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

October 15, 2024
9:00 A.M.

RECORDING COURT PROCEEDINGS IS PROHIBITED

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 will appear at the hearing to contest the tentative

If you fail to so notify the court or opposing side, the Court will not hear argument, and the tentative ruling will be adopted.

(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

APPEARANCES

The Court strongly prefers in-person appearances.

If you must appear virtually, you must 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.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml

COURT REPORTERS

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.scscourt.org/general_info/court_reporters.shtml

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
1	23CV409991	Maria Carrillo vs Ashley Cardenas et al	Defendant's motion seeks an order compelling Kaiser Permanente San Jose Medical Center's ("Kaiser San Jose") compliance with a business records subpoena Defendant issued on April 4, 2024. Defendant argues Kaiser San Jose's sole objection to producing the subpoenaed documents was Plaintiff's objection. Plaintiff was served with this motion and did not oppose it. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) However, the Court was unable to locate a proof of service demonstrating Defendant's motion to compel was served on Kaiser San Jose. Defendant's motion seeks an order compelling Kaiser San Jose to comply with the subpoena despite Plaintiff's objection. Since Kaiser San Jose was not served with the motion to compel, unless there is legal authority to the contrary which authority the Court would happily receive, the Court lacks jurisdiction to compel them to do anything. (See *Diaz v. Professional Community Mgmt.* (2017) 16 Cal.App.5th 1190, 1204-1205 (A court lacks jurisdiction to hear a motion that has not been properly served, even if the non-moving party had some type of advanced notice).) Accordingly, unless the parties appear and provide the Court with either a proof of service demonstrating Defendant's motion to compel was timely served on Kaiser San Jose or authority making clear such service was not necessary, Defendant's motion will be DENIED WITHOUT PREJUDICE. Court to prepare formal order.
2	23CV412945	BMO Harris Bank N.A. vs J&N Engineering, Inc. et al	Parties are ordered to appear for debtor's examination.
3	24CV429426	Wells Fargo Bank, N.a. vs Nam Luong	Wells Fargo Bank, N.A.'s Motion for Order that Matters in Request for Admission of Truth of Facts be Admitted is GRANTED. A notice of motion with this hearing date was served on Defendant by electronic mail on July 31, 2024. Defendant failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) There is also good cause to grant this motion. Plaintiff served requests for admission on Defendant by electronic mail on April 22, 2024. To date, Defendant served no responses. A party served with Requests for Admission must serve a response within 30 days. (Code of Civ. Pro. §2033.250.) When a party fails to respond—even in the face of a motion to have the matters in the Requests for Admission deemed admitted—as Defendant has done here, the Court must order the Requests for Admission deemed admitted. (Code of Civ. Pro. §2033.280(c); *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776.) Such a "deemed admitted" order establishes that the nonresponding party has responded to the requests for admission by admitting the truth of the matters contained in the requests. (*Id.*) Accordingly, Plaintiff's motion is granted, and the matters set forth in Plaintiff's requests for admission are deemed admitted. Moving party to prepare formal order.
4	24CV430338	Mary Ann Rodriguez vs Holden Neal	Defendant's demurrer to the complaint is SUSTAINED WITHOUT LEAVE TO AMEND. A notice of motion with this hearing date was served on Plaintiff by electronic and U.S. mail on September 4, 2024. Plaintiff failed to file an opposition. "[T]he failure to file an opposition creates an inference that the motion [] is meritorious." (*Sexton v. Super Ct.* (1997) 58 Cal.App.4th 1403, 1410.) The demurrer is also well taken. The accident is alleged to have occurred on October 25, 2021. (See Complaint.) Plaintiff had two years within which to bring this claim. (See Code Civ Proc § 335.1; *Litwin v. Estate of Formela* (2010) 186 Cal. App. 4th 607.) Plaintiff filed the complaint on February 2, 2024, well beyond the statute. Accordingly, Plaintiff's claim is time-barred as a matter of law, and Defendant's demurrer is SUSTAINED WITHOUT LEAVE TO AMEND. Court to prepare formal order with this finding and dismissing the case.

