

FOSTER v. IRBC 2 PROPERTIES, et al.

21CV45573

DEFENDANTS' MOTION FOR LEAVE TO FILE AMENDED ANSWER

This is a wrongful foreclosure case.

Defendant wishes to file an amended answer to the second amended complaint (SAC) to "explain, clarify and simplify the denials and affirmative defenses to the causes of action pleaded against each defendant by making the additions, deletions and edits as well as adding supplemental affirmative defenses ... , and the finality of the judgment in IRBC 2 Properties LLC. v Foster in Calaveras County Superior Court Case No.20 UD13121." (Motion for Leave to File Amended Answer, 2:10-15.)

Courts have long exercised liberality in permitting amendments to pleadings, particularly amendments to answers. *Permalab-Metalab Equipment Corp. v. Maryland Cas. Co.* (1972) 25 Cal.App.3rd 465, 472. Defendants' remedy is to request leave of the court to amend their answer to assert the defenses. " If either party finds, on the hearing of such a motion, that his pleading is not adequate, either by way of allegation or denial, the court may and should permit him to amend" *Gardenswartz v. Equitable etc. Soc.* (1937) 23 Cal.App.2nd Supp. 745, 753.

The Motion for Leave to File Amended Answer encompasses four separate answers.

- Exhibit 1 is the Answer for Defendants IRBC 2 Properties, LLC, Park Tree Investments, LLC, and Wilmington Saving Fund Society, FSB, D/B/A Christiana Trust as Trustee for Residential Trust 3-2;
- Exhibit 2 is the Answer for Connie M. Riggsby and Orion Financial Group, Inc., mistakenly sued as Orion Financial Group LLC;
- Exhibit 3 is the Answer for FCI Lender Services, Inc.; and
- Exhibit 4 is the Answer for California TD Specialists.

The Court does not share plaintiff's expressed confusion as to the exhibits attached to the motion. Each has a separate cover sheet clearly marked with the number of each following exhibit. Although the Declaration of Richard Reynolds is incomplete as to the description of Exhibit 1, the document is a filed pleading and speaks for itself; to require a newly filed motion just to describe the document as plaintiff proposes puts form over substance and is contrary to the concept of judicial economy.

Defendants' Motion for Leave to File Amended Answer is **GRANTED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Defendants to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.

MARTIN v. FRASER

22CV46236

PLAINTIFF'S MOTION TO COMPEL RESPONSES TO SPECIAL INTERROGATORIES, SET TWO AND REQUEST FOR MONETARY SANCTIONS

The parties were involved in a romantic relationship for approximately 2½ years and shared one child. In June 2020, plaintiff purchased real property with his sole funds. However, legal title was taken as a joint tenant with defendant who resided at the property for 7 months. Plaintiff now seeks a partition of the property and asserts that a joint tenancy was never agreed to, or intended, between the Parties.

On October 10, 2024, Special Interrogatories, Set Two, were served on defendant. By letter to defense counsel dated December 5, 2023, plaintiff demanded that answers (without objection) and extended the date to December 19, 2023. When defense counsel was relieved, plaintiff further extended the time to respond to the discovery to January 26, 2024. This motion was filed on February 9, 2024. To date no response has been provided.

Where, as here, interrogatories are served by mail, responses must be served 35 days after the date of mailing. (California Code of Civil Procedure ("CCP") §§1013(a), 2030.260(a).) Response due date was twice extended by plaintiff. Failure to serve timely responses results in the waiver of all objections, including those based on privilege or work product. (CCP §2030.290(a).) Where no responses are served, a motion to compel such responses is authorized. (CCP §2030.290(b).)

A motion to compel initial discovery responses need only show that discovery was properly served on the opposing party, the time to respond expired, and no response was served. (*Leach v. Sup. Ct.* (1980) 111 Cal.App.3rd 902, 905-06; CCP § 2030.290.)

The motion establishes that plaintiff properly served defendant with the Special Interrogatories, Set Two, and defendant never responded. Nor was any opposition to this motion filed. The request for "non-monetary sanctions" in the form of an issue sanction for failure to produce documents is premature, although the Court will consider such a request in the event no answers are provided in compliance with this Order. Moreover, Courts do not ordinarily order monetary sanctions on a nonopposed initial motion to compel responses when no responses have been served. (*See Puritan Insurance Co. v Superior Court* (1985) 171 Cal.App.3rd 877, 884.)

Based on the foregoing, the Motion to Compel Responses to Special Interrogatories, Set Two is **GRANTED**. Sanctions are **DENIED**. Defendant must provide complete verified answers. Without objection, by April 21, 2024.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a

formal Order pursuant to CRC 3.1312 in conformity with this Ruling.

