

MASON v GESSLER

24FL47420

**RESPONDENT’S MOTION TO COMPEL DISCOVERY
AND FOR SANCTIONS AND ATTORNEY’S FEES**

This is a dissolution proceeding brought by Brian Mason (“Mason”) against Ora Gessler (“Gessler”). Now before the Court is Gessler’s Motion to Compel Responses to Request for Production of Documents, Set One (“RFP”) and for sanctions.

I. Factual and Procedural Background

The parties were married On November 1, 2018, and have one child. There is a domestic violence temporary restraining order against Mason. On June 3, 2024, Mason filed a petition for dissolution of marriage. On August 19, 2024, Gessler served Mason with a Deposition Subpoena and RFP. The RFPs sought various financial and business records related to accounts and businesses utilized, created or operated and expenditures incurred during the marriage. (Declaration of Tulin D. Acikalin (“Acikalin Decl.”) ¶ 4.) Specifically, the RFPs at issue requested:

- RFP 1: Any and all documents related to your income from November 1, 2018 to the date of production, including but not limited to 1099s, W-2s, K-1s, pay stubs, royalties, dividend statements, interest income, and investment income.
- RFP2: Any and all documents related to income you received, but did not include on your tax returns, from November 1, 2018 to the date of production.
- RFP5: Corporate income tax returns and filings for businesses in which you were a shareholder, owner, partner, or member from November 1, 2018 to the date of production.
- RFP6: Monthly bank statements for all accounts, credit union accounts, certificates of deposit, or other financial accounts held in your name or jointly with any other person from November 1, 2018 to the date of production.
- RFP7: Monthly credit card statements for all credit card accounts maintained in your name or jointly with any other person from November 1, 2018 to the date of production.

- RFP 8: Documents related to any pension, retirement, profit sharing plan, or individual retirement account in which you had an interest from November 1, 2018 to the date of production.
- RFP 9: Monthly statements purchase and/or sale confirmations, account agreements, summary sheets, and other records related to securities purchases and/or sales from November 1, 2018 to the date of production.
- RFP 10: Loan applications and/or credit applications for all loans applied for by you from November 1, 2018 to the date of production.
- RFP 11: Business agreements or other documentation that relates to any of your business interest from November 1, 2018 to the date of production.
- RFP 12: Financial statements, profit and loss statements, and balance sheets for businesses in which you were a shareholder, owner, partner, or member from November 1, 2018 to the date of production.
- RFP 13: Documents evidencing any payments that have been made to pay or toward the loan on any student loans from November 1, 2018 to the date of production.
- RFP 15: Documents related to payments to or from you to another person or business related to the purchase or sale of firearms and firearm parts and/or ammunition from November 1, 2018 to the date of production.
- RFP 16: Documents related to payments to or from you to another person or business related to the purchase or sale of firearms and firearm parts and/or ammunition from November 1, 2018 to the date of production.
- RFP 17: All documents pertaining to real property including purchase agreements, loan applications, escrow documents, deeds, receipts, invoices, grants, title policies, closing statements or settlement statements, and all other documents evidencing ownership from November 1, 2018, to date of production.

On September 20, 2024, Mason responded and produced some documents along with numerous objections, primarily that the requests were overburdensome and that some of the documents did not exist. (*Id.* ¶ 5.)

On October 18, 2024, Gessler's attorney sent a meet and confer letter to Mason's counsel, outlining the perceived deficiencies in the response and requesting proper, code-compliant responses. (Acikalin Decl. ¶ 6., Ex. A.) Counsel for both parties then agreed to a deadline of December 7, 2024, to provide supplemental responses. (*Id.* ¶ 7.) According to Gessler, those responses were also deficient, and even contradictory to the previous responses. Gessler's attorney sent a follow up meet and confer about the perceived deficiencies and requesting supplemental responses. (*Id.* ¶ 8, Ex. B.)

Gessler contends that the supplementary responses received from Mason on February 5, 2025, were again non-compliant, evasive and contradictory. The instant motion to compel followed.

II. Legal Standard

The burden on the propounding party is higher in compelling responses to production of documents than in compelling responses to interrogatories. On receipt of a response to a Request for Production of Documents, the demanding party may move for an order compelling further responses to the demand if the demanding party deems that (1) a statement of compliance with the demand is incomplete, (2) a representation of inability to comply is inadequate, incomplete, or evasive, or (3) an objection in the response is without merit or too general. (CCP § 2031.310(a).) The motion to compel must "set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc. §2031.310 (b)(1).)

The motion must be accompanied by a meet and confer declaration in compliance with Code Civil Procedure section 2016.040. (Code Civ. Proc. § 2030.300(b); 2031.310(b)(2).) If good cause is shown by the moving party, the burden shifts to the responding party to justify any objections made to disclosure of the documents. (*Kirkland, supra*, 95 Cal.App.4th at 98.)

Counsel for Gessler did attempt to meet and confer but the parties were unable to informally resolve the dispute. Thus, the Court finds that the meet and confer efforts were sufficient and this requirement is satisfied.

III. Discussion

As a preliminary matter, the Court finds Respondent has demonstrated good cause for further production as to each RFP. Each of RFPs is designed to produce documents speaking to the full financial picture and status of Mason from the moment of marriage until dissolution. Indeed, as regards the tax returns, Mason is obligated pursuant to Family Code section 3552, to provide his state and federal income taxes to the court. None of the requests appear errant or not reasonably calculated to lead to the discovery of admissible evidence. Having found good cause to be demonstrated, the burden is upon Mason to justify its objection to each request. As many of the requests are objected to on multiple grounds, it is most efficacious to address the objections by type, rather than analyzing each individual RFP.