5	24CV436322	EXETER 1140-1150 RINGWOOD, LLC, a Delaware limited liability company vs GRU ENERGY LAB, INC., a Delaware corporation	Off calendar.
6	24CV436825	Wells Fargo Bank, N.a. vs Saulo Gonzalez	Plaintiff's motion to amend complaint to change the Defendant's name to Saulo G. Gonzalez is GRANTED. Plaintiff shall file the amended complaint as a separate document within 10 days of the hearing. These orders will be reflected in the minutes.
7	23CV423415	VIET LE vs KEVIN VUONG et al	Off calendar.
8	24CV443182	Sijin Kim vs Omar Tenaza Mora et al	Scroll to line 8 for ruling. Court to prepare formal order.
9	24CV432566	Francesca Salari-Salcido vs David Weisenberg et al	Nathan Kingery and Wilshire Law Firm's motion to withdraw as counsel for Plaintiff Francesca Nicloe Salari-Sacido first came on for hearing on October 8, 2024. Plaintiff, but not counsel, appeared at the hearing and seemed to have some opposition to Counsel's withdrawal. The Court therefore continued the hearing to this date. Plaintiff and counsel are ordered to appear so the Court can confirm that Plaintiff's concerns have been addressed before issuing a final ruling on this motion.

Calendar Line 8

Sijin Kim vs Omar Tenaza Mora et al, Case No. 24CV443182

Plaintiff's motion for protective order first came on for hearing before the Court on October 8, 2024. Pursuant to California Rule of Court 3.1308, the Court issued its tentative ruling on October 7, 2024. The parties appeared, and Plaintiff persuaded the Court to reconsider the merits of the motion despite the Court's findings regarding what the Court viewed as an inappropriate meet and confer letter. The Court found Plaintiff's counsel's apology sincere and argument persuasive and took the matter under submission. The Court has now reviewed the subject discovery requests and issues its tentative ruling concerning those requests.

I. Background

This matter concerns a car collision. Plaintiff claims on November 30, 2023, Defendant Tenaza Mora rearended Plaintiff while he was at a complete stop. Plaintiff further alleges Defendant Premier Nissan of San Jose employed Mora, and Defendant Premier Automotive Group, LLC owned the vehicle Mora was driving at the time of the collision.

On August 14, 2024, Defendant served 77 specially prepared interrogatories, 57 requests for production of documents, request for statement of damages, and a set of form interrogatories. Plaintiff responded to the form interrogatories and statement of damages but not the special interrogatories or requests for production, instead requesting that those discovery requests be withdrawn in a meet and confer letter. Portions of this letter are set forth, verbatim, below.

- You have propounded discovery out of ignorance or out of malice and ill-intent, but not out of good faith. Please withdraw your special interrogatories and hand this file to a senior attorney who truly wants to figure this case out and settle it accordingly.
- If Defendant wants to know how the accident happened because he honestly doesn't know and can't think of a way besides the propounded special interrogatories to figure it out, then he should seek medical help, because there is something very wrong with his brain. If defense counsel wants to hear the elements of negligence eleven times, then Counsel should do the same.
- Other than those two scenarios - wanting to see us write out the elements of negligence 11 times or having brain damage necessitating medical intervention - there is no reason,

given the rules that we don't have to prepare your case for you, to ask us to respond those interrogatories.

- WHAT?!! WHAT PREVIOUS DISCOVERY>????. . . Did you even look at these interrogatories? Are they some leftover in some computer at your firm you found and just decided, "yeah, 72 questions, this'll learn em!" and spit out a regurgitated cut and paste job>?

- Please list for me the specific issues – (that you are familiar with, right?) – that make this case so complex, or withdraw your entire set of discovery and do it over before you resend to us a set of discovery that asks for precise information relating to this particular case that you currently do not have and decide you NEED and that Plaintiff is likely to have before continuing to resolve this case.

- If you do not withdraw your entire set of requests, including form interrogatories and requests for production, by Monday, September 2, 2024 at 4pm, we will file a motion to protect plaintiff from this hack attempt at real lawyering, get your discovery thrown out, request maximum sanctions from your firm, and recommend that your attorney be investigated by the state bar and the district attorney office for perjuring herself in her accompanying declaration.

Plaintiff complains that Defendants did not respond to this letter. However, Defendants are correct that this belligerent, demeaning, abusive letter warranted no response. Defendant did later offer to remove some text and interrogatories and move other text. It also appears the parties had conversations and did not reach agreement. This is not surprising, since Plaintiff's counsel "feel[s] this motion hearing is necessary for defense counsel's growth."

It is reasonable for parties to disagree about the appropriateness of propounded discovery. What is not reasonable is the way Plaintiff's counsel expressed disagreement here. The entire approach smacks of rude condescension. It is, in short, uncivil.

