

Calaveras Superior Court

Civil Law & Motion Calendar Tentative Rulings

Friday, July 2, 2021, Courtroom 2

Hon. David M. Sanders

9:00 AM	16CV41853 / 18PR8058	Demurrer Hearing	09/01/2016	07/23/2021 Motion Hearing; 08/18/2021 Case Management Conference
XComp:	Shulz, Elizabeht		Atty:	Sternfeld, David I.
XDefs:	Hyatt, Dylan P.		Atty:	Huber, Jonathan Paul
Decedent:	Hughes, Jonathan			

TENTATIVE RULING: Cross-Defendant/Personal Representative Dylan P. Hyatt demurs, pursuant to Code of Civil Procedure section 430.10 (d), (e), and (f), to Elizabeth Schulz' Amended Cross-Complaint in both of these actions on the grounds that the cause of action set forth therein is based on misjoinder of parties, fails to state facts sufficient to state a cause of action, and is uncertain, ambiguous and unintelligible.

Defendant has not complied with Local Rule 3.3.7 enacted January 1, 2018, by failing to include the mandatory language in the notice of demurrer regarding the Court's tentative ruling system. Pursuant to said local rule, lack of compliance provides a specific ground to deny any such procedurally-deficient motion. Based solely upon defendant's failure to comply with Local Rule 3.3.7, the demurrer is OVERRULED, without prejudice to refile, to the extent it otherwise is timely and appropriate pursuant to all relevant statutes.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

9:00 AM	20CV45004	Plaintiff's Motion for Monetary Sanctions/Atty Fees for Def's FTA at Deposition; for Order Compelling Future Deposition	11/02/2020	07/21/2021 Case Management Conference
		Event Fee Required \$435.00 answer fee		
Ptff/Pet:	Giffin, Robin A		Atty:	Kruse Law Corporation
Def/Res:	Vasconcellos, Steven Crane		Atty:	Pro Se

TENTATIVE RULING: Plaintiff Robin A. Giffin moves, pursuant to Code of Civil Procedure sections 2023.010, et seq., 2025.450, and 2025.480, for monetary sanctions for Defendant Steven C. Vasconcellos' failure to appear at his duly noticed deposition and for an order compelling Defendants' deposition. Defendant has not filed any opposition.

Plaintiff served a proper amended notice of deposition concerning which defendant did not serve any objection and for which defendant did not appear. This nonappearance without any proper legal basis cause plaintiff to incur unnecessary expenses of time and money.

Good cause appearing, and no opposition having been filed, the motion is GRANTED. Defendant is ordered to appear for a deposition on a day and time of plaintiff's choosing during the week of July 19, 2021, at the offices of California Deposition Reporters (2453 Grand Canal Boulevard in Stockton). Sanctions are awarded in the total amount of \$1,029.00 (attorney's fees of \$600 [2 hours at \$300 per hour, i.e., the customary rate in this market], court reporter appearance fee of \$275, filing fee of \$60, and CourtCall fee of \$94).

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

Ptff/Pet: Barr, Howard Todd
Def/Res: County of Calaveras;
County of Calaveras

Atty: Shepardson, John Arthur
Atty: Angelo, Kilday & Kilduff;
Sanders, Serena Mercedes

TENTATIVE RULING: Defendant County of Calaveras moves, pursuant to Code of Civil Procedure sections 2019.020 (b), 2019.030 (1), and 2025.420 (b), for a protective order placing conditions and limitations on discovery conducted by Plaintiff. Specifically, "Defendant requests the Court issue a protective order limiting questioning to a maximum of four hours, directing Plaintiff's counsel to prioritize areas of inquiry needed to oppose [Defendant's pending Motion for Summary Judgment], and limiting the questioning to the valid topics of inquiry not previously covered in the first day of PMQ deposition. (See Motion at 2:7-11.)

Defendant presents evidence that, in response to Plaintiff's deposition notice of Defendant's person most qualified (PMQ), Defendant produced Judy Hawkins for seven hours of questioning on April 22, 2021. (See Declaration of Serena Warner at ¶¶ 11 and 12, and Exhs. C and E.) Defendant asserts that Plaintiff seeks to depose Ms. Hawkins, as Defendants' PMQ, further, an assertion confirmed by plaintiff's companion motion to compel further PMQ testimony.

Defendant indicates it will produce Ms. Hawkin for this purpose. (Support Memo at 8:8-8.) However, Defendant first asks the Court to limit the second session of Ms. Hawkins' PMQ deposition to four hours. Based on the evidence produced by Defendant, the Court finds that limiting the PMQ deposition of Ms. Hawkins to eleven total hours of questioning is necessary to protect her from undue burden in light of the needs of the case, the amount in controversy, the number and complexity of matters at issue through the pleadings on which she has been asked to testify, and the importance of those issues. (See Code Civ. Proc., § 2019.030 (a)(2) and CCP § 2025.420 (b)(5).)

Plaintiff appears to concede that four additional hours are sufficient and/or that so limiting the deposition is appropriate by failing, in his opposition papers, to address Defendant's request for such limit.

