

**SUPERIOR COURT, STATE OF
CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 7**

**191 North First Street, San Jose, CA 95113
408.882.2170 · 408.882.2193 (fax)**

civildiscoverytentatives@scscourt.org
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DISCOVERY CALENDAR TENTATIVE RULINGS

This Tentative Order is the Final Order if signed below
Please refer to Court protocol if contesting Tentative Order

DATE: 16 JANUARY 2009

TIME: 10:00 am

When contesting a Tentative Order, parties must contact the court and opposing parties before 4:00PM on the court day before the hearing or else the case will not be heard. If no party has requested oral argument, appearances are not required and the Tentative Ruling will be adopted as the ruling of the court. The telephone number to notify the court is (408) 882-2170.

When contesting a Tentative Order by E-mail, please be specific in which areas of the Tentative Order are to be argued.

LINE #	RULING?	CASE NUMBER	CASE TITLE
LINE 1	O/C	1 08 PR 162963	WARREN BROWN REV LIVING TRUST
LINE 2	YES	1 05 CV 038314	REBELO V CASTLEWOOD
LINE 3	CONT	1 06 CV 075625	WORLDWIDE ENTERTAINMENT V DISALVO
LINE 4	O/C	1 06 CV 075642	NUNES V HARRISON
LINE 5	CONT	1 07 CV 078538	AT-TA HOLDINGS SPC V AMIR TECHNOLOGY LABS
LINE 6	no	1 07 CV 089072	WESTOR V SANDHU
LINE 7	YES	1 07 CV 094272	LEONG V PARKER
LINE 8	no	1 07 CV 096435	BUDH V DOUNG
LINE 9	YES	1 08 CV 104050	NATIONAL CREDIT V LY
LINE 10	YES	1 08 CV 105952	MONTANA V SAVVIS
LINE 11	YES	1 08 CV 107077	AL V INC V COTE
LINE 12	O/C	1 08 CV 107086	NORTHLAKE HOMEOWNERS ASSOC V BAHARI
LINE 13	O/C	1 08 CV 111174	JONES V SOUTHFORK DEVELOPMENT
LINE 14	CONT	1 08 CV 118934	ANDERSON V PENCO ASSOC
LINE 15	no	1 08 CV 106928	IRELAND SANFILIPPO LLP V SANFILIPPO
LINE 16	REASSIGN	1 08 CV 102985	KEYS V MILLER
LINE 17	O/C	1 08 CV 109356	OXFORD SEMICONDUCTOR V MIPS TECHNOLOGIES
LINE 18	no	1 06 CV 075692	CARAWAY V KNANAYA
LINE 19	O/C	1 07 CV 101005	KAFFEE V KUMRA

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LINE #	RULING?	CASE NUMBER	CASE TITLE
LINE 20	no		
LINE 21	no		
LINE 22	no		
LINE 23	no		
LINE 24	no		
LINE 25	no		
LINE 26	no		
LINE 27	no		
LINE 28	no		
LINE 29	no		
LINE 30	no		

KEY:

OC = Off Calendar

CONT = Continued to date

CCP 170.3 = Code of Civil Procedure § 170.3(c)(1) challenge filed

CCP 170.6 = Code of Civil Procedure § 170.6 challenge filed]

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No ruling for calendar line 1.

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REBELO v. CASTLEWOOD CONSTRUCTION

Date: 16 January 2009

Time: 10:00 a.m.

Case No.: 1-05-CV-038314

Line Number: 2

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 7 in the Downtown Superior Courthouse, 3rd Floor, 191 North First Street, San Jose. Any party opposing the tentative ruling must call Department 7 at 408.882.2170 and the opposing party no later than 4:00 PM on Thursday 15 January 2009. If you wish to contest the tentative ruling, please specify the issue using the email protocol. In order to comply with Rule of Professional Conduct 5-300(B), send a copy of your email to all other parties and counsel.

The motions of Defendants to compel Plaintiffs to provide further answers and responses to Special Interrogatories (Set Three), and for terminating, issue, evidence and monetary came on regularly for hearing before the Honorable Socrates Peter Manoukian on 16 January 2009 at 10:00 a.m. in Department 7. The matter having been submitted, the Court finds and orders as follows:

The motions are not opposed.¹

The motion is defective in the following respects: [The information required by Rule of Court 3.1110(b) is not complete.² The moving papers fail to comply with Rule of Court 3.1110(f) (Tabs on Exhibits³.)

The matter has a trial date of 2 March 2009.

STATEMENT OF FACTS.

This litigation is about construction defects pertaining to the construction of a single-family home in Gilroy.

In February of 2008, defendants propounded a request for production of documents. The failure of plaintiffs to respond to that discovery led to a motion to compel production which was granted on 27 May 2008. This court ordered production of the records and further ordered Plaintiffs to pay the sum of \$1425.00 in sanctions. While the documents were produced a month after the deadline imposed by this Court, the sanctions have not been paid.

Defendants propounded a set of Special Interrogatories, Set Three, in response to the documents produced by Plaintiffs. Just before the due date of the responses, an attorney⁴ on behalf of Plaintiffs asked for but was denied a two-week extension of time within which to respond.

¹ "The failure to file a written opposition or to appear at a hearing or the voluntary provision of discovery shall not be deemed an admission that the motion was proper or that sanctions should be awarded." (Rule of Court 3.1030(b).)