> Since 2014, the oath new attorneys of this state must take requires them to "vow to treat opposing counsel with 'dignity, courtesy, and integrity.'" (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134 [248 Cal. Rptr. 3d 263] (*Lasalle*).) Although Smith asserts he took the attorney oath before it was so revised, as an officer of the court he owed the court and opposing counsel "'professional courtesy.'" (*Id.* at p. 132, quoting *Lossing v. Superior Court* (1989) 207 Cal.App.3d 635, 641 [255 Cal. Rptr. 18] [attorneys' "responsibilities as officers of the court include professional courtesy to the court and to opposing counsel"].) Rather than a *new* requirement, the "'civility oath'" added by the rules in 2014 "serves as an important *reminder* to lawyers of their general ethical responsibilities in the pursuit of all their professional affairs, including litigation." (*People v. Shazier* (2014) 60 Cal.4th 109, 147, fn. 17 [175 Cal. Rptr. 3d 774, 331 P.3d 147], italics added.) As the court stated in *Karton*, civility "is an ethical component of professionalism," *and* it "is socially advantageous [as] it lowers the costs of dispute resolution." (*Karton, supra*, 61 Cal.App.5th at p. 747.)

(*Snoeck v. ExakTime Innovations, Inc.* (2023) 96 Cal. App. 5th 908, 922.)

Plaintiff's counsel violated this oath in the August 28, 2024 letter and the tone of this motion. Accordingly, the Court's initial tentative ruling was to deny Plaintiff's motion for protective order and order Plaintiff to produce verified, code compliant responses without objections to the special interrogatories and requests for production and produce all documents sought; and pay $2,050 in sanctions to Defendant for abusive discovery behavior.

However, Plaintiff's counsel expressed genuine remorse for the tone of the letter and motion when counsel appeared at the October 8, 2024 hearing. The Court appreciates that counsel seriously considered the Court's initial tentative ruling, and came in person to express his remorse. Plaintiff's counsel also persuasively argued that his client should not be deprived of a ruling on the merits of the protective order motion because of counsel's discovery behavior. The Court stated during the hearing that while there would still be sanctions for the letter and the tone in the motion, the Court would reach the merits of Plaintiff's request for relief from responding to 77 specially prepared interrogatories and 59 requests for production of documents.

II. Legal Standard

Discovery is generally permitted "regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Pro. § 2017.010.) Everything that is relevant to the subject matter is presumed to be discoverable. (*Id.*) The Discovery Act further declares that "the court shall limit the scope of discovery" if it determines that the burden, expense, or intrusiveness of that discovery "clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (Code Civ. Pro. § 2017.020(a); *Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385.) The California Supreme Court teaches in *Greyhound* that the judge exercising discretion to limit discovery should construe disputed facts liberally in favor of discovery; reject objections such as hearsay that only apply at trial; permit fishing expeditions (within limits), avoid extending limitations on discovery, such as privileges; and, whenever possible, impose only partial limitations rather than

denying discovery entirely. (*Greyhound Corp. v. Superior Court* (1961) 56 C.2d 355, 383-385; *see also Tylo v. Superior Court* (1997) 55 Cal.App.4th 1379, 1386.)

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.)

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).)

"[N]o party shall as a matter of right, propound to any other party more than 35 specially prepared interrogatories." (Code Civ. Proc. §2030.030(b).) Code of Civil Procedure section 2030.040 provides:

> (a) Subject to the right of the responding party to seek a protective order under Section 2030.090, any party who attaches a supporting

declaration as described in Section 2030.050 may propound a greater number of specially prepared interrogatories to another party if this greater number is warranted because of any of the following:

(1) The complexity or the quantity of the existing and potential issues in the particular case.

(2) The financial burden on a party entailed in conducting the discovery by oral deposition.

(3) The expedience of using this method of discovery to provide to the responding party the opportunity to conduct an inquiry, investigation, or search of files or records to supply the information sought.

(b) If the responding party seeks a protective order on the ground that the number of specially prepared interrogatories is unwarranted, the propounding party shall have the burden of justifying the number of these interrogatories.

Code of Civil Procedure section 2030.050 lays out the requirements for a declaration seeking more than 35 specially prepared interrogatories:

Any party who is propounding or has propounded more than 35 specially prepared interrogatories to any other party shall attach to each set of those interrogatories a declaration containing substantially the following:

DECLARATION FOR ADDITIONAL DISCOVERY

I, _____, declare:

1. I am (a party to this action or proceeding appearing in propria persona) (presently the attorney for , _____ a party to this action or proceeding).

2. I am propounding to _____ the attached set of interrogatories.

3. This set of interrogatories will cause the total number of specially prepared interrogatories propounded to the party to whom they

are directed to exceed the number of specially prepared interrogatories permitted by Section 2030.030 of the Code of Civil Procedure.

4. I have previously propounded a total of _____ interrogatories to this party, of which interrogatories were not official form interrogatories.