Defendant next asks the Court to direct Plaintiff's counsel, in the conduct of the reconvened PMQ deposition, to prioritize those areas of inquiry that Plaintiff needs to oppose Defendant's pending Motion for Summary Judgment and to limit the questioning to valid topics of inquiry not previously covered in the first session of the PMQ deposition. The Court declines to so instruct or limit counsel's questioning. Plaintiff has an additional four hours to depose Defendant's PMQ and counsel is free to prioritize questioning during those hours in whatever way he feels best serves his case. His failure to oppose the requested limitation suggests that this additional time is adequate to permit questioning on all reasonably necessary matters, whether for purposes of opposing an MSJ or in prosecuting the case. The Court finds no grounds for either (1) dictating to Plaintiff his priorities in this regard, or (2) prohibiting Plaintiff from using his allotted time to follow up on topics previously covered.

The Court notes Defendant's concern that Plaintiff will seek another continuation of the hearing on Defendant's pending motion for summary judgment. (See, e.g., Support Memo at 2:14-15.) No such request is currently before the Court. Defendant's concern about the possibility that Plaintiff will make such request in the future is insufficient grounds for the Court to dictate the details of Plaintiff's examination of Defendant's PMQ.

Based on the foregoing, the motion is GRANTED IN PART. The Court orders that the deposition of Judy Hawkins, in her capacity as Defendant's PMQ, shall be limited to a total of eleven hours. The motion is denied in all other respects.

The clerk shall provide notice of this ruling to the parties forthwith. Defendant to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM 18CV42976 Motion to Compel Def's person most qualified to answer PMQ 01/05/2018 07/23/2021 Motion-Summary Jgmt/Adjudication;
Topic Questions 08/11/2021 Case Management Conference

Ptff/Pet: Barr, Howard Todd
Def/Res: County of Calaveras;
County of Calaveras

Atty: Shepardson, John Arthur
Atty: Angelo, Kilday & Kilduff;
Sanders, Serena Mercedes

TENTATIVE RULING: The notice of motion fails to state exactly what relief Plaintiff seeks through the present motion. This is no mere procedural oversight. The Court is genuinely confused regarding the nature of the present motion.

The notice of motion must state the nature of the relief sought and the grounds upon which that relief is sought. (See Code Civ. Proc., § 1010 [“the notice of a motion, other than for a new trial, must state...the grounds upon which it will be made”]; see also Rules of Court, Rule 3.1110 [“[a] notice of motion must state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order”]; see also *People v. American Sur. Ins. Co.* (1999) 75 Cal.App.4th 719, 726.)

The notice of motion provides that Plaintiff “will bring a motion compel [sic] Defendant County of Calaveras’ Person Most Qualified Witness to answer PMQ topic area questions, and seek reimbursement sanctions for the partial cost of this motion.” (Motion at 1:24-27.) Plaintiff contends that the motion “is brought pursuant to Code of Civil Procedure sections 2016, 2020.310, 2023.010, 2023.030, 2025.010, 2025.230, and 2025.480. (See *id.* at 1:28-2:1.)

The memorandum section of Plaintiff’s filing begins with the following: “Question Presented [¶] Can Defendant produce a PMQ witness and refuse to answer PMQ-related questions merely because they previously testified on the topic earlier in the litigation as a percipient lay witness?” (Motion at 2:14-16.) Plaintiff then quotes, in its entirety, Code of Civil Procedure section 2025.610, which is not cited in the Notice of Motion section of the filing. (See *id.* at 2:19-3:6.) The memorandum section ends with, “Plaintiff respectfully requests the Court order Defendant’s PMQ to answer deposition questions on the PMQ topic areas identified in the Separate Statement and order reimbursement to Plaintiff’s counsel in the modest sum of \$2,400 for being forced by Defendant to bring this motion.” (Support Memo at 9:14-17.)

Adding to the Court’s confusion, Defendant contends that through the motion, “Plaintiff...challenges 28 of Defendant County of Calaveras’ objections to the Notice of Deposition for a Person Most Qualified on 69 areas of inquiry.” (Opposition at 1:22-24.) Plaintiff’s Separate Statement is organized by PMQ Topic Number, providing some ephemeral support for that conclusion; however, the Court cannot find in Plaintiff’s moving papers any support for this interpretation of the nature of Plaintiff’s motion.

In fact, Defendant’s contention is undermined by several portions of Plaintiff’s Motion. First, the contention is undermined by the “Question Presented” section quoted herein above. Based on that “Question Presented” statement, the subject of Plaintiff’s motion is not Defendant’s objections to the Notice of Deposition, and not Defendant’s failure or refusal to name a Person Most Qualified (PMQ) regarding certain topics but, instead, the refusal by Defendant to allow the PMQ to answer questions. (See Support Memo at 2:14-16.) That this is the exclusive subject matter of the motion is reinforced by Plaintiff’s “Summary Argument” section wherein Plaintiff urges that “Defendant has improperly refused to allow the PMQ to answer topic area questions on the basis that they previously testified in the area as a lay witness.” (Motion at 3:17-18.) This argument appears to refer to events that took place at the deposition of Judy Hawkins, produced in her capacity as PMQ, on April 22, 2021. (See Motion at 3:24-25; Exhibit 3, Declaration of John A. Shepardson at ¶ 9.) Finally, this interpretation is further supported by the Statement of Facts section of the Motion. (See *id.* at 3:24-4:13.)