² "(b) Date of hearing and other information The first page of each paper must specify immediately below the number of the case: (1) The date, time, and location, if ascertainable, of any scheduled hearing and the name of the hearing judge, if ascertainable; (2) The nature or title of any attached document other than an exhibit; (3) The date of filing of the action; and (4) The trial date, if set.

³ Each exhibit shall be separated by a hard 8- 1/2 x 11 sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation. An index to exhibits shall be provided. Pages from a single deposition and associated exhibits shall be designated as a single exhibit. Exhibits written in a foreign language shall be accompanied by an English translation, certified under oath by a qualified interpreter. (Subd (e) adopted effective July 1, 1997.)

⁴ Charles Wagner.

Plaintiffs did respond to the discovery, surveying verified responses on 13 October 2008. In a letter dated 16 October 2008, Counsel for Defendants pointed out that several of the answers refer to an "Exhibit A" which was not appended to the responses. That document was sent to defense counsel. In a letter dated 5 November 2008, Defendants pointed out that the "Exhibit A" did not fully respond to Special Interrogatories numbered 61, 62, 63 and 64.

Defendants made reasonable attempts to confer with Plaintiffs in a reasonable and good faith attempt to resolve informally the dispute concerning discovery.

The motions are GRANTED. Plaintiffs shall serve further verified, code compliant answers and responses to Special Interrogatories numbered 61, 62, 63 and 64 within 10 calendar days of this Order. Documents and things shall be produced within 10 calendar days of this Order. Objections are deemed waived.

The request of Defendants for monetary sanctions is GRANTED. The request is code-compliant. Plaintiffs acted without substantial justification, pursuant to Code of Civil Procedure, § 2023.010(f) by taking an evasive response to discovery.

Plaintiffs shall pay \$1,090.00 to counsel for Defendants within 20 calendar days of this Order. All sanctions that have ordered but which have not been paid are also due within 20 calendar days of this order.

The Court does not award monetary sanction for time spent meeting and conferring because counsel are obligated to do so prior to bringing a motion to compel. The Court does not award anticipated costs, but will reconsider them should this matter proceed to a hearing.

The Court is inclined to disallow travel costs for unopposed motions since Court Call is available to all. The number enroll with Court Call is (888) 882-6878 and the fee is now \$60.00, which this Court will allow should the service be used.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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LEONG v. PARKER, et al.

Date: 16 January 2009

Time: 10:00 a.m.

Case No.: 1-07-CV-094272

Line Number: 7

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 7 in the Downtown Superior Courthouse, 3rd Floor, 191 North First Street, San Jose. Any party opposing the tentative ruling must call Department 7 at 408.882.2170 and the opposing party no later than 4:00 PM on Thursday 15 January 2009. If you wish to contest the tentative ruling, please specify the issue using the email protocol. Send a copy of your email to all counsel.

The motions of Plaintiff Arnold Leong ("Plaintiff"):

- To compel Defendant Gordon Cruikshank ("Cruikshank") to provide further discovery responses;
- To compel Defendant Vincent Parker ("Parker") to provide discovery responses;

and sanctions came on regularly for hearing before the Honorable Socrates Peter Manoukian on 16 January 2009 at 10:00 a.m. in Department 7. The matter having been submitted, the Court finds and orders as follows:

BACKGROUND

This is a fraud action. Plaintiff alleges that Parker, Cruikshank, and other defendants enticed him into a series of loans, investments, and guarantees in excess of a million dollars, based upon a scheme of deception and fraud. Now disabled, Plaintiff has filed a complaint and first amended complaint ("FAC") alleging causes of action for: (1) compel payment of debt and indemnity; (2) money had and received; (3) conversion; (4) fraud; (5) negligent misrepresentation; (6) constructive fraud-fiduciary breach; (7) violation of CA Corporations Code 25401; (8) financial elder abuse; (9) accounting; and (10) fraudulent conveyance.

PLAINTIFF'S MOTION TO COMPEL CRUIKSHANK TO PROVIDE FURTHER DISCOVERY RESPONSES

On 27 August 2008, Plaintiff served Cruikshank with special interrogatories (set one) ("SI") and requests for production of documents (set one) ("RPD").⁵

On 21 October 2008, Cruikshank served Plaintiff with answers interposing objections with factual responses.⁶ Plaintiff found Cruikshank's responses to be inadequate because his answers were evasive, no documents were produced, and the objections raised were without merit.

On 14 November 2008, Plaintiff's attorney sent a letter to Defense Counsel outlining the deficiencies in the discovery responses and requested supplemental answers and production of documents.⁷

On 21 November 2008, Defense Counsel responded to the letter standing by his objections.⁸ The parties engaged

⁵ Declaration of James Roberts in support of motion to compel discovery from Cruikshank, ¶ 2; Exhibits A and B.

⁶ Id at ¶ 3; Exhibits C and D.

⁷ Id at Exhibit E.

⁸ Declaration of Charles S. Bronitsky, Exhibit 1.

in further correspondence over this discovery but were unable to resolve these issues. Plaintiff seeks Court intervention to resolve this dispute.

Pursuant to Code of Civil Procedure ("CCP") Sections 2030.300 and 2031.310, Plaintiff seeks an order from the Court compelling Cruikshank to provide further responses to SI Nos. 16, 22, 24, 28, and 29 and RPD Nos. 1-5 and 7-23. Plaintiff argues that Cruikshank's discovery responses were evasive, no documents were produced, and the objections raised were without merit. Both parties request an award of monetary sanctions.

