

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: November 16, 2023 TIME: 9:00 A.M.

TO REQUEST ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml

TO HAVE THE HEARING REPORTED: The Court does not provide official court reporters. If you want a court reporter to report your hearing, you must submit the appropriate form, which can be found here:

https://www.sccscourt.org/general_info/court_reporters.shtml

TO SET YOUR NEXT hearing date: You no longer need to file a blank notice of motion to obtain a hearing date. **Phone lines are now open for you to call and reserve a date before you file your motion.** If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Civil Local Rule 8C is in the amendment process and will be officially changed by January 2024.

Where to call for your hearing date:

408-882-2430

When you can call:

Monday through Friday, 8:30 am to 12:30 pm

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	21CV381575	R. Case vs Mai Loan Nguyen	Parties are ordered to appear for examination.
2	20CV373138	Envirodigm, Inc. vs Apple, Inc.	These motions to compel are continued to December 21, 2023 at 9 a.m. in Department 6 to be heard in the event the December 7, 2023 motion to designate this case as complex is denied. If the motion is granted, the complex court should make the determination on these motions.
3	20CV373138	Envirodigm, Inc. vs Apple, Inc.	These motions to compel are continued to December 21, 2023 at 9 a.m. in Department 6 to be heard in the event the December 7, 2023 motion to designate this case as complex is denied. If the motion is granted, the complex court should make the determination on these motions.
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9	23CV412270	Ruby Rebosa vs Dolores Tapay	Defendant's Motion to Compel Plaintiff's Further Responses to Special Interrogatories (Set Two) and for Sanctions is DENIED. Please scroll down to lines 9-11 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
10	23CV412270	Ruby Rebosa vs Dolores Tapay	Defendant's Motion to Compel Plaintiff's Further Response to Request for Production of Documents (Set Two), No. 7, and for Sanctions is DENIED. Please scroll down to lines 9-11 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.

11	23CV412270	Ruby Rebosa vs Dolores Tapay	Defendant's Motion to Compel Plaintiff's Deposition and for Sanctions is DENIED. Please scroll down to lines 9-11 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
12	19CV358400	Bhupinder Dhillon vs Amritsar Times, Inc. et al	Plaintiff Bhupinder S. Dhillon's Motion to Amend Complaint is DENIED. Please scroll down to line 12 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
13	21CV378991	Frederick Hart, Jr. vs Michael Hart et al	Brenden J. Dooley's Motion to be relieved as Plaintiff's counsel is GRANTED. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to use order on file.
14	22CV397651	Nabil Haidar et al vs Christopher Sciba et al	Defendants' Motion for Leave to File a Cross-Complaint is GRANTED. Code of Civil Procedure section 426.30 does not bar the proposed cross-complaint; because Defendants did not file the cross-complaint with their answer, they were required to seek leave of court, which they have done. Further, the Court cannot conclude on this record that the proposed claims are barred by the statute of limitations. (See <i>Paredes v. Credit Consulting Services, Inc.</i> (2022) 82 Cal. App. 5th 410, citing <i>ZF Micro Devices, Inc. v. TAT Capital Partners, Ltd.</i> (2016) 5 Cal.App.5th 69 and holding "[w]hether the cross-complaint is construed as compulsory [] or permissive [the] cross-complaint 'is entitled to the benefit of the tolling doctrine.'")) Accordingly, Defendants' motion is granted, without prejudice to the form of Cross-Defendants' response to the cross-complaint. Defendants are ordered to file the proposed cross-complaint within 10 days of service of the formal order. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
15	23CV414116	Sandra Deneen vs Dan Fortune	Labor Commissioner's Motion to Vacate Clerk's Judgment is GRANTED. On March 7, 2023, Plaintiff Sandra Deneen filed a <i>de novo</i> appeal of the Labor Commissioner's Order, Decision and Award contesting the amount awarded to her and against Defendant Dan Fortune. Accordingly, the clerk's judgment must be vacated. Court to use proposed order on file.