A. Unnecessarily overbroad, unduly burdensome, and oppressive (First Responses to all RFPs.)

In his first responses to the RFPs, Mason objected to each of the requests on the grounds that they were overbroad, unduly burdensome or oppressive. Pursuant to Code of Civil Procedure section 2017.020(a): “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.”

The objection based upon burden must be sustained by evidence showing the quantum of work required, while to support an objection of oppression there must be some showing either of an intent to create an unreasonable burden or that the ultimate effect of the burden is incommensurate with the result sought. (*West Pico Furniture Co. of Los Angeles v. Superior Court In and For Los Angeles County* (1961) 56 Cal.2d 407, 417.)

In his initial responses, Mason made no attempt to explain how the requests would require excessive work, nor that the requests were made with an attempt to create an unreasonable burden. Nor does Mason explain or support the objection in any opposition to the motion to compel.

B. Not in Custody or Control or Lost/Destroyed

In Mason's supplemental responses, he provided very limited additional documentation. For RFP 1, he supplemented with the tax schedules for one of his businesses for the years 2022 and 202 and joint married tax return for 2018. To RFPs 8 and 9, he provided an Edward James Portfolio Summary. To RFP 11, Mason eventually provided the Operating Agreement and Member Agreements for Little Claw LLC and Otolith LLC. To RFP 16, he provided an Unsecured Promissory Note dated April 25, 2022. To RFP 17, Mason provided a Grant Deed, closing statement and tax bill for a property in Murphys, California.

Other than these limited responses to some of the RFPs, Mason objected on the grounds that he was not in the custody or control of the documents or that documents had been lost and destroyed. Gessler points out that some of these responses are contradictory. For instance, to RFP 17, Mason's first response indicated the presence of additional documents and requested 14 days to produce those documents. However, in the subsequent response, Mason stated the documents had been lost or destroyed, and then then subsequently stated the documents were not in his custody or control.

When making an objection based on lack of possession, custody or control, the respondent "must provide the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of the responsive documents." (Code Civ. Proc. §2031.230.) Mason did not do so. Nor did Mason differentiate between which documents might be lost or destroyed versus not in his possession versus the additional documents he was going to produce.

C. Duplicative

Mason objected to RFPs 6 and 7 partially on the grounds that the requests were duplicative because Gessler had the ability (and had taken steps) to subpoena those same bank documents. Duplicative discovery requests are allowable. (*Mendoza v. Felix Chevrolet*, 2023 Cal. Super LEXIS 11702 [citing published caselaw holding that duplicative discovery is allowable].) Unduly or unreasonably duplicative discovery may be limited at the Court's discretion. (*Carter v. Superior Court* (1990) 218 Cal.App.3d 994, 998.)

Here, Mason's objection was based solely on the fact that Gessler could obtain the information elsewhere, without providing any legal authority as the basis for making such objection, which does not serve to avoid his discovery responsibilities.

As set forth above, Mason's objections to the RFPs and that limited amount of documents produced was not sufficient. Mason also did not file an opposition to the motion to compel, which can be deemed consent to the granting of the motion. (Cal. Rules of Court §8.54(c).)

Accordingly, based on the foregoing, the Motion to Compel is **GRANTED**.

IV. Sanctions

Family Code §271 authorizes an award of attorney's fees and costs "on the extent to which any conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." Likewise, Code of Civil Procedure section 2030.030 authorizes the court to impose sanctions for abuse of the discovery process.¹ Finally, Code of Civil Procedure section 2030.050(a) mandates the imposition of a \$1,000 sanction on any party who did not respond in good faith to discovery requests.

As set forth above, Mason has repeatedly refused to fully answer the RFPs, has provided unwarranted and unsubstantiated objections, and has made contradictory discovery responses. Accordingly, sanctions are warranted.

Gessler seeks attorney's fees and costs in the amount of \$14,420 under Code of Civil Procedure section 2030.030(a) and 2031.310(h) and sanctions in the amount of \$15,000 under Family Code section 271.

Gessler's attorney avers that she charges \$625 per hour and that she has spent approximately 41 hours in reviewing discovery responses, drafting meet and confer letters, preparing the motion to compel and required separate statement. Her associates charge between \$300 and \$550 an hour. For paralegals the charge is \$225.

¹ The mandatory sanctions available under Code of Civil Procedure 2031.310(h) do not apply because Mason has not filed an opposition.

First, these hourly rates are significantly higher than the average rate in this community which the Court has established at \$300 per hour for attorneys and \$100 per hour for paralegals. In addition, the declaration and attached billing do not identify who performed different work, other than by unidentified initials.

Gessler also seeks costs in the amount of \$3,000 for the costs of subpoenas to financial institutions for the same information that Mason should have provided in discovery.

The Court awards attorney's fees in the amount of \$3,000; this amount accounts for the Court's determination of the market rate in this community and an equitable determination of the amount of hours attributable to the necessity of a motion to compel. The Court denies the request for costs related to subpoenas, finding in light of the level of animosity involved in this dissolution they likely would have been subpoenaed even if all responsive documents had been produced to confirm the veracity of the response.

Gessler also seeks sanctions to prevent further discovery abuse under Family Law Code section 271. The Court agrees that sanctions are warranted but reduces the amount to the \$1,000 mandatory sanction.

In summary, respondent's motion to compel is **GRANTED**. Petitioner is therefore ordered to respond to RFPs fully, including production of all responsive documents, without further objection, in a code compliant manner, including proper verification, by June 13, 2025. It is further ordered that petitioner is to pay **sanctions in the amount of \$4,000.00**, to be paid to respondent c/o her counsel, also by June 13, 2025.

The Clerk shall provide notice of this Ruling to the parties forthwith. Respondent to prepare a formal Order in conformity with this Ruling in compliance with CRC 5.125..