Based on the foregoing, the Court reasonably concludes that the present motion is one brought pursuant to Code of Civil Procedure section 2025.480 for a motion to compel Defendant’s PMQ Judy Hawkins to answer questions at her continued deposition relating to the topics identified in the PMQ deposition notice.

Plaintiff provides the Court with a copy of the entire 206-page transcript of Ms. Hawkins’ April 22, 2021 deposition. The transcript reflects that on occasion counsel instructed Ms. Hawkins to not answer questions regarding her personal knowledge of certain topics on the grounds that she had previously testified thereon as a percipient witness. (See, e.g. Shepardson Decl. at Exh. 3, 22:23-23:15.) Here, Defendant clarifies that “Defendant raised objections prior to the deposition and during deposition that Plaintiff may not properly re-open [Ms. Hawkins’] percipient witness deposition once Hawkins (as PMQ) confirmed the absence of information available to County beyond her own percipient knowledge.” (Opposition at 5:17-21.) The transcript of Ms. Hawkins’ deposition supports the conclusion that, as PMQ, Ms. Hawkins repeatedly testified that her personal knowledge was the only information the County had as to certain topics. (See, e.g., Shepardson Decl. at Exh. 3, 21:21-22:6, 23:5-12; see also Opposition at 5:24-6:23 and

evidence cited therein.) But, when asked at the April 22, 2021, PMQ deposition to testify as to this personal knowledge, Ms. Hawkins was instructed not to answer. (See, e.g., Shepardson Decl. at Exh. 3, 22:16-23:3.)

“It is generally improper...for counsel to instruct a witness not to answer on grounds other than privilege, privacy, trade secrets, or other matters statutorily or constitutionally exempt from discovery.” (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2020) § 8:734.2, p. 8E-122 citing *Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1013-15.) Defendant presents no authority suggesting any statutory or constitutional grounds for instructing Ms. Hawkins to not answer questions regarding her personal knowledge. Neither does Defendant present authority otherwise suggesting that the instruction not to answer was proper. Although it seems quite likely that Ms. Hawkins’ PMQ testimony concerning her personal knowledge will largely (if not wholly) mirror her earlier percipient testimony, she is produced in a separate role as PMQ and plaintiff is entitled to have her provide her percipient testimony in this role, especially upon confirmation that her percipient knowledge is the County’s only available information.

Based on the foregoing, Plaintiff’s motion, as reasonably construed by the Court is GRANTED. Defendant is directed to produce Ms. Hawkins as PMQ and allow her to testify regarding her personal knowledge on the topics identified in the deposition notice.

Plaintiff’s request for sanctions is DENIED. The Court finds that in light of the nature of Plaintiff’s questioning of Ms. Hawkins at the April 22, 2021, and the understandable confusion regarding the nature and scope of Plaintiff’s arguments through meet and confer and the present motion, Defendant acted with substantial enough justification in opposing the motion that sanctions are not warranted. (See Code Civ. Proc., § 2025.480 (j).)

To the extent Plaintiff seeks other relief through the motion, it is denied in all such respects based on lack of clarity.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

¹For ease of reference the term “Motion” as used herein refers to the document, filed on May 28, 2021, by Plaintiff in this action, and titled “PLAINTIFF HOWARD TODD BARR’S NOTICE OF MOTION TO COMPEL DEFENDANT’S [sic] PERSON MOST QUALIFIED TO ANSWER PMQ TOPIC QUESTIONS; AND SUPPORTING AND [sic] MEMORANDUM ; RESPECTFULLY REQUEST FROM DEFENDANT COUNTY OF CALAVERAS REIMBURSEMENT FOR PARTIAL COST OF MOTION OF \$2,400.”

9:00 AM 19CV43844 Motion to Compel Def Vieira to provide further responses to Form Interrogatories, etc. and Comply with Agreements... 01/30/2019 08/25/2021 Case Management Conference

Ptff/Pet: Bonavera, Angelo G.; Bonavera, Anthony J.; Cloud, Jeremiah J.; Cloud, Zechariah C. Atty: Carpenter, Zuckerman & Rowley Llp
Def/Res: California Department of Transportation; Pacific Bell Telephone Co.; Vieira, Victor R. Atty: Keowen, James Christopher; Tyson & Mendes Llp

TENTATIVE RULING: Plaintiff Jeremiah J. Cloud moves, pursuant to Code of Civil Procedure sections 2030.300, 2031.310, and 2031.320, for an ordering requiring Defendant Victor Vieira to: (1) provide further, complete, verified, objection-free responses to Form Interrogatories Nos. 7.1 through 7.3; (2) provide further, complete, verified, objection-free responses to Special Interrogatories Nos. 1 and 15; and (3) provide further, complete, verified objection-free responses and documents to Requests for Production, Set One, Nos. 1, 6, 7, 9, 11-14, 16, 19-20, 20 [sic] 22-23, and 25-27. Plaintiff also requests sanctions, pursuant to Code of Civil Procedure sections 2030.30, and 2031.310, against Defendant Vieira and his counsel of record in the amount of \$7,392.00.

A. Plaintiff's Motion is Granted in Part as to Interrogatories

For interrogatories, the propounding party has the burden of filing a motion to compel if it finds the answers received unsatisfactory, but "the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory." (Coy v. Superior Court (1962) 58 Cal.2d 210, 220-221.)

The Court rules on the motion as to each of the subject interrogatories as follows.

