

Sanfilippo v. Arrowhead Insurance Agency Inc, et al.

21CV45129

MOTION TO COMPEL FURTHER RESPONSES TO DISCOVERY

Defendant Arrowhead Insurance Agency, Inc. moves, pursuant to Code of Civil Procedure sections 2030.300 (a)(1) and 2031.310 (a)(1) and (3), for an order compelling Plaintiff Dennis Sanfilippo to provide further substantive, code-compliant, verified responses to Defendant's Form Interrogatories, Set One and Request for Production of Documents, Set One, on the grounds that Plaintiff's responses are incomplete and evasive. Defendant further requests the Court impose monetary sanctions pursuant to Code of Civil Procedure sections 2030.300 (d) and 2031.310 (h), against Plaintiff and his counsel in the amount of \$500.

Plaintiff's request for judicial notice is GRANTED. The Court takes judicial notice of the Complaint filed in this action.

A. INTERROGATORIES

A party propounding interrogatories 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.) To show an interrogatory seeks relevant, discoverable information "is not the burden of [the party propounding interrogatories]. As a litigant, it is entitled to demand answers to its interrogatories, as a matter of right, and without a prior showing, unless the party on whom those interrogatories are served objects and shows cause why the questions are not within the purview of the code section." (*West Pico Furniture Co. v. Super. Ct.* (1961) 56 Cal.2d 407, 422.)

Plaintiff's entire argument in opposition to the motion to compel as it relates to the interrogatories is as follows. "Plaintiff is supplementing his response to Form Interrogatory 12.4 to specify the five photographs already sent to Defendant on October 21, 2021. Defendant is still searching for additional photographs and the insurer, Nationwide Agribusiness Insurance, NAIC took numerous photographs which Plaintiff is now requesting." (Opposition at 1:20-25.) This response reflects a misunderstanding regarding either the nature of the interrogatories or

Plaintiff's obligations to respond thereto, or both. At a minimum, Plaintiff fails to "show cause why the questions are not within the purview of the code section." (*West Pico Furniture Co. v. Super. Ct.*, *supra*, 56 Cal.2d at 422.)

Plaintiff is directed to carefully review the text of the interrogatory.

B. Requests for Production of Documents

The burden on the propounding party is higher in compelling responses to production of documents (hereinafter "RFPD") 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.)

Each of RFPDs numbers one through six makes explicit reference to allegations of the Complaint. RFPD numbers seven and thirteen are relevant to Plaintiff's claims for damages. RFPD number eight calls for communications between Plaintiff and Defendant relating to the subject matter of the Complaint. The Court finds that each RFPD is relevant to the issues of the litigation. (*Kirkland v. Super. Ct.*, *supra*, 95 Cal.App.4th at 98.)

1. *Plaintiff's Failure to Comply with Code of Civil Procedure section 2031.210 (a)*

"The party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following: [¶] (1) A statement that the party will comply with the particular demand....[¶] (2) A representation that the party lacks the ability to comply with the demand....[¶] (3) An objection to the particular demand for inspection, copying, testing, or sampling." (Code Civ. Proc., § 2031.210, (a).) With the exception of RFPD number 8, none of Plaintiff's responses to the RFPDs comply with any of the subdivisions of the statute. Therefore, with the exception of RFPD number 8, each of Plaintiff's responses is deficient.

2. *Plaintiff Fails to Justify His Work Product Objection*

Throughout his opposition, Plaintiff argues that each of the RFPDs "clearly is requesting the 'contentions, conclusions and legal arguments instead of facts...' which is prohibited by *Flora Crane Service, Inc. v. Superior Court* (1950) 234 Cal.App.2d 767, 780-782, because it seeks work product and the materials which support Plaintiff's legal reasoning which is not due until designation of experts." (Opposition at 2:1-6.) Plaintiff provides no further analysis or explanation for this argument.