POKER FLAT P.O.A., INC. v. ROLON

22CV46309

**PLAINTIFF'S MOTION FOR MONETARY SANCTIONS
FOLLOWING NON-ATTENDANCE OF DEFENDANT ROLON
AT THE FIRST SETTLEMENT CONFERENCE**

Defendant owns a parcel of shorefront residential property on Lake Tulloch. The property is located within a common-interest development that is managed by plaintiff. Defendant acquired the real property from a foreclosing bank. At the time of defendant's purchase, there was damage from a landslide/soil subsidence to the land, flora, and improvements (stairways, retaining walls, covered dock, and the home's foundation). Plaintiff brought this action to enforce special assessments to clean the property. According to defendant's Settlement Conference Statement, a geotechnical engineer has been retained to design a retaining wall and drainage system for the property.

A Settlement Conference ("MSC") was scheduled for Oct. 23, 2023, which defendant did not attend. An Order to Show Cause ("OSC") was held on November 17, 2023, where defendant testified he had been ill during the earlier MSC. The Court reset the MSC, did not strike defendant's answer and dismissed the OSC. (The second MSC was held March 4, 2024. It was unsuccessful and a trial has been set.)

To obtain monetary sanctions for non-attendance at a settlement conference, the moving party must show that the other party engaged in bad faith actions or tactics that are frivolous or intended solely to cause unnecessary delay. (California Code of Civil Procedure ("CCP") § 128.5, subd. (a).) The tactics or actions at issue must have been undertaken with bad faith. Notice and an opportunity to be heard must be given. (CCP § 128.5, subd. (c); *Pacific Trends Lamp & Lighting Products, Inc. v. J. White, Inc.* (1998) 65 Cal.App.4th 1131, 1136.)

The necessary showing of bad faith on the part of defendant has not been made, particularly noting that at the OSC hearing the Court found good cause to dismiss and not impose any sanctions.

Based on the foregoing, the Motion for Monetary Sanctions is **DENIED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to CRC 3.1312 in conformity with this Ruling.

**JODY GRAHAM TRUSTEE OF THE LEE AND JANE HESS
FAMILY TRUST v. STATE OF CALIFORNIA, et al**

20CV44999

PLAINTIFF'S MOTION TO TAX COSTS

Plaintiff Trustee brought this action against defendant (State Teachers Retirement Service) for late payments of benefits. Defendant's demurrer was sustained by this Court.

California Code of Civil Procedure §1033.5(a)(14) states that recoverable costs include: "Fees for the electronic filing or service of documents through an electronic filing service provider if a court requires or orders electronic filing or service of documents."

In opposition to the motion, defendant's declaration offers cost estimates if filings were by an in-person filing agency but omits low-cost alternatives such as mail. There is no showing of a Court Order requiring electronic filing in this case or that other fees were incurred. The Court concludes defendant's incurred electronic filing fees represent an elective procedure of convenience by using a service when they can be directly e-filed through the court's website at no cost.

Plaintiff's motion to tax costs is **GRANTED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to CRC 3.1312 in conformity with this Ruling.

TRYON v. ANGELS GUN CLUB, INC.

17CV42160

CROSS-DEFENDANT'S MOTION FOR RECONSIDERATION OF ORDER GRANTING LEAVE TO THE FOURTH AMENDED CROSS-COMPLAINT

Cross-Defendant moves for reconsideration of the order granting leave to file a Fourth Amended Cross-Complaint.

The Fourth Amended Cross-Complaint (filed January 22, 2024) was filed to include as parties all Tryon family members in title to the subject real property. These persons were added to the lawsuit "as a technical matter." The latest cross-complaint was filed after a January 19, 2024, hearing where the Court granted leave to file the Fourth Amended Cross-Complaint. Cross-defendant argues for reconsideration of this ruling because cross-complainant had inexcusably delayed the request, that actual prejudice to the parties exists, and procedurally that facts in support of the motion were improperly included in the reply brief instead of the moving pleadings.

In ruling on the request to grant leave to file a Fourth Amended Cross-Complaint, the court gave great liberality to cross-complainant to file an amended pleading. (See *Cal. Gasoline Retailers v. Regal Petroleum Corp.* (1958) 50 Cal.2nd 844, 851.) However, where a would-be amendment prejudices a party with unnecessary delay in seeking amendment, the court may deny leave to file an amended pleading.

A Motion for Reconsideration is brought under Code of Civil Procedure Section 1008 and requires new law, facts or circumstances. A new law or different fact must be one that was not available to the party when the underlying motion was presented to the Court; a new or different fact is one that was not available to the party when the underlying motion was presented to the Court (*New York Times v. Superior Court* (2005) 135 Cal.App.4th 206, 212-213; see e.g., *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255.) The Court considered the argument of unnecessary delay when it exercised its discretion to grant leave to amend; no new facts, law, or circumstances have been provided with regard to the present motion.

Motion for Reconsideration of Order Granting Leave to File Fourth Amended Cross-Complaint is **DENIED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Moving party to submit a formal order pursuant to Rule of Court 3.1312 in conformity with this ruling.