Form Interrogatory No. 7.1. DENIED. The Court reasonably interprets the Interrogatory as seeking information relating to loss or damage to a vehicle for which the responding party seeks to hold another party to the litigation liable. Defendant Vieira responded that he "is not making any claim for vehicle or other property damage in this case." (Reply Separate Statement (RSS) at 2:14-16.) As such, the Interrogatory, by its terms, requires no further response. (See RSS at 2:4-5 ["...if so, for each item of property..."].)

Form Interrogatory Nos. 7.2 and 7.3. DENIED. Defendant Vieira is not obligated to produce information in response to either interrogatory because he did not refer to any item of property (relating to which he seeks to obtain damages through the present litigation) in response to Form Interrogatory No. 7.1.

Special Interrogatory No. 1. DENIED. The Court finds that Defendant Vieira has carried his burden of justifying his objection to the Interrogatory on the ground that it is overly broad and seeks information that is neither relevant nor likely to lead to the discovery of admissible evidence. (See Opposition at 8:24-9:26 and evidence and authority cited therein.) While information relating to specific types of moving violations may be relevant, Defendant carries his burden of showing that the request for each and every moving violation Defendant has been issued in the past 20 years is over-broad.

Special Interrogatory No. 15. GRANTED. Defendant Vieira's response is sufficient to describe conversations that he had with persons involved in preparing the subject accident report. However, Plaintiff is entitled to an answer that unequivocally states whether these are the only individuals Defendant Vieira spoke with at the subject scene, and if not, an identification of what other individuals he spoke with and a description of such conversations.

B. Plaintiff's Motion is Granted in Part as to His Requests for Production

The burden on the propounding party is higher in compelling responses to production of documents than in compelling responses to interrogatories. 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).) "[A]bsent a claim of privilege or attorney work product, the party who seeks to compel production has met his burden of showing good cause simply by a fact-specific showing of relevance." (Kirkland v. Super. Ct. (2002) 95 Cal.App.4th, 92 98.) "In the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement." (Glenfed Development Corp. v. Super. Ct. (1997) 53 Cal.App.4th 1113, 1117.) Once good cause is shown, the burden shifts to the party opposing the motion to justify its objection(s). (See Kirkland v. Super. Ct., supra, at 98.)

The Court rules on the motion as to each of the subject requests as follows:

Generally: The Court is unable to determine, from the record, whether Defendant's responses are all verified. To the extent that they are not, the motion is GRANTED for the purposes of obtaining a verified response.

Request for Production No. 1. The Court declines Plaintiff's invitation to order Defendant to produce a response which does not refer to the protective order. (See RSS at 11:21-23.) The issue of whether documents produced in response to this request are subject to the protective order is not properly before the Court on this motion to compel.

Request for Production Nos. 6, 7, 9, 23, 25, 26. The Court is unable to determine, from the record, whether Defendant's responses are all verified. To the extent that they are not, the motion is GRANTED for the purposes of obtaining a verified response.

Request for Production No. 11. DENIED. The Court finds the request overly broad and not limited to documents that are relevant to the action. While certain documents relating to certain types of auto-related claims may be relevant, Plaintiff's request for all such documents relating to any auto-related claim is overbroad.

Request for Production No. 12. DENIED. The Court finds the request overly broad and not limited to documents that are relevant to the action. While information relating to specific types of moving violations may be relevant, Plaintiff fails to make a factual showing that all documents relating to every moving violation Defendant has been issued are relevant.

Request for Production No. 13. GRANTED. The documents requested are relevant to the issues involved in the litigation.

Request for Production No. 14. GRANTED IN PART. The Court finds Plaintiff has made a factual showing of relevance as to all documents that relate to Defendant Vieira's level of pre-incident training. (See RSS at 19:14-15.) The motion is DENIED as to this request in all other respects. First, documents and electronically stored information related to any action Vieira's employer took as a result of the subject incident is not limited to documents relating to Vieira; Vieira's employer is a party to the action and Plaintiff should seek such documents from that party to allow assertion of any appropriate objections. Second, Plaintiff fails to make a factual showing that other documents responsive to this request are relevant to the action. Finally, to the extent that Plaintiff seeks information that is part of Defendant Vieira's employment record, the Court finds that his privacy rights as to those records outweigh the need for discovery as to documents the relevance of which Plaintiff has failed to show. (See *Shaffer v. Super. Ct.* (1995) 33 Cal.App.4th 993, 999.)

Request for Production No. 16. GRANTED IN PART. The Court finds that Plaintiff has made a factual showing of relevance as to any receipts for any purchases made the day of the incident, and as to any work orders, and time and attendance records for the day in question. The motion is DENIED as to this request in all other respects. The Court finds the phrase, "activities YOU claim YOU engaged in on the date of the SUBJECT INCIDENT" vague and ambiguous and not subject to reasonable interpretation. Moreover, Plaintiff fails to make a factual showing that any other documents described in the request are relevant to the action.

