

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

**Department 3**

**Honorable William J. Monahan, Presiding**

Allison Croft, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2130

**UPDATED DATE: 1/25/2024 TIME: 9:00 A.M.**

**TO CONTEST THE RULING:** Before 4:00 p.m. 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 and 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 link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

[https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.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. Where to call for your hearing date: **408-882-2430** When you can call: **Monday to Friday, 8:30 am to 12:30 pm**

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet).

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

| LINE #                 | CASE #     | CASE TITLE                           | RULING  |
|------------------------|------------|--------------------------------------|---|
| <a href="#">LINE 1</a> | 21CV390457 | MIJA O'CONNOR vs MIRADRY, INC. et al | Motion: Compel. (SI, set one)<br><br>GRANTED. Scroll down to Line 1 for tentative ruling. |
| <a href="#">LINE 2</a> | 21CV390457 | MIJA O'CONNOR vs MIRADRY, INC. et al | Motion: Compel. (PMK).<br><br>OFF CALENDAR per moving party.                              |

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|                         |                  |   |  |
|-------------------------|------------------|---|--|
| <a href="#">LINE 3</a>  | 21CV390457       | MIJA O'CONNOR vs MIRADRY, INC. et al                            | Motion: Compel (SI, set two)<br><br>GRANTED. Scroll down to Line 3 for tentative ruling.   |
| <a href="#">LINE 4</a>  | 22CV401201       | City of San Jose vs Dave Brough                                 | Motion: Hearings. Judicial determination regarding return of firearms by Respondent Dave Brough.<br><br>APPEAR.  |
| <a href="#">LINE 5</a>  | 23CV421931       | AgentSync, Inc. vs Health IQ Insurance Services, Inc.           | Motion: Seal Records. Portions of complaint and declaration of Dave Jaras. Unopposed and GRANTED.<br><br>Moving Party to prepare order.  |
| <a href="#">LINE 6</a>  | 23CV425884       | Hopkins & Carley, a Law Corporation vs Samuel Orozco, Sr. et al | Petition to confirm arbitration award by Petitioner Hopkins & Carley, a Law Corporation.<br><br>The name of the respondent on the proof of service (POS) filed 1/8/2024 is Samuel R. Orozco, Jr. This is different from the Petition which has the name Samuel R. Orozco. The name on the POS must match the name on the Petition.<br><br>The respondents' names on the other 4 POS in the file match the Petition.<br><br>APPEAR with corrected POS or Petition hearing may be continued.<br><br>The Petition is otherwise unopposed. |
| <a href="#">LINE 7</a>  | 2014-1-CV-261702 | J. Doe, et al vs R. Hong, et al                                 | Motion: order for sanctions against Defendants Palo Alto Foundation Medical Group, Roy Hong M.D. and their attorneys<br><br>DENIED. Scroll down to line 7 for tentative ruling.  |
| <a href="#">LINE 8</a>  |                  |   |  |
| <a href="#">LINE 9</a>  |                  |   |  |
| <a href="#">LINE 10</a> |                  |   |  |

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| <a href="#">LINE 11</a> |  |  |  |
| <a href="#">LINE 12</a> |  |  |  |

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**Calendar Line 1****Case Name:** *MIJA O'CONNOR vs MIRADRY, INC. et al.***Case No.:** 21CV390457

Motion: Compel: Defendant Sientra Inc.'s further responses to Special Interrogatories Set One by Plaintiff Mija O'Conner.

Good cause appearing, plaintiff Mija O'Conner ("Plaintiff")'s motion to compel defendant Sientra, Inc. ("Sientra")'s further response to Special Interrogatories ("SI") set one, No. 3, is GRANTED. Sientra's objections are overruled. Code of Civil Procedure section 2017.020 entitled "Information regarding insurance" provides, in part: "This discovery may include ... the nature and *limits* of the coverage." (*Id.*, emphasis added.) Sientra shall provide a code-compliant verified further response to Plaintiff's SI, set one, No. 3 (without objections) within 30 days of this order.

The court will prepare the order.

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**Calendar Line 2****Case Name:** *MIJA O'CONNOR vs MIRADRY, INC. et al.***Case No.:** 21CV390457

Motion to compel PMK and for sanctions.

OFF CALENDAR per moving party.

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### **Calendar Line 3**

**Case Name:** *MIJA O'CONNOR vs MIRADRY, INC. et al.*

**Case No.:** 21CV390457

Defendant Sientra Inc Motion: Compel: Defendant MiraDry, Inc. further responses to Special Interrogatories, Set Two, nos. 103, 104 and 105 by Plaintiff

Good cause appearing, Plaintiff Mija O'Connor's ("Plaintiff")'s motion to compel further responses by Defendant MiraDry, Inc. ("Defendant") to special interrogatories ("SI") set two, Nos. 103, 104, and 105 is GRANTED.

### **I. Summary**

Plaintiff's motion to compel further responses asks the Court to compel Defendant to further respond to SI set two, served by Plaintiff pursuant to Code of Civil Procedure ("CCP") section 2030.300. (Motion at ¶ 2.) Particularly, Plaintiff seeks further response to SI nos. 103, 104, and 105. (Motion at ¶¶ 2-3.)