PLAINTIFF'S MOTION TO COMPEL PARKER'S DISCOVERY

On 27 August 2008, Plaintiff served Parker with SIs and RPDs.⁹ Parker has not served any responses to this discovery.

On 11 December 2008, Plaintiff's attorney sent a letter to Parker requesting discovery responses.¹⁰ There was no response to the letter.

Plaintiff seeks an order from the Court compelling Parker to provide discovery responses and produce documents because timely responses have not been served. Plaintiff also requests an award of monetary sanctions against Parker for failure to provide timely discovery responses.

PLAINTIFF'S MOTION TO COMPEL CRUIKSHANK TO PROVIDE FURTHER DISCOVERY RESPONSES

Plaintiff seeks an order from the Court compelling Cruikshank to provide further responses to SI Nos. 16, 22, 24, 28, and 29 and RPD Nos. 1-5 and 7-23.

Special Interrogatories

Legal Standard

A responding party must provide non-evasive answers to interrogatories that are "as complete and straightforward...to the extent possible," and, if after a reasonable and good faith effort to obtain the information they still cannot respond fully to an interrogatory, the responding party must so state in its response. (CCP § 2030.220.) If the responding party provides incomplete or evasive answers, or objections without merit, the propounding party's remedy is to seek a court order compelling a further response to the interrogatories. (CCP § 2030.300.) If a timely motion to compel answers is filed, the burden is on the responding party to justify any objection or failure to fully answer the interrogatories. (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-221.)

General Objections

The Court notes that it is improper for Cruikshank to insert general objections to each and every response served. A responding party may serve objections to discovery requests. However, each objection must be stated separately (no objections to entire set), and must bear the same number or letter as the interrogatory to which it is directed. (CCP § 2030.210(c).) Objections must be specific. A motion to compel lies where objections are "too general." (CCP § 2030.300(a) (3).) Here, Cruikshank's nonspecific, boilerplate objections are improper.¹¹ (See *Korea Data Systems Co. Ltd. v Superior Court* (1997) 51 Cal.App.4th 1513, 1516.)

SI Nos. 16 and 22

SI Nos. 16 and 22 ask Cruikshank to itemize each receipt of money or equivalent he has received from Hiview Enterprises, Inc. ("Hiview") or the Cambridge property, whether directly or for his benefit. Cruikshank objects to these interrogatories on privacy grounds as to his personal financial affairs. Cruikshank also provides a factual response stating that he is willing to amend his response subject to an appropriate protective order.

Right to Privacy

⁹ Declaration of James Roberts in support of motion to compel discovery from Parker, ¶ 2; Exhibits A and B.

¹⁰ Id at ¶ 4; Exhibit C.

¹¹ It should be noted that Cruikshank provided General Objections to SIs and RPDs.

"While it is very broad, the right to discovery is not absolute, particularly where issues of privacy are involved." (*Puerto v. Superior Court*, (2008)158 Cal. App. 4th 1242, 1250.) The right of privacy in the California Constitution (art. I, § 1), "protects the individual's reasonable expectation of privacy against a serious invasion." (*Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370.)

The party seeking discovery must show a particularized need for the confidential information sought. (Weil & Brown, *California Practice Guide: Civil Procedure Before Trial* (Rutter Group 2008) at § 8:320.) The broad "relevancy to the subject matter" standard is not enough here. (Id.) The Court must be convinced that the information is directly relevant to a cause of action or defense...i.e., that is essential to determining the truth of the matters in dispute. (Id; *Britt v. Superior Court (San Diego Unified Port Dist.)*(1978) 20 Cal.3d 844, 859-862.)

Discovery will not be ordered if the information sought is available from other sources or through less intrusive means. (*Allen v. Superior Court (Sierra)* (1984) 151 Cal.App.3d 447, 449.)

Here, Plaintiff claims that Cruikshank is a principal at Hiview and owes a fiduciary duty to him. Plaintiff argues that the financial information is directly relevant to allegations in the complaint that Cruikshank and other Defendants defrauded him when he invested in Hiview and took his money. Further, providing this financial information using interrogatories is the least intrusive means of obtaining this discovery.

California law provides that a right to privacy exists as to a party's confidential financial affairs, even when the information sought is admittedly relevant to the litigation. (See *Cobb v. Superior Court* (1979) 99 Cal.App.3d 543, 550.)

Cruikshank states that he would provide an amended response subject to a protective order. When interrogatories have been propounded, the responding party may promptly move for a protective order. (CCP § 2030.090(a).) The Court may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. (CCP § 2030.090(b).)

Here, Cruikshank has not sought a protective order with the Court and attorneys on both sides could not agree on the scope of an appropriate protective order during meet and confer. Further, the information appears directly relevant to allegations raised in the complaint and Cruikshank does not provide any argument as to why a protective order would be necessary before answering these interrogatories. Thus, Cruikshank's privacy objection is overruled.

Relevance

Cruikshank objects to SI No. 22 on the ground that it is not relevant to the subject matter of this action.

The standard of relevance is broad under California law. Discovery is allowed for any matters that are not privileged and relevant to the subject matter, and a matter is relevant if it appears reasonably calculated to lead to the discovery of admissible evidence. (CCP § 2017.010.) The "relevance to the subject matter" and "reasonably calculated to lead to discovery of admissible evidence" standards are applied liberally with any doubt generally resolved in favor of discovery. (*Colonial Life & Acc. Ins. Co. v. Superior Court* (1982) 31 Cal.3d 785, 790.)

Moreover, for discovery purposes, information is "relevant to the subject matter" if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Gonzalez v. Superior Court*. (1995) 33 Cal.App.4th 1539, 1546.)