Request for Production No. 19. GRANTED IN PART. The Court finds that Plaintiff has made a factual showing of relevance as to all documents that relate to Defendant Vieira's level of pre-incident training. (See RSS at 23:26-24:2.) The motion is DENIED as to this request in all other respects. Plaintiff fails to make a factual showing that all other documents responsive to this request are relevant to the action. Moreover, all such documents are part of Defendant Vieira's employment record, and the Court finds that his privacy rights as to those records outweigh the need for discovery as to documents the relevance of which Plaintiff has failed to show. Additionally, this request is similar to Request 16 so the analysis also applies, however the Court notes this request is also significantly broader raising even more significant relevance and privacy concerns. (See *Shaffer v. Super. Ct.* (1995) 33 Cal.App.4th 993, 999.)

Request for Production No. 20. DENIED. Plaintiff seeks Defendant Vieira's application with Defendant Pacific Bell Telephone Company on the single grounds that it "may show Vieira's level of pre-incident training and experience." (RSS at 25:20, 26:24-28.) The Court finds that while Defendant Vieira's application may disclose his pre-incident training and experience, that information can be obtained by other means, including through deposition or by interrogatory, and the application is all but certain to contain private information that is not relevant to the action. (See *Shaffer v. Super. Ct.* (1995) 33 Cal.App.4th 993, 999.)

Request for Production No. 20 [sic]. DENIED. Plaintiff concedes that documents have been produced in response to this Request. (See RSS at 29:19.) Plaintiff's request that the Court require Defendant Pacific Bell Telephone Company to provide further response is denied as this relief was not identified in the Notice of Motion. (See Code Civ. Proc. §1010 ["the notice of a motion, other than for a new trial, must state...the grounds upon which it will be made"]; see also Rules of Court, Rule 3.1110 ["[a] notice of motion must

state in the opening paragraph the nature of the order being sought and the grounds for issuance of the order”].)

Request for Production No. 22. GRANTED IN PART. The Court finds that Plaintiff has made a factual showing of relevance as to all documents that relate to Defendant Vieira’s level of pre-incident training. (See RSS at 30:14-17.) The motion is DENIED as to this request in all other respects. Plaintiff fails to make a factual showing that all other documents responsive to this request are relevant to the action. Moreover, all such documents are part of Defendant Vieira’s employment record, and the Court finds that his privacy rights as to those records outweigh the need for discovery as to documents the relevance of which Plaintiff has failed to show. (See *Shaffer v. Super. Ct.* (1995) 33 Cal.App.4th 993, 999.) The Court also finds that the burden that Plaintiff seeks to place on Defendant, of redacting all “sensitive personal/private information” is undue and improper in the context of Plaintiff’s failure to make a factual showing of the relevance of such documents (outside of the category identified herein above).

Request for Production No. 27. GRANTED. The Court finds that the documents requested are relevant to the action. Defendant’s response indicates that he will produce documents in response to the Request. Plaintiff indicates no such documents have been produced. The Court can find nothing in Defendant’s opposition papers addressing this Request or updating that the documents have actually been produced.

C. The Parties’ Respective Requests for Sanctions are Denied

The parties each request sanctions against the other. Each of the statutes on which the parties rely provide for the imposition of sanctions “against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response....” (Code Civ. Proc., § 2030.300, subd. (d); see also Code Civ. Proc., § 2031.310, subd. (h).) Based on the mixed nature of the Court’s ruling, the Court finds neither that Plaintiff unsuccessfully made the motion, nor that Defendant Vieira unsuccessfully opposed it. As a result, each of the parties’ requests for sanctions is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM 19CV43844 Motion to Compel Def Pacific Bell to provide further responses to Form Interrogatories, etc. and Comply with Agreements.... 01/30/2019 08/25/2021 Case Management Conference

Ptff/Pet: Bonavera, Angelo G.; Bonavera, Anthony J.; Cloud, Jeremiah J.; Cloud, Zechariah C.
Def/Res: California Department of Transportation; Pacific Bell Telephone Co.; Vieira, Victor R.

Atty: Carpenter, Zuckerman & Rowley Llp
Atty: Keowen, James Christopher; Tyson & Mendes Llp

TENTATIVE RULING: Plaintiff Jeremiah J. Cloud moves, pursuant to Code of Civil Procedure sections 2030.300, 2031.310, and 2031.320, for an ordering requiring Defendant Pacific Bell Telephone Company (PacBell) to: (1) provide further, complete, verified, objection-free responses to Form Interrogatories Nos. 7.1 through 7.3; (2) provide further, complete, verified, objection-free responses to Special Interrogatories Nos. 1-3; and (3) provide further, complete, verified objection-free responses and documents in response to Requests for Production, Set One, Nos. 1, 6, 7, 9, 11-14, 16, 18-20, 22-23, and 25-27. Plaintiff also requests, pursuant to Code of Civil Procedure sections 2030.300 and 2031.310, sanctions against PacBell and its counsel of record in the amount of \$11,088.00.

A. Plaintiff's Motion is Granted in Part as to Interrogatories

For interrogatories, the propounding party has the burden of filing a motion to compel if it finds the answers it receives unsatisfactory, but "the burden of justifying any objection and failure to respond remains at all times with the party resisting an interrogatory." (Coy v. Superior Court (1962) 58 Cal.2d 210, 220-221.)

The Court rules on the motion as to each of the subject interrogatories as follows.

Form Interrogatory No. 7.1. GRANTED IN PART. The Court reasonably interprets this interrogatory as seeking information relating to loss or damage to a vehicle for which the responding party seeks to hold another party to the litigation liable. PacBell responded that it "is not making any claim for vehicle or other property damage in this case." (Amended Separate Statement (Am.SS) at 2:15-16, 25-26, .) As such, the interrogatory, by its terms, requires no further response. (See Am.SS at 2:5 ["...if so, for each item of property..."].)