Plaintiff did not assert the “work-product” objection in any of his responses to the RFPDs. Even assuming *arguendo* that this failure does not constitute a waiver of the objection, the Court disagrees with Plaintiff’s implicit characterization that the requests, or any of them, describe exclusively work product documents. To the extent that any specific documents described by any of the RFPDs include attorney work product, Plaintiff is required to comply with the requirements of Code of Civil Procedure section 2031.240, and specifically subdivisions (a) and (c); Plaintiff has failed to do so.

3. *Plaintiff Fails to Justify His Objections Based on the Timing of Expert Witness Disclosures*

Plaintiff only raised an objection based on the timing of expert witness disclosures in response to RFPDs Nos. 2, 3, 4, and 6. Plaintiff’s failure to raise the objection in response to the other RFPDs constitutes a waiver of the objection as to those RFPDs.

Moreover, the Court does not find any basis for Plaintiff’s assertion that “work product and materials which support Plaintiff’s legal reasoning...is not due until designation of experts.” (Opposition at 2:5-6.) As such, Plaintiff fails to justify those objections. (See *Kirkland v. Super. Ct.*, *supra*, 95 Cal.App.4th at 98.)

C. Sanctions

Defendant requests the Court impose monetary sanctions pursuant to Code of Civil Procedure sections 2030.300 (d) and 2031.310 (h), against Plaintiff and his counsel in the amount of \$500.

The Court finds that Plaintiff unsuccessfully opposed the present motion to compel. Plaintiff does not contest the request for an award of sanctions or argue that he acted with substantial justification or that other circumstances would make imposition of sanctions unjust. (See Code Civ. Proc., §§ 2030.300 (d) and 2031.310 (h).)

Defendant presents evidence that it has incurred \$838.50 in attorneys’ fees at the rate of \$195.00 per hour and filing fees in the amount of \$60.00 in connection with this motion. (Declaration of Sarah K. Glatt at ¶ 14.) The Court finds that both the rate and the amount of time spent are reasonable.

D. Conclusion

Based on the foregoing, the motion is GRANTED as to the Interrogatories, and as to RFPD Nos. 1-7, and 13. The motion is DENIED as to RFPD No. 8. Plaintiff must provide complete verified answers/responses to the discovery detailed above, including production of all responsive documents in his care, custody, or control, no later than 10 days after Notice Of Entry of Order regarding this ruling.

Defendant’s request for sanctions in the amount of \$500 against Plaintiff and his counsel is GRANTED. Plaintiff and/or his counsel of record shall remit payment of \$500 to Defendant care of its counsel of record, no later than 10 days’ after Notice of Entry of Order regarding this ruling.

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

IRBC Properties, LLC v. Larry Foster

21CV45174

DEMURRER TO FIRST AMENDED COMPLAINT

Defendant Larry Foster specially demurs to the First Amended Complaint on the grounds that “the Plaintiff originally named in the Original Complaint and Summons has no Capacity to Sue because it is a foreign Delaware LLC that is not registered with the California Secretary of State to do business in California, and therefore also does not have Capacity and/or Standing simply to amend to add another Plaintiff, especially without a motion required by Rule of Court 8.36.”

Plaintiff’s request for judicial notice is GRANTED. The Court takes judicial notice of the subject matters thereof.

The gravamen of Defendant’s demurrer is that the entire action must be dismissed because the original Plaintiff was not the real party in interest, and further because the original Plaintiff lacked the capacity to maintain an action in California. (See Demurrer at 2:15-22.)

The Court finds that the identification of Plaintiff IRBC Properties 2, LLC as “IRBC Properties, LLC” in the original Complaint was the result of a scrivener’s error. Upon becoming aware of the error, Plaintiff filed the First Amended Complaint correcting it. Based on the foregoing, the Court concludes that the First Amended Complaint did not result in a substitution of parties, and did not, therefore, require compliance with Rule of Court 8.36. The filing of the First Amended Complaint, prior to the filing of an answer, demurrer, or motion to strike by Defendant, was proper pursuant to Code of Civil Procedure section 472 (a).

Based on the foregoing, the demurrer is OVERRULED. Defendant has 10 days to answer or otherwise respond to the Complaint. (See Rule of Court 3.1320 (j).)

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.