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Calendar Line: 9-11

Case Name: *Ruby Rebosa vs Dolores Tapay*

Case No.: 23CV412270

Before the Court are Defendant's Motions to Compel (1) Plaintiff's Further Responses to Special Interrogatories (Set Two) and for Sanctions; (2) Plaintiff's Further Response to Request for Production of Documents (Set Two), No. 7, and for Sanctions; and (3) Plaintiff's Deposition and for Sanctions. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background

According to the Complaint, Plaintiff Ruby Rebosa was employed by Defendant Dolores Tapay as Ms. Tapay's in-home caregiver. (Complaint, ¶1.) Plaintiff alleges that in late 2018 Ms. Tapay hired her on an hourly basis to be a driver for at a pay rate of \$20 per hour and was then hired to provide Ms. Tapay 24 hour in home care after Ms. Tapay suffered a fall. (Complaint, ¶6.) Ms. Tapay agreed to pay Plaintiff \$3500 per month for providing full support and assistance with all activities of daily living. (Complaint, ¶6-7.) Plaintiff worked for Ms. Tapay in this way from October 1, 2019 until October 31, 2021 with only very limited time off. Plaintiff alleges she was not paid overtime hours for this entire period and filed this lawsuit on February 28, 2023 asserting (1) wage theft in violation of the Domestic Worker Bill of Rights (Labor Code §§1454 and 1194); (2) failure to pay minimum wages in violation of Labor Code §§ 1194 and 1197); (3) violation of Labor Code § 1194.2; (4) violation of labor code §§ 202 and 203; and (5) violation of Business & Professions Code § 17200.

Ms. Tapay characterizes the parties' relationship differently, alleging "outrageous abuse and control perpetrated by Plaintiff, an unscrupulous and avaricious service provider, who took advantage of Ms. Tapay, an elderly widow." Ms. Tapay accordingly filed a cross-complaint against Ms. Rebosa on May 17, 2023, alleging (1) financial abuse of an elder; (2) neglect of an elder; and (3) intentional infliction of emotional distress.

By order dated October 20, 2023, the Court denied Defendant's motion to compel Plaintiff's further responses to document requests and for sanctions. In that order, "Court encourages Defendant to review the remaining motions to compel to ensure that they are substantially justified and really cannot be resolved through meaningful dialogue." Those remaining three motions to compel are now before the Court.

II. Legal Standard

Discovery management plainly lies “within the sound discretion of the trial court.” (*People v. Sup. Ct.* (2001) 94 Cal.App.4th 980, 987; *see also Orange County Water Dist. v. The Arnold Eng’g Co.* (2018) 31 Cal.App.5th 96, 119 (judge’s discretionary functions include managing discovery and trial proceedings before them).) In fact, case law teaches that it is up to judges to make sure that the discovery process is not abused. (See *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal. App. 4th 216, 221 (discovery abuse is a spreading cancer; judges must be aggressive in curbing abuse; discovery statutes are prone to misuse absent judicial consideration for burden; courts must insist that discovery be used to facilitate litigation rather than as a weapon); *accord Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424, 43.)

A party responding to interrogatories must respond in writing, under oath separately to each interrogatory with an answer that contains the information sought, an exercise of the party’s option to produce writings from which the answer can be determined, or an objection to the interrogatory. (Code Civ. Pro. §2030.210(a).) The responding party must make a reasonable, good faith effort to obtain information to provide a response and generally may not respond to the interrogatory by simply stating it cannot respond. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 406; Code Civ. Pro. §2030.210(c).)

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to “set forth specific facts showing good cause justifying the discovery sought by the demand.” (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Information is relevant to the subject matter of the action if it might reasonably assist a party in evaluating the case,

preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

Code of Civil Procedure section 2023.020 states: “the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney’s fees, incurred by anyone as result of that conduct.” (See also *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 448 (failure to participate in meet and confer process in good faith is independent discovery abuse for which sanctions are authorized by statute); *Ellis v. Toshiba Am. Info. Sys., Inc.* (2013) 218 Cal.App.4th 843, 879-880 (substantial monetary sanction appropriate for failure to cooperate in setting protocol for expert inspection as ordered).) This monetary sanction is mandatory regardless of how the court rules on the offending party’s motion. (Code Civ. Proc. §2023.020.)

III. Analysis

As in Defendant’s motion to compel further responses to requests for production of documents (set one), Defendant fails to explain what information is missing from Plaintiff’s discovery responses. Nor does Defendant provide any authority to support why Defendant is entitled to a stipulation for Plaintiff’s appearance at the agreed to November 27, 2023 deposition date. It again appears to the Court that Plaintiff has regularly engaged with Defendant regarding discovery matters, supplemented responses, and complied with the code of civil procedure.

By contrast, Defendant persisted with the present motions even in the face of the Court’s admonishment to further meet and confer and Plaintiff’s continued production of documents and agreement to a firm deposition date. Based on the correspondence between the parties, it does not appear to this Court that any of these motions were necessary—Plaintiff was already working diligently with Defendant on Defendant’s further requests.

Accordingly, Defendant’s motions to compel are DENIED. Defendant is ordered to pay Plaintiff \$3,600 in sanctions within 30 days of service of this formal order.

