, and Plaintiffs failed to present sufficient evidence to show how the full details included in police reports of criminal cases had direct relevance to the subject matter of the case. (*Ibid*.) Any tentative agreement between the parties regarding production of documents has no bearing on these findings.

Plaintiffs also argue in reply that the court's "earlier ruling is erroneous, unfair, and inequitable," there is "no plain, speedy, or adequate alternative remedy" to the requested discovery, and the court abused its discretion in denying Plaintiffs' motion to compel. (Plaintiffs' Reply to Third Party-City of San Jose's Opposition to Plaintiffs' Application for Reconsideration, at pp. 3-6.) These arguments do not address the requisite standard to bring a motion to reconsider. Code of Civil Procedure section 1008, subdivision (a) requires that a motion for reconsideration be based on new or different facts, circumstances, or law. (See *Gilberd v. AC Transit* (1995) 32 Cal. App. 4th 1494, 1500 ["Since in almost all instances, the losing party will believe that the trial court's 'different' interpretation of the law or facts was erroneous, to interpret the statute as the respondent urges would be contrary to the clear legislative intent to restrict motions to reconsider to circumstances where a party offers the court some fact or authority that was not previously considered by it."].)

CONCLUSION

The motion for reconsideration is DENIED as without merit.

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