5. This set of interrogatories contains a total of _____specially prepared interrogatories.

6. I am familiar with the issues and the previous discovery conducted by all of the parties in the case.

7. I have personally examined each of the questions in this set of interrogatories.

8. This number of questions is warranted under Section 2030.040 of the Code of Civil Procedure because _____. (Here state each factor described in Section 2030.040 that is relied on, as well as the reasons why any factor relied on is applicable to the instant lawsuit.)

9. None of the questions in this set of interrogatories is being propounded for any improper purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or needless increase in the cost of litigation.

10. I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on _____.

11. (Signature)

12. Attorney for _____

A responding party may move for protective order, and a court may make such orders "that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." (Code Civ. Pro. §2030.090.) Code of Civil Procedure section 2030.090 sets forth the relief a court may grant. (*Id.*)

III. Analysis

Defendants submitted a declaration to support their request for 77 special interrogatories, which declaration complies in format to that set forth above. However, that declaration does not support the need for these interrogatories, each of which the Court has reviewed. Although, the Court disagrees with Defendant that there is perjury here (plainly, knowing what discovery has been conducted can include the fact that no discovery has yet been conducted), the Court does not agree that this case is so complex, that there are an unusual quantity of existing and/or potential issues in this case or that these interrogatories will promote expediency "to provide to the responding party the opportunity to conduct an inquiry, investigation, or search of files or records to supply the information sought." To the contrary, most of the special interrogatories are completely redundant to the form interrogatories Plaintiff already responded to, are irrelevant (all social media accounts?)[1], or would be better suited for a deposition. Defendants' opposition goes through categories of these interrogatories in an effort to explain their relevance, but it does not explain why these interrogatories are needed *in addition to the form interrogatories* to which Defendants already responded. The form interrogatories were designed to obtain the basic information most of these special interrogatories also seek.

Most of the document requests are similarly unjustified. The mere fact that Defendants are entitled to documents in discovery does not entitle them, for example, to "all DOCUMENTS, including photographs, films, digital images, and computer printouts, that feature, show represent, or otherwise depict the vehicles involved in the INCIDENT prior to the occurrence of the INCIDENT." The Court does not know the age of the vehicles involved in this crash, but the Court's vehicle is nearly 15 years old. Many photographs, films, and digital images "feature,

[1] The Court understands Defendants seek any statements Plaintiff may have made about the alleged collision on Plaintiff's social media accounts and/or evidence of Plaintiff's activities before and after the accident to test Plaintiff's assertions regarding injuries sustained from the accident. However, Plaintiff may not have social media accounts or, even if Plaintiff does have social media accounts, Plaintiff may not have made any statements or the accounts may not require passwords. Would not a simpler question be to ask for any statements Plaintiff has made about the incident on social media accounts? And, even if that question is posed, how would it not already be encompassed by form interrogatories? And, is there any reason why Defendants cannot simply search for Plaintiff's social media activity then pose targeted questions?

show, represent, or otherwise depict" the Court's vehicle during that 15 year period, virtually none of which would be relevant to a collision the Court could be involved in tomorrow. Similarly, why do Defendants need a copy of the front and back of Plaintiff's social security card or every medical insurance card Plaintiff has ever had?

Not only are the document requests draft in a way that makes them grossly overbroad, but they also seek documents when a simple question could suffice (e.g. the social security card). Further examples of this include, "all DOCUMENTS, Vehicle Registration Forms, that state, describe, identify, establish, and/or indicate the owner of the vehicle PLAINTIFF occupied at the time of the occurrence of the INCIDENT." Why are any documents needed to establish vehicle ownership—a deposition question or a request for admission would quickly and efficiently do the trick.

Defendants complain that Plaintiff does not designate which requests/special interrogatories for which protection is sought. Plaintiff seeks a protective order for all of this discovery. Plaintiff's view is that Defendants should serve new discovery that focuses specifically on information Defendants need using a suitable discovery device. The Court agrees.

Accordingly, Plaintiff's motion for protective order is GRANTED. Plaintiff is relieved from responding to the 57 requests for production or 77 special interrogatories. If necessary after they analyze Plaintiff's responses to form interrogatories, Defendants may serve 20 requests for production and 15 special interrogatories specifically targeted to materials and information Defendants did not already receive in response to the form interrogatories.

Plaintiff's counsel is ordered to pay $2,050 in sanctions to Defendants for Plaintiff's abusive discovery correspondence. While Plaintiff's motion for protective order was well taken, the method taken to achieve success here was not. And, while the Court again commends Plaintiff's counsel for his comments made at the October 8, 2024 hearing, it is essential that all parties understand the importance of civility in the legal profession. Had Plaintiff approached this discovery problem with civility, the parties may have been able to reach an agreement about what Defendants really need without this extensive motion practice.