Calendar Line: 12

Case Name: *Bhupinder Dhillon vs Amritsar Times, Inc. et al*

Case No.: 19CV358400

Before the Court is Plaintiff Bhupinder S. Dhillon's Motion to Amend Complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling as follows.

I. Background

This is a defamation and false light/invasion of privacy case. According to the Complaint, Plaintiff Bhupinder S. Dhillon (aka Bob Dhillon) is the President of Sikh Gurdwara-San Jose ("Temple"). (Complaint, ¶ 1.) Plaintiff alleges Defendant Jasjeet Singh (aka Jasjeet Singh Chala) and Defendant Balwinder Singh are the owners of the publication *Quamantry Amritsar Times*. (Complaint, ¶ 2.) According to Plaintiff, *Quamantry Amritsar Times* Volume 9, Issue 37, dated September 18, 2019 to September 24, 2019, contained statements about Plaintiff Defendants knew were false. (Complaint, ¶¶ 9- 10.) Defendants contend the statements were true.

Plaintiff filed this lawsuit on November 8, 2019. Trial is set to commence on February 5, 2024 with a mandatory settlement conference scheduled for January 31, 2024. Plaintiff now seeks to amend his complaint "to seek damages for his anxiety that arise [sic] from the defamatory statements made about [him] by the Defendants." (Plaintiff's Declaration in Support of Motion to Amend, ¶ 2.) Plaintiff contends there can be no prejudice to Defendants, since they were alerted of Plaintiff's intent to seek leave to file an amended complaint before Plaintiff's deposition, thus Defendants have already been able to take discovery on this issue.

Defendants do not dispute that they took some limited discovery on this issue, and, in fact, point to Plaintiff's deposition testimony in support of their opposition. Defendants do argue additional discovery would be necessary if the Court were to grant Plaintiff's request. Defendants argue, however, that Plaintiff's testimony renders the proposed amendment futile because Plaintiff very clearly testified that his anxiety is related to this *lawsuit* and not to the alleged defamatory statements. (See Plaintiff's Decl., ¶ 5.)

II. Legal Standard and Analysis

"[T]he trial court has wide discretion in allowing the amendment of any pleading. (*Bedolla v. Logan & Frazer* (1975) 52 Cal. App. 3d 118, 135-136.) However, "the exercise of this discretion must

be sound and reasonable and not arbitrary or capricious. (*Richter v. Adams*, 43 Cal.App.2d 184, 187; *Eckert v. Graham*, 131 Cal.App. 718, 721.) ‘[It] is a rare case in which ‘a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.’ (*Guidery v. Green*, 95 Cal. 630, 633; *Marr v. Rhodes*, 131 Cal. 267, 270.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (*Nelson v. Superior Court*, 97 Cal.App.2d 78; *Estate of Herbst*, 26 Cal.App.2d 249; *Norton v. Bassett*, 158 Cal. 425, 427.)” (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal. App. 2d 527, 530-531 (error for trial court to fail to give leave to amend). However, “even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial.” (*Roemer v. Retail Credit Co.* (1975) 44 Cal. App. 3d 926, 939-940; see also *Moss Estate Co. v. Adler* (1953) 41 Cal. 2d 581, 585-587.)

Although leave to amend should be liberally construed and freely granted, amendment is not without limitation. Leave to amend is properly denied if the proposed amended pleading would be futile. (*Foxborough v. Van Atta* (1994) 26 Cal. App. 4th 217, 231 (“The trial court did not abuse its discretion in denying Foxborough leave to amend its complaint. The proposed amendment would have been futile because it was barred by the statute of limitations.”) Leave to amend is also properly denied where the amendment would result in delaying trial and increasing discovery burdens. (*Miles v. City of Los Angeles*(2020) 56 Cal.App.5th 728.)

Based on these authorities, the Court finds this is the unusual case where leave to amend should be denied. This case has been pending for four years, and trial is imminent. Granting leave to amend at this time would require additional extensive discovery, including mental health examination(s) and expert discovery. Such discovery would necessarily require continuing the trial date. This alone is prejudicial to Defendants and justifies denying leave to amend.

This record also demonstrates that the amendment would be futile. Despite Plaintiff’s representation in argument that he seeks amendment to allege mental health injury he just discovered in July of this year stemming from the alleged defamatory statements made four years ago, Plaintiff’s

deposition testimony unequivocally states that the anxiety relates directly to the activity in this lawsuit, which lawsuit Plaintiff filed. As a matter of law, Plaintiff will be unable to allege the requisite causation element for anxiety related to litigation activity that Plaintiff initiated and is pursuing.

Accordingly, Plaintiff's motion for leave to file an amended complaint is DENIED.