SI no. 103 asks Defendant to "identify all internal memorandums sent or received by Defendant from January 1, 2008 to December 31, 2011 relating to nerve damage associated with the Miradry System". (SI at ¶ 9.) SI no. 104 asks Defendant to identify the same memorandums between January 1, 2012 to December 31, 2015, and SI no. 105 asks for the same from January 1, 2016 to present. (*Id.* at ¶¶ 9-10.)

Defendant objects to SI nos. 103, 104, and 105 on grounds that they are vague, ambiguous, and overbroad, particularly as it pertains to the term MiraDry System. (Response at ¶¶ 3-4.) Defendant further objects to the requests on confidentiality, attorney-client privilege, and work product doctrine grounds. Defendant further objects on burdensome and oppressive grounds. *Id.*

### **II. Legal Standard**

The requesting party may file a motion to compel further responses if it deems that the timely served responses to its interrogatories are deficient. (CCP § 2030.300.) The responding party carries the burden of justifying any objections to the interrogatories upon a timely motion to compel further responses. (*Fairmont Ins. Co. v. Superior Court (Stendell)* (2000) 22 Cal.4th 245, 255.)

To determine whether a motion to compel further responses should be granted, a court will look to the following factors: (1) the relationship of the information sought to the issues framed in the pleadings; (2) the likelihood that disclosure will be of practical benefit to the party seeking discovery; and (3) the burden or expense likely to be encountered by the responding party in furnishing the information sought. (*Columbia Broadcasting System, Inc. v. Superior Court (Rolfe)* (1968) 263 Cal.App.2d 12, 19.)

#### **a. Vague, Ambiguous, and Overbroad Objection**

Where a question is somewhat ambiguous, but the requested information's nature is apparent, the proper solution is to "provide an appropriate response". (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783.) A vague and ambiguous objection is only proper when the request is so ambiguous that the responding party cannot provide an intelligent response. (*Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 430.)

An objection that a special interrogatory is overbroad is only valid on grounds that the breadth of the interrogatory imposes an undue burden on the responding party, or on grounds that it is irrelevant to the subject matter of the litigation. (CCP § 2017.010.). The Legislature has put forth a liberal standard of relevancy, and any doubts as to relevance "should generally be resolved in favor of permitting discovery". (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal.3d 161, 173.)

#### b. Burdensome and Oppressive

An objection on burden grounds requires the objecting party to show the amount of work required. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549-550.) It is not sufficient for the objecting party to allege that answering would require extensive labor to search through business records. (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417.)

An objection of oppression requires a showing of either an intent to create an "unreasonable burden" or that effect of responding will be "incommensurate" with the result sought. (*Id.*) When a discovery request is overly broad on its face and does not appear to reasonably relate to a legitimate discovery need, a "reasonable inference can be drawn of an intent to harass and improperly burden." (*Obregon v. Superior Court*, (1998) 67 Cal.App.4th 424, 431.)

### **III. Discussion**

Defendant has the burden of justifying its objections in its Response. Here, it does not attempt to do so as it pertains to its objections on attorney-client privilege, work-product doctrine, confidentiality, and trade secrets grounds. Defendant merely restates those objections in its Response and Separate Statement. As such, Defendant has not carried its burden regarding those objections, and they are **OVERRULED**.

Defendant's Response and Separate Statement revolve primarily around its vague, ambiguous, overbroad, burdensome, and oppressive objections. Defendant does attempt to justify these in its opposition.

Here, the core of Defendant's argument is that that Plaintiff's request for further memorandums on the "MiraDry System" seeks irrelevant information. The Legislature has adopted a liberal standard of relevance, and it cannot be said that requesting further internal memorandums about the MiraDry System and nerve damage incidents would be irrelevant to the instant case under that broad standard.

Defendant further attempts to buttress this argument by pointing to the difficulties of obtaining the records, yet merely pointing to a labor-intensive process is not sufficient to sustain the burdensome objection. The responses will be of practical benefit to Plaintiff in

establishing Defendant's knowledge of these incidents. As such, these objections are **OVERRULLED**.

#### **IV. Conclusion**

Good cause appearing, Plaintiff's motion to compel Defendant's further response to SI set two, nos. 103, 104, 105 is **GRANTED**. Defendant's objections are **OVERRULLED**. Defendant MiraDry, Inc. shall provide a code-compliant verified further response to Plaintiff's SI set two, nos. 103, 104, and 105 (without objections) within 30 days of this order.

The court will prepare the order.

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**Calendar Line 5**

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**Calendar Line 6**

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## **Calendar Line 7**

**Case Name:** Jane Doe, et al vs R. Hong, et al.

**Case No.:** 2014-1-CV-261702

Plaintiffs Jane Doe and John Doe (“Plaintiffs” or “Moving Parties”)’s motion for sanctions against defendants Palo Alto Foundation Medical Group, Roy Hong, M.D. (“Defendants”) and their attorneys David Burke and Clark Hudson (collectively “Respondents”) pursuant to Code of Civil procedure sections 128(a)(5), 128.5 and Cal Rules of Court (CRC) rule 2.30(b) is DENIED.