Plaintiff's claim that "Defendant Vieira's new response does not remove all objections..." is immaterial to this motion against PacBell. (See Am.SS at 3:13-14.)

The Court is unable to determine, from the record, whether PacBell's responses are all verified. Plaintiff's Am.SS refers to "Defendant Vieira's new response." (See Am.SS at 3:17.) To the extent that they are not, the motion is GRANTED for the limited purpose of obtaining a verified response.

Form Interrogatory Nos. 7.2 and 7.3. DENIED. Defendant PacBell is not obligated to produce information in response to either interrogatory because it did not refer to any item of property (relating to which he seeks to obtain damages through the present litigation) in response to Form Interrogatory No. 7.1.

Special Interrogatory No. 1. DENIED. The Court finds that the inclusion of the phrase "that YOU were aware of when YOU hired VICTOR VIEIRA," limits the interrogatory's relevance to a claim of negligent entrustment. Plaintiff's arguments that the interrogatory is more broadly relevant appear to refer to Special Interrogatory No. 1 propounded on Defendant Vieira, rather than to the present interrogatory. (Compare Am.SS at 7:27-8:12 with Amended Separate Statement Submitted in Support of Plaintiff's Motion to Compel Against Defendant Victor Vieira at 7:6-19.) "If, as here, an employer offers to admit vicarious liability for its employee's negligent driving, then claims against the employer based on theories of negligent entrustment, hiring, or retention become superfluous." (Diaz v. Carcamo (2011) 51 Cal.4th 1148, 1160.) PacBell affirmatively represents to the Court that it "has admitted vicarious liability." (Opposition at 8:25.)

Special Interrogatory Nos. 2 and 3. GRANTED. The Court finds that the interrogatories are each reasonably calculated to lead to the discovery of admissible evidence. PacBell fails to carry its burden of showing that Defendant Vieira has a right to privacy in his driving records.

B. Plaintiff's Motion is Granted in Part as to His Requests for Production

The burden on the propounding party is higher in compelling responses to production of documents than in compelling responses to interrogatories. 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).) "[A]bsent a claim of privilege or attorney

work product, the party who seeks to compel production has met his burden of showing good cause simply by a fact-specific showing of relevance.” (Kirkland v. Super. Ct. (2002) 95 Cal.App.4th, 92 98.) “In the context of discovery, evidence is ‘relevant’ if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement.” (Glenfed Development Corp. v. Super. Ct. (1997) 53 Cal.App.4th 1113, 1117.) Once good cause is shown, the burden shifts to the party opposing the motion to justify its objection(s). (See Kirkland v. Super. Ct., supra, at 98.)

The Court rules on the motion as to each of the subject requests as follows.

Request for Production No. 1. The Court is unable to determine, from the record, whether PacBell’s responses are all verified. To the extent that they are not, the motion is GRANTED for the purposes of obtaining a verified response. The Court declines Plaintiff’s invitation to order Defendant to produce a response which does not refer to the protective order. (See Am.SS at 12:21-24.) The issue of whether the documents produced in response to this request are subject to the protective order or not is not properly before the Court on this motion to compel.

Request for Production Nos. 6, 7, 9, 20, 23, 25, 26. The Court is unable to determine, from the record, whether Defendant’s responses are all verified. To the extent that they are not, the motion is GRANTED for the sole purpose of obtaining a verified response.

Request for Production No. 11. DENIED. The Court finds the request overly broad and not limited to documents that are relevant to the action. While certain documents relating to certain types of auto-related claims may be relevant, Plaintiff’s request for all documents relating to any “claims that involve Defendant Victor Vieira’s acts” is overbroad.

Request for Production No. 12. DENIED. The Court finds the request overly broad and not limited to documents that are relevant to the action. While information relating to specific types of moving violations may be relevant, Plaintiff fails to make a factual showing that all documents relating to every moving violation Defendant has been issued are relevant.

Request for Production No. 13. GRANTED. The documents requested are relevant to the issues involved in the litigation.

Request for Production No. 14. GRANTED IN PART. The Court finds that Plaintiff has made a factual showing of relevance as to all documents that relate to Defendant Vieira’s level of pre-incident training. (See Am.SS at 20:21-22.) The motion is DENIED as to this request in all other respects. Plaintiff fails to make a factual showing that all other documents responsive to this request are relevant to the action. Finally, to the extent that Plaintiff seeks information that is part of Defendant Vieira’s employment record, the Court finds that Mr. Vieira’s right to privacy in that record outweighs the need for discovery as to documents the relevance of which Plaintiff has failed to show. (See Shaffer v. Super. Ct. (1995) 33 Cal.App.4th 993, 999.)

Request for Production No. 16. DENIED. Plaintiff fails to make any factual showing of relevance. The Court does not find that this request and Request No. 14 are so similar that Plaintiff’s arguments as to the latter apply here. (See Am.SS at 22:27-28.) Plaintiff makes no other argument in support of his motion to compel as to this request.

Request for Production No. 18. GRANTED IN PART. The Court finds that Plaintiff has made a factual showing of relevance as to all documents that relate to Defendant Vieira’s level of pre-incident training. (See Am.SS at 23:16-17, 20:21-22.) The motion is DENIED as to this request in all other respects. Plaintiff fails to make a factual showing that all other documents responsive to this request are relevant to the action. Finally, to the extent that Plaintiff seeks information that is part of Defendant Vieira’s employment record, the Court finds that Mr. Vieira’s right to privacy in that record outweighs the need for discovery as to documents the relevance of which Plaintiff has failed to show. (See Shaffer v. Super. Ct. (1995) 33 Cal.App.4th 993, 999.)

Request for Production No. 19. DENIED. Plaintiff seeks Defendant Vieira’s application with Defendant Pacific Bell Telephone Company on the grounds that it “may show Vieira’s level of pre-incident training and experience.” (Am.SS at 24:3-6.) The Court finds that while Defendant Vieira’s application may disclose his pre-incident training and experience, that information can be obtained by other means, including through deposition or by interrogatory, and the application is all but certain to contain private information that is not relevant to the action. (See Shaffer v. Super. Ct. (1995) 33 Cal.App.4th 993, 999.)

Request for Production No. 22. GRANTED IN PART. The Court finds that Plaintiff has made a factual showing of relevance as to all documents that relate to Defendant Vieira’s level of pre-incident training. (See Am.SS at 27:22-24.) The motion is DENIED as to this request in all other respects. Plaintiff fails to make a factual showing that all other documents responsive to this request are relevant to the action. Moreover, all such documents are part of Defendant Vieira’s employment record, and the Court finds that Mr. Vieira’s right to privacy in that record outweighs the need for discovery as to documents the relevance of which Plaintiff has failed to show. (See Shaffer v. Super. Ct. (1995) 33

Cal.App.4th 993, 999.) The Court also finds that the burden that Plaintiff seeks to place on Defendant, of redacting all “sensitive personal/private information” is undue in the context of Plaintiff’s failure to make a factual showing of the relevance of such documents (outside of the category identified herein above.)

Request for Production No. 27. GRANTED. The Court finds that the documents requested are relevant to the action. PacBell’s response indicates that it will produce documents in response to the Request. Plaintiff indicates no such documents have been produced. (See Am.SS at 34:11-12, 19-21.) The Court can find nothing in PacBell’s opposition papers addressing this Request.

C. The Parties’ Respective Requests for Sanctions are Denied

The parties each request sanctions against the other. Each of the statutes on which the parties rely provide for the imposition of sanctions “against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response....” (Code Civ. Proc., § 2030.300 (d); see also Code Civ. Proc., § 2031.310 (h).) Based on the mixed nature of the Court’s ruling, the Court finds neither that Plaintiff unsuccessfully made the motion, nor that PacBell unsuccessfully opposed it. As a result, each of the parties’ requests for sanctions is DENIED.

The clerk shall provide notice of this ruling to the parties forthwith. Plaintiff to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

Ptff/Pet: Brumbaugh, Allen

Atty: Axelrod, David L

Def/Res: Appaloosa Road Community Service District

Atty: Calaveras County Counsel

TENTATIVE RULING: Respondent Appaloosa Road Community Services District demurs, pursuant to Code of Civil Procedure section 430.10 (e), to Petitioner's first amended petition for writ of mandamus (FAP) on the grounds that Petitioner fails to allege facts sufficient to state a cause of action. Respondent further demurs to the "purported claim for relief for breach of the Brown Act...on the ground that it fails to state facts sufficient to constitute a cause of action, in that Petitioner's claim is not timely and fails to allege facts constituting a breach of the Brown Act's statutory provisions." (See Demurrer at 2:21-24.)

A party may demurrer to a petition, brought under Code of Civil Procedure section 1085, for writ of mandate (Code Civ. Proc. §1089.) In ruling on a demurrer, the Court must accept as true all allegations of fact contained in the petition. (Sheehan v. San Francisco 49ers, Ltd. (2009) 45 Cal.4th 992, 998.) The Court must also accept as true facts that may be inferred from those expressly alleged. (Cundiff v. GTE Cal., Inc. (2002) 101 Cal.App.4th 1395, 1405.) The Court may also consider as grounds for a demurrer any matter that is judicially noticeable under Evidence Code sections 451 or 452. (Code. Civ. Proc. § 430.30, subd. (a).) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the [pleading]; the question of [petitioner's] ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (Comm. on Children's Television, Inc. v. Gen. Foods Corp. (1983) 35 Cal.3d 197, 213 14.) While all material facts properly pleaded, and factual inferences therefrom are presumed true, contentions, deductions or conclusions of fact or law are not. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) In reviewing a demurrer, the Court must "construe the allegations of a [petition] liberally in favor of the pleader." (Skopp v. Weaver (1976) 16 Cal.3d 432, 438.) A general demurrer will also lie "where the [petition] has included allegations that clearly disclose some defense or bar to recovery." (Cryolife, Inc. v. Super. Ct. (2003) 110 Cal.App.4th 1145, 1152.) Finally, a demurrer may only be sustained if the petition fails to state a cause of action under any possible legal theory. (Fox v. Ethicon Endo-Surgery, Inc. (2005) 35 Cal.4th 797, 810.)

Respondent's request for judicial notice is GRANTED. The Court takes judicial notice of the exhibits attached to the original Petition filed in this action, but not for the truth of the matters set forth therein. (Evid. Code, §452, subd. (d).)

Respondent first argues that the Petition was not timely filed pursuant to the requirements of Government Code section 54960.1. (See Support Memorandum of Points and Authorities (Support Memo) at 6:23-7:6.)

First, the matters properly before the Court on this demurrer do not clearly disclose facts from which the Court can conclude that the action is time barred. (Cryolife, Inc. v. Super. Ct., supra, 119 Cal.App.4th at 1152.) Respondent cites to a letter attached as Exhibit E to the original Petition. As noted herein above, the Court takes judicial notice of the letter, but not for the truth of the matters set forth therein. As a result, the letter is insufficient to establish that Petitioner submitted a letter to Respondent dated November 20, 2020. Because Respondent's argument is premised on Petitioner having submitted said November 20, 2020 letter, the argument fails. (See Ion Equipment Corp. v. Nelson (1980) 110 Cal.App.3d 868, 881 ["[t]he purpose of a general demurrer is to determine the sufficiency of the complaint and the court should only rule on matters disclosed in that pleading"], superseded by statute on other grounds as reported in Hart v. TWC Product & Technology LLC (March 17, 2021) 2021 U.S. Dist. LEXIS 52683 at *8.) Second, even if the fact of the November 20, 2020, was properly before the Court, that letter itself is not. Respondent's argument fails because the matters properly before the Court do not establish that Petitioner's attorney's letter and the purported November 20, 2020 letter constitute identical written demands to cure and correct pursuant to Government Code section 54960.1 (b). Finally, the argument fails because Respondent provides no authority for the proposition that a party is barred from submitting two written demands to cure and correct a single purported violation of the Brown Act.

Respondent next asserts that "[t]here was no violation of the Brown Act by [Respondent's] Board, and Petitioner has not properly pled one." (Support Memo at 9:26-27.)

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which

the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.” (Code Civ. Proc. §1085.)

Petitioner’s prayer for a writ of mandate is based exclusively on allegations that Respondent violated Government Code section 54954.6. (See FAP at ¶¶ 5-13, 19, and p.11:17-21.) The documents incorporated into the FAP as exhibits reinforce this conclusion. (See Petition at Exh. E, FAP at ¶ 16.)

The parties are in accord that all of Respondent’s acts that are the subject of the FAP relate to the adoption of a special tax, as opposed to a general tax or increased assessment. (See FAP at 11:5-8, Support Memo at 8:13, Opposition at 5:19-21.) The Court finds that, by its plain language, Government Code section 54954.6 applies only to general taxes and assessments, and not to special taxes as defined by the California Constitution, Article XIII C, section 1, subdivision (d). Petitioner presents no authority extending the provisions of 54954.6 to the adoption of special taxes.

Based on the foregoing, the FAP fails to identify “an act which the law specially enjoins, as a duty resulting from an office, trust, or station” which Respondent has failed to undertake, or “the use and enjoyment of a right or office to which [Petitioner] is entitled, and from which [Petitioner] is unlawfully precluded by [Respondent].” (Code Civ. Proc. §1085.)

Petitioner argues that even if the foregoing were true, “Respondent fails to explain why the notice requirement [sic] of other statutory and constitutional provisions do not apply with these circumstances.” (Opposition at 6:2-4.) Petitioner does not, however, cite to any allegation in the FAP that Respondent violated any such “notice requirement of other statutory or constitutional provisions.” (Id. at 6:2-8:16.) The remainder of Petitioner’s arguments cite to broad sections of code and entire articles of the California constitution. (See id. at 6:4-8 [citing “the balance of the Brown Act, Government Code §§ 54950, et seq.” and “California Constitution, Article XIII C and D”].) Petitioner’s reference to “other statutory or constitutional provisions” and his citations are too broad and abstract to permit the Court to identify factual allegations in the FAP that would support Petitioner’s prayer for a writ of mandate pursuant to this argument.

For the foregoing reasons, Respondent’s demurrer is SUSTAINED.

Generally, it is an abuse of discretion for a court to deny leave to amend where there is any reasonable possibility that a Petitioner can state a good cause of action. (Goodman v. Kennedy (1976) 18 Cal.3d 335, 349.) However, the pleading party bears the burden of showing such reasonable possibility. (Ibid.) The Court finds a reasonable possibility that Petitioner can state a good cause of action based on Petitioner’s suggestion that “notice requirement[s] of other statutory and constitutional provisions” may apply. For this reason, the demurrer is sustained with 10 days’ leave to amend.

The clerk shall provide notice of this ruling to the parties forthwith. Respondent to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.

9:00 AM 21CV45171 OSC for TRO and Preliminary Injunction

02/09/2021

Ptff/Pet: Brumbaugh, Allen

Atty: Axelrod, David L

Def/Res: Appaloosa Road Community Service District

Atty: Calaveras County Counsel

TENTATIVE RULING: Petitioner’s application for a temporary restraining order and stay, based on the allegations in the First Amended Petition, is MOOT based on the Court’s ruling sustaining Respondent’s Demurrer to the First Amended Petition.

The clerk shall provide notice of this ruling to the parties forthwith. Respondent to prepare a formal Order pursuant to Rule of Court 3.1312 in conformity with this ruling.