Here, Plaintiff argues that Cruikshank personally profited after he sold the Cambridge property to Hiview. Such information is relevant to allegations in the complaint that Cruikshank and other Defendants took money from the Plaintiff following his investment in Hiview. Thus, the objection is overruled.

Therefore, Plaintiff's motion to compel a further response to SI Nos. 16 and 22 is GRANTED.

SI No. 24

SI No. 24 asks Cruikshank to provide identifying information for individuals who prepared and kept control of his records and books pertaining to his income for the last three years. Cruikshank objected to this interrogatory on relevance and privacy grounds.

Here, the information is relevant because the complaint alleges that Cruikshank and other Defendants took money from Plaintiff following his investment in Hiview. Also, the mere identity of Cruikshank's bookkeeper does not automatically infringe on his right to privacy. Thus, the objections are overruled and Plaintiff is entitled to a further response.

Therefore, Plaintiff's motion to compel a further response to SI No. 24 is GRANTED.

SI No. 28

SI No. 28 asks whether Cruikshank has any documents in his possession that support his reported income and expenses of Hiview and Highview Transportation, Inc. Cruikshank objects to this interrogatory on the ground that the term "reported income and expenses" is not defined and the request is compound.

Although not defined, the phrase "reported income and expenses" is not vague or ambiguous. Courts generally do not sustain this kind of objection unless the question is totally unintelligible. (*Weil & Brown, supra*, at § 8:1084.) The answering party owes a duty to respond in good faith as best he or she can. (*Id*; see *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783.)

However, Cruikshank's compound objection has merit. No specially prepared interrogatory shall contain subparts, or a compound, conjunctive, or disjunctive question. (CCP § 2030.060.) Here, the interrogatory requests a "yes or no" response as to whether Cruikshank has documents in his possession for two different companies. Thus, the interrogatory is compound and this objection is sustained.

Therefore, Plaintiff's motion to compel a further response to SI No. 28 is DENIED.

SI No. 29

SI No. 29 asks Cruikshank to state the identifying information concerning persons who act as his present accountant. Cruikshank objects on the ground that the four part definition of the phrase "identifying information concerning persons" constitutes subparts that are compound, conjunctive, or disjunctive. Cruikshank also raises relevance and privacy objections.

Here, the question applies to a single subject, i.e. the identifying information for Cruikshank's accountants. Thus, Cruikshank's objection on the ground that the interrogatory contains subparts is overruled. Further, the information is relevant because the complaint alleges that Cruikshank and other Defendants took money from the Plaintiff. Also, the identifying information of Cruikshank's accountants does not infringe on his right to privacy. As such, the relevance and privacy objections are overruled and Plaintiff is entitled to a further response.

Therefore, Plaintiff's motion to compel a further response to SI No. 29 is GRANTED.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Legal Standard

A responding party to an inspection demand must respond separately to each item in the demand by stating one of the following: (1) an agreement to comply, (2) a representation of inability to comply, or (3) objections. (CCP § 2031.210.) If a party demanding a response to an inspection demand deems: (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, that party may move for an order compelling further response to the demand. (CCP § 2031.310-320. *Weil & Brown, supra*, at § 8:1490.)

Good Cause Requirement

The motion for order compelling further responses shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand. (*Weil & Brown, supra*, at § 8:1495, citing CCP §2031.310 and *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) To establish "good cause," the burden is on the moving party to show both (1) relevance to the subject matter (e.g. how the information in the documents would tend to prove or disprove some issue in the case); and (2) specific facts justifying discovery (e.g. why such information is necessary for trial preparation or to prevent surprise at trial). (*Weil & Brown, supra*, at § 8:1495.6.) If good cause is shown by the moving party, the burden is then on the responding party to justify any objections made to

document disclosure. Weil & Brown, *supra*, at § 8:1495.6, citing *Kirkland v. Superior Court*, *supra*, at 95 Cal.App.4th at 98.)

Plaintiff argues that good cause for production exists because he seeks documents related to the Stevens Creek property and other properties. Plaintiff argues that Defendants profited off the leasing of the property that was acquired and improved by using his money. Plaintiff also claims that sale tax records of the corporation would be relevant in showing any effort by Defendants to create a separate secret corporation. Further, Plaintiff seeks documents related to the Cambridge property because he argues that Cruikshank personally profited after he sold this property to the corporation.

Having shown good cause for the subject discovery, the burden shifts to Cruikshank to justify the objections made to the subject RPDs. (Weil & Brown, *supra*, at § 8:1495.6, citing *Kirkland v. Superior Court*, *supra*, 95 Cal.App.4th at 98.)

Validity of Objections

The responding party may object to any item or category demanded in whole or in part. To be effective, the objection must: (1) identify with particularity the specific document or evidence demanded as to which the objection is made; and (2) set forth the specific ground for objection. (Weil & Brown, *supra*, at § 8:1474; see *Standon Co., Inc. v. Superior Court (Kim)* (1990) 225 Cal.App.3d 898, 901.)

RPD Nos. 7, 8, 9, 17, 18, 19, 20, 21, 22, and 23

In reply, Plaintiff states that RPD Nos. 7, 8, 9, 17, 18, 19, 20, 21, 22, and 23 have been withdrawn from the motion.¹² Therefore, Plaintiff's motion to compel a further response to RPD Nos. 7, 8, 9, 17, 18, 19, 20, 21, 22, and 23 is OFF CALENDAR.

RPD Nos. 2 and 3

On 22 December 2008, Cruikshank served amended responses to RPD Nos. 2 and 3.¹³ In reply, Plaintiff provides a supplemental separate statement challenging the adequacy of these amended responses and requesting a further response. However, Plaintiff's request is improper because Cruikshank has not been given notice and an opportunity to respond to the amended responses. Plaintiff can challenge the adequacy of these amended responses through a noticed motion to the Court. Where a response has been made, but the demanding party is not satisfied with it, the remedy is a motion to compel further responses. (CCP § 2031.310.)

Therefore, Plaintiff's motion to compel a further response to RPD Nos. 2 and 3 is DENIED as MOOT.

RPD Nos. 1, 4, 5, 10, 11, 12, 13, 15, and 16

As to these RPDs, Cruikshank responds saying that he would comply and produce documents. However, Cruikshank has not produced any documents pertaining to these requests.

Therefore, Plaintiff's motion to compel a further response to RPD Nos. 1, 4, 5, 10, 11, 12, 13, 15, and 16 is GRANTED.

RPD No. 14

RPD No. 14 seeks production of documents which evidence income received by Parker, Cruikshank, and/or Brett Harrell derived from Hiview or Highview Transportation, Inc. Cruikshank objects on the ground that the term "Documents/Material" is capitalized and not defined and, therefore, he cannot respond to the request. Courts generally do not sustain this kind of objection unless the question is totally unintelligible. (Weil & Brown, *supra*, at § 8:1084.) The answering party owes a duty to respond in good faith as best he or she can. (*Id.*; see *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783.) Thus, the objection is overruled.

Cruikshank also objects on privacy grounds as to his personal financial affairs. Cruikshank states that he will only

¹² See Plaintiff's Reply Brief in support of motion to compel further responses against Cruikshank, Pg. 4.

¹³ See Declaration of Charles S. Bronitsky, ¶ 7; Exhibit 9. Cruikshank also provided Plaintiff with amended responses to RPD Nos. 7, 8, 9, 17, 18, 19, 20, 21, 22, and 23 on the same day.

produce documents upon the execution of an appropriate confidentiality and protective order. Here, Cruikshank has not sought a protective order with the Court and attorneys on both sides could not agree on the scope of an appropriate protective order. Further, the information appears directly relevant to allegations raised in the complaint and Cruikshank does not provide any argument as to why a protective order would be necessary before producing these documents. Thus, Cruikshank's privacy objection is overruled.

Therefore, Plaintiff's motion to compel a further response to RPD No. 14 is GRANTED.

PLAINTIFF'S MOTION TO COMPEL PARKER TO PROVIDE DISCOVERY RESPONSES

Legal Standard

If the party to whom interrogatories are directed fails to respond, the propounding party may move for an order compelling answers. (CCP § 2030.290; Weil & Brown, *supra*, at § 8:1136.) All that the moving party needs to show is that the interrogatories were properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (Weil & Brown, *supra*, at § 8:1140; *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.) A party to whom interrogatories have been directed who fails to serve a timely response, waives any right to object to the interrogatories, including the assertion of a privilege or work product protection under CCP Section 2018. (CCP § 2030.290.)

Any party may obtain discovery of documents and other things in the possession, custody, or control of any other party to the action, by way of a request for production. (CCP § 2031.010.) Where the responding party makes no response, the propounding party may move for an order compelling production pursuant to CCP Section 2031.300.

Analysis

The motion is unopposed and Parker has failed to provide any responses to SIs or RPDs.

Therefore, Plaintiff's motion to compel responses to SIs and RPDs is GRANTED.

SANCTIONS

The Court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. (CCP § 2023.030.)

Plaintiff's motion to compel further responses against Cruikshank

Both parties request an award of monetary sanctions.

Cruikshank will not be awarded sanctions because he did not substantially prevail in opposing the motion. Although Cruikshank served some amended responses to RPDs, Plaintiff is still entitled to sanctions. As set out in California Rule of Court ("CRC"), 3.1030(a): "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though ... the requested discovery was provided to the moving party after the motion was filed." Whether a particular response does resolve satisfactorily the issues raised by a motion is a matter best determined by the trial court in the exercise of its discretion, based on the circumstances of the case. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal. App. 4th 390, 409.)

Plaintiff makes a code-compliant request for monetary sanctions in the amount of \$5,220. This amount includes time spent preparing the motion, meeting and conferring, obtaining the tentative ruling, filing fees for the motion, preparing reply papers, and attending the hearing on the motion. However, the Court finds this amount to be excessive given the size and scope of the motions. Instead, the Court will award \$1,265 (3.5 hours X \$350 per hour + \$40 motion filing fee) to Plaintiff in reasonable costs and attorney's fees in bringing the motion. The Court does not award meet and confer time since the code requires parties to do so before filing the motion. The Court does not award anticipated expenses but may do so if this matter proceeds to a hearing.

Therefore, Plaintiff's request for monetary sanctions is GRANTED in the amount of \$1,265 against Cruikshank.

Plaintiff's motion to compel further responses against Parker

Plaintiff makes a code-compliant request for monetary sanctions in the amount of \$1,615. This amount includes

time spent preparing the motion, reviewing the opposition, obtaining the tentative ruling, filing fee for the motion, and attending the hearing on the motion. However, the Court finds this amount to be excessive given that no opposition to the motion was filed.¹⁴ Instead, the Court will award \$565 (1.5 hours X \$350 per hour + \$40 motion filing fee) to Plaintiff in reasonable costs and attorney's fees in bringing the motion. The Court does not award anticipated expenses but may do so if this matter proceeds to a hearing.

Therefore, Plaintiff's request for monetary sanctions is GRANTED in the amount of \$565 against Parker.

CONCLUSION

Plaintiff's motion to compel a further response to SI Nos. 16, 22, 24, and 29 is GRANTED. Cruikshank shall provide a verified, code-compliant further response, without objections, to SI Nos. 16, 22, 24, and 29 within 20 calendar days of this Order.

Plaintiff's motion to compel a further response to SI No. 28 is DENIED.

Plaintiff's motion to compel a further response to RPD Nos. 7, 8, 9, 17, 18, 19, 20, 21, 22, and 23 is OFF CALENDAR.

Plaintiff's motion to compel a further response to RPD Nos. 2 and 3 is DENIED as MOOT.

Plaintiff's motion to compel a further response to RPD Nos. 1, 4, 5, 10, 11, 12, 13, 14, 15, and 16 is GRANTED. Cruikshank shall provide a verified, code-compliant further response, without objections, to RPD Nos. 1, 4, 5, 10, 11, 12, 13, 14, 15, and 16 and produce all responsive documents within 20 calendar days of this Order.

Plaintiff's motion to compel responses to SIs and RPDs is GRANTED. Parker shall provide a verified, code-compliant response, without objections, to SIs and RPDs within 20 calendar days of this Order.

Plaintiff's request for monetary sanctions is GRANTED. Cruikshank shall pay \$1,265 to Plaintiff within 20 calendar days of this Order. Parker shall pay \$565 to Plaintiff within 20 calendar days of this Order.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

- oo0oo -

¹⁴ The Court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed. (CRC 3.1030(a))

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

DEPARTMENT 7

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No ruling for calendar line 8.

- 00000 -

**SUPERIOR COURT, STATE OF
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COUNTY OF SANTA CLARA
DEPARTMENT 7**

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NATIONAL CREDIT ACCEPTANCE, INC. v. LY

Date: 16 January 2008

Time: 10:00 a.m.

Case No.: 1-08-CV-104050

Line Number: 9

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 7 in the Downtown Superior Courthouse, 3rd Floor, 191 North First Street, San Jose. Any party opposing the tentative ruling must call Department 7 at 408.882.2170 and the opposing party no later than 4:00 PM on Thursday 15 January 2009. If you wish to contest the tentative ruling, please specify the issue using the email protocol. Send a copy of your email to all counsel.

The motions of Plaintiff National Credit Acceptance, Inc. ("Plaintiff"):

- Renewed motion to compel a further response to form interrogatory no. 15.1;
- For issue or evidentiary sanctions for failing to obey a discovery order, or alternatively, to compel further responses to Plaintiff's form interrogatory no. 17.1

and sanctions by came on regularly for hearing before the Honorable Socrates Peter Manoukian on 16 January 2009 at 10:00 a.m. in Department 7. The matter having been submitted, the Court finds and orders as follows:

BACKGROUND

In 1991, Defendant Ninh Ly ("Ly") applied for a business loan with Wells Fargo Bank. In 2000, Ly married Defendant Sandy Hong ("Hong") and they purchased a home in Santa Clara County in 2004. In 2005, Ly transferred his right, title, and interest in the property to Hong by way of Interspousal Transfer Grant Deed as her sole and separate property.

Plaintiff is the successor in interest to Wells Fargo. Plaintiff claims that Ly's transfer was fraudulent and that he breached his agreement to personally guarantee the debts of the defendants in this action. The principal amount of the debt is alleged to be \$97,352.75.

On 24 January 2008, Plaintiff filed a complaint alleging the following causes of action: (1) to set aside fraudulent transfer of residential real property (intentional fraud); (2) to set aside fraudulent transfer of residential real property (constructive fraud); (3) civil conspiracy; (4) injunctive relief; (5) damages for breach of express contract; (6) open book account; (7) account stated; (8) damages against personal guarantor.

DISCOVERY DISPUTE

On 29 April 2008, Plaintiff served Ly with requests for admissions ("RFA") and form interrogatories ("FI").

On 3 July 2008, Ly served discovery responses.

On 14 July 2008, Plaintiff's attorney sent Ly's counsel a meet and confer letter explaining that some of the responses to FIs were evasive and incomplete.

On 18 July 2008, Ly's attorney responded and stood by his responses. The parties were unable to resolve this discovery dispute and Plaintiff sought Court intervention.

Plaintiff filed a motion to compel further responses to FI Nos. 15.1 and 17.1 that was heard by the Court on 19 September 2008. The Court denied Plaintiff's motion to compel a further response to FI No. 15.1 without prejudice

because Ly indicated that, subject to Court approval, he would be filing an amended answer in the case. The Court granted Plaintiff's motion to compel a further response to FI No. 17.1.¹⁵

Ly's motion to amend was granted by Judge Emerson on 25 September 2008.¹⁶ On 9 October 2008, Plaintiff's counsel sent a letter to Ly's attorney requesting the amended answer.¹⁷ However, Ly has not filed an amended answer in the case.

On 21 October 2008, Ly served Plaintiff with a further response to FI No. 17.1.¹⁸ Plaintiff found Ly's further response to FI No. 17.1 to be evasive and in violation of the Court's order.

On 14 November 2008, Plaintiff's attorney sent a letter to Ly's counsel outlining the deficiencies in Ly's further response to FI No. 17.1 and requested an amended response.¹⁹

On 24 November 2008, Ly served Plaintiff with an amended response to FI No. 17.1.²⁰

Plaintiff seeks an order from the Court compelling Ly to provide a further response to FI No. 15.1 because no amended answer has been filed in the case.

Plaintiff also seeks an order for issue or evidentiary sanctions against Ly for violating the 19 September 2008 Court order by failing to provide a code-compliant further response to FI No. 17.1. Alternatively, Plaintiff seeks an order compelling Ly to provide a further response to FI No. 17.1 as to his denials to RFA Nos. 8, 17, 18 and 19.

Both parties request an award of monetary sanctions.

PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE

As an initial matter, Plaintiff requests judicial notice of the Court records in this case. In particular, Plaintiff requests judicial notice of its separate statement in support of the motion to compel further responses to FIs along with the proof of service that was executed on 7 August 2008.²¹

Judicial notice may be taken of court records and files of any other action pending in the same court or any other court of record in the United States, pursuant to Evidence Code § 452(d). While the Court is free to take judicial notice of the existence of a document in a court file, the Court may not take judicial notice of the truth of hearsay statements in decisions and court files. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) Therefore, the Court grants judicial notice as to the existence of the documents in question, but not as to the truth of the matters asserted therein.

Accordingly, Plaintiff's request for judicial notice is GRANTED.

PLAINTIFF'S RENEWED MOTION TO COMPEL A FURTHER RESPONSE TO FI NO. 15.1

Legal Standard

A party who originally made an application for an order which was refused in whole or in part, or granted conditionally or on terms, may make subsequent application for the same order upon new or different facts, circumstances, or law, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown. (Code of Civil Procedure ("CCP") § 1008(b).) Unlike a motion for reconsideration, there is no time limit under Section 1008 for the renewal of a previous motion. (See CCP § 1008(b), (e); *Stephen v. Enterprise Rent-A-Car of San Francisco* (1991) 235 Cal.App.3d 806, 816.)

¹⁵ See Declaration of Andre J. LeLievre, Exhibit 31 to renewed motion to compel.

¹⁶ *Id.* at ¶¶ 8, 10-13.

¹⁷ *Id.* at Exhibit 32.

¹⁸ See Declaration of Andre J. LeLievre, Exhibit 35 to motion for issue or evidence sanctions.

¹⁹ *Id.* at Exhibit 36.

²⁰ Declaration of Carlos Martinez, Exhibit D.

²¹ See Plaintiff's request for judicial notice, Exhibits 37 and 38.

Analysis

FI No. 15.1 asks Ly to identify each denial of a material allegation and each special or affirmative defense in the pleadings. FI No. 15.1 further requests that Ly state all facts upon which the denial or affirmative defense is based on, relevant contact information of individuals having knowledge of the facts, and identify all documents. This interrogatory has been approved in appellate decisions.²²

The Court's previous order denied Plaintiff's motion to compel a further response to FI No. 15.1 without prejudice. The denial was based on the fact that Ly would amend his answer which could change the denials and affirmative answers raised in this action. However, no amended answer was served on Plaintiff or filed with the Court.

It should also be noted that the denial of a motion without prejudice evidences the Court's intent to allow the motion to be renewed at a later time, potentially without the necessity of showing new facts. (Weil & Brown, *California Practice Guide: Civil Procedure Before Trial* (Rutter Group 2008) at § 9:338.) However, CCP Section 1008 creates no exception for such orders. (Id.) Thus, the effect of a "without prejudice" denial is unclear given the jurisdictional nature of Section 1008. (Id.)

Here, a renewal motion must be supported by a declaration showing the previous order and by which judge it was made along with the new and different facts. (CCP § 1008(b); see *Graham v. Hansen* (1982) 128 Cal.App.3d 965, 969-970.) It appears Plaintiff has satisfied all of these requirements including the introduction of new facts since Ly has not filed an amended answer in this case. Thus, Plaintiff is entitled to a code compliant further response.

Therefore, Plaintiff's renewed motion to compel a further response to FI No. 15.1 is GRANTED.

PLAINTIFF'S MOTION FOR ISSUE OR EVIDENTIARY SANCTIONS

Legal Standard

Disobeying a court order to provide discovery constitutes a misuse of the discovery process and may result in sanctions. (CCP § 2023.010(g).) The court may impose a monetary, evidence, issue, terminating, or contempt sanction against any party who misuses the discovery process. (CCP § 2023.030.) Two facts are generally prerequisite to the imposition of non-monetary sanctions: (1) absent unusual circumstances, there must be a failure to comply with a court order; and (2) the failure must be willful. (*Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327; *R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496.) The sanctions imposed must be tailored to "fit the crime." (See *Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293.)

Analysis

The 19 September 2008 Court order required Ly to serve a verified, code-compliant further response, without objections, to FI No. 17.1 within 20 days. There is no doubt that Ly violated the Court's order because Plaintiff was not served with a further response until 21 October 2008, beyond the 20 days required by the Court's order. However, Plaintiff has not made any showing in its papers that such a violation of the Court's order was done willfully. As such, the Court finds that imposing issue or evidentiary sanctions against Ly is not an appropriate sanction at this time.

Therefore, Plaintiff's motion for issue or evidentiary sanctions is DENIED WITHOUT PREJUDICE.

PLAINTIFF'S MOTION TO COMPEL A FURTHER RESPONSE TO FI NO. 17.1

Legal Standard

A responding party must provide non-evasive answers to interrogatories that are "as complete and straightforward...to the extent possible," and, if after a reasonable and good faith effort to obtain the information

²² "Regardless, a finding of prejudice to [the party serving Form Interrogatory 15.1] is not difficult to discern. An important aspect of legitimate discovery from a [party's] point of view is the ascertainment, in advance of trial, of the specific components of [the opposing party's] case so that appropriate preparations can be made to meet them. A party cannot intelligently defend itself against affirmative defenses or damage claims when the other side's discovery responses consist of legal doubletalk and provide no useful information. Here, after numerous extensions of time and more than a year's worth of delay, [responding party] could still not provide an intelligible factual basis for their defenses and counterclaims. Prejudice is inherent in such tactics. *Liberty Mutual Fire Ins. Co. v. Lcl Administrators, Inc.* (2008) 163 Cal. App. 4th 1093, 1105.

they still cannot respond fully to an interrogatory, the responding party must so state in its response. (CCP § 2030.220.) If the responding party provides incomplete or evasive answers, or objections without merit, the propounding party's remedy is to seek a court order compelling a further response to the interrogatories. (CCP § 2030.300.) If a timely motion to compel answers is filed, the burden is on the responding party to justify any objection or failure to fully answer the interrogatories. (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-221.)

Analysis

FI No. 17.1 requires Ly to (1) state all facts upon which he bases every response that is not an unqualified admission; (2) provide contact information for all persons who have such facts; and (3) identify all documents and tangible things, and the location of such evidence, in support of any qualified responses.

Plaintiff seeks an order compelling Ly to provide a further response to FI No. 17.1 as to his denials to RFA Nos. 8, 17, 18 and 19. On 24 November 2008, Ly served Plaintiff with an amended response to FI No. 17.1. In reply, Plaintiff withdraws its motion as to RFA No. 19 but challenges Ly's amended response as to RFA Nos. 8, 17, and 18 by submitting a supplemental separate statement.²³

However, Plaintiff's request is improper because Ly has not been given notice and an opportunity to respond to what is essentially a new motion submitted in the reply brief.²⁴ Where a response has been made, but the demanding party is not satisfied with it, the remedy is a motion to compel further responses. (CCP § 2030.300.)

Therefore, Plaintiff's motion to compel a further response to FI No. 17.1 is DENIED as MOOT without prejudice to another motion to compel further responses.

SANCTIONS

Both parties request an award of monetary sanctions. The Court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (CCP § 2030.300(d).)

The Court may also impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. (CCP § 2023.030.)

Ly will not be awarded sanctions as to the motion to compel a further response to FI No. 15.1 because he did not prevail in opposing the motion. Also, the Court in its discretion, will not award sanctions to Ly in opposing Plaintiff's motion for issue or evidentiary sanctions or in the alternative to compel a further response to FI No. 17.1.

Plaintiff will not be awarded sanctions with regard to its motion for issue or evidentiary sanctions or in the alternative to compel a further response to FI No. 17.1 because it did not prevail on the merits of the motion. However, Plaintiff made a code compliant request for sanctions regarding its motion to compel a further response to FI No. 15.1 and will be awarded \$240 (1.0 hours X \$200 per hour + \$40 motion filing fee). The Court does not award anticipated expenses but may do so if this matter proceeds to a hearing.

Therefore, Ly's request for monetary sanctions is DENIED.

Plaintiff's request for monetary sanctions is GRANTED in the amount of \$240.

CONCLUSION

Plaintiff's request for judicial notice is GRANTED.

²³ See Plaintiff's Reply Brief, Pg. 1 and Supplemental Separate Statement.

²⁴ "We normally follow the general rule that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before." (*Radovich v. Locke-Paddon* (1995) 35 Cal.App.4th 946, 979.)

Plaintiff's renewed motion to compel a further response to FI No. 15.1 is GRANTED.

Plaintiff's motion for issue or evidentiary sanctions is DENIED WITHOUT PREJUDICE.

Plaintiff's motion to compel a further response to FI No. 17.1 is DENIED as MOOT.

Ly's request for monetary sanctions is DENIED.

Plaintiff's request for monetary sanctions is GRANTED. Ly shall pay \$240 to Plaintiff within 20 calendar days of this Order.

DATED:

HON. SOCRATES PETER MANOUKIAN

Judge of the Superior Court

County of Santa Clara

- 00000 -

**SUPERIOR COURT, STATE OF
CALIFORNIA
COUNTY OF SANTA CLARA
DEPARTMENT 7**

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MONTANA v. SAVVIS, INC., et al.

Date: 16 January 2009

Time: 10:00 a.m.

Case No.: 1-08-CV-105952

Line Number: 10

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 7 in the Downtown Superior Courthouse, 3rd Floor, 191 North First Street, San Jose. Any party opposing the tentative ruling must call Department 7 at 408.882.2170 and the opposing party no later than 4:00 PM on Thursday 15 January 2009. Please be specific about the nature of the objection. If you use the email notice protocol, please send a copy to all counsel.

The motion of defendants Savvis, Inc. ("Savvis") and Tim Caulfield ("Caulfield") (collectively, "Defendants") to compel further responses from plaintiff Christine Montana ("Plaintiff") to written discovery, the motion of Plaintiff for a protective order, and requests for sanctions, came on regularly for hearing before the Honorable Socrates Peter Manoukian on 16 January 2009 at 10:00 a.m. in Department 7. The matters having been submitted, the Court finds and orders as follows:

BACKGROUND

Plaintiff, a 