Moving Parties cite three statutes or rules in support of their motion for sanctions: CCP section 128(a)(5), CCP section 128.5 and California Rule of Court (CRC) 2.30(b).

### **CCP Section 128**

CCP section 128 states that “(a) Every court shall have the power to do all of the following: ... (5) To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto.” (*Id.*)

While CCP section 128 does provide California courts with inherent power to control proceedings and issue contempt orders, there is no inherent power to impose monetary sanctions against parties or their counsel under this statute absent the parties authorizing the court to impose fees as a sanction.

In *Bauguess v Paine* (1978) 22 Cal.3d 626, the California Supreme Court held that trial courts may not award attorney fees as a sanction for misconduct unless they do so pursuant to statutory authority or an agreement of the parties. (*Id.*, at pp. 634-639.) Although *Bauguess* acknowledged that court courts possess inherent powers to supervise judicial proceedings, that decision placed limits on these powers to avoid the “serious due process problems” that would arise if trial courts had unfettered authority to award fees as sanctions. (*Id.* at pp. 637-638.) Hence, *Bauguess* prohibited a trial court from fee awards to punish misconduct *unless* the Legislature, or *the parties, authorized the court to impose fees as a sanction.* (*Id.*, at pp. 634-639; see also *Andrews v. Superior Court* (2000) 82 Cal.App.4th 779, 782; *Clark v. Optical Coating Laboratory, Inc.* (2008) 165 Cal.App.4th 150, 164.)

Here, the parties did authorize the court to impose monetary sanctions under their Stipulated Protective Order, however, that agreement provides in paragraph 7:

Should it be determined that the provisions of this protective order have been violated, a party shall be permitted to seek monetary ... sanctions *as approved by the Court*.... (Moving Party's Exhibit G, emphasis added.)

However, as discussed in more detail below, the court does not approve any sanctions under the facts and circumstances of this case.

Moving parties' citations to federal authorities dealing with the powers of federal courts, particularly *Chambers v NASCO, Inc.* 501 U.S. 32, have no application to the statutory authority (or rules of court) they cited in this case.

### **CCP Section 128.5**

By its express terms, CCP section 128.5 only applies to cases filed on or after January 1, 2015. (See CCP § 128.5(i) [This section applies to actions or tactics that were part of a civil case filed on or after January 1, 2015."].) Moving Parties' case was filed in 2014, making section 128.5 inapplicable.

### **CRC Rule 2.30(b)**

CRC Rule 2.30, subsection (b) states:

**Sanctions[.]** In addition to any other sanctions permitted by law, the court may order a person, after written notice and an opportunity to be heard, to pay reasonable monetary sanctions to the court or an aggrieved person, or both, *for failure without good cause to comply with the applicable rules*. For the purposes of this rule, "person" means a party, a party's attorney, a witness, and an insurer or any other Individual or entity whose consent is necessary for the disposition of the case. If a failure to comply with an applicable rule is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.

(Cal Rules of Court, Rule 2.30, subd. (b), emphasis added.)

Moving Parties imply that Defendants and their counsel violated CRC Rules 2.550 and/or 2.551 because they did not file a motion to seal. These rules set forth the procedures to file a motion to seal. However, they cited no rule of court requiring a motion to seal be filed by Respondents in the context of an Abstract of Judgment or Satisfaction of judgment. Moving Parties claim Defendants and their counsel violated CRC Rule 2.551(b)(5) which states:

**Redacted and unredacted versions** If necessary to prevent disclosure, any motion or application, any opposition, and any supporting documents must be filed in a public redacted version and lodged in a complete, unredacted version conditionally under seal. The cover of the redacted version must identify it as "Public--Redacts materials from conditionally sealed record." The cover of the unredacted version must identify it as "May Not Be Examined Without Court Order--Contains material from conditionally sealed record.

(Cal Rules of Court, Rule 2.551, subd. (b)(5).)

Here, Respondents admit that they filed the offending documents without redaction. They also do not dispute that there was a stipulation by the parties for confidentiality and protective order for the Does. However, they showed good cause for their actions based on their argument that by statute, the Abstract of Judgment must include the actual names of the judgment debtors. (See CCP §§ 674(a)(3) and 674(c)(1).) Moreover, the Affidavit of Identity is inherently necessary in this situation because pseudonyms do not own property and a good faith purchaser would not have constructive notice of a recorded abstract using only a pseudonym. (*Orr v. Byers* (1988) 198 Cal.App.3d 666, 669.)

Once the Moving Parties paid the judgment, Respondents again showed good cause for their actions based on their argument that the statutory requirements for the Acknowledgement of Satisfaction of Judgment, providing the required notice the judgment was paid, included the names of the judgment debtors. (See CCP § 724.060(a)(3).)

Under the facts of this case, the court finds good cause has been shown by Respondents for their alleged failure to comply with the court rules cited by Moving Parties. Furthermore, the court does not find a willful violation of a court order, or that Plaintiffs are entitled to any sanctions against Respondents. Moving Parties' motion for sanctions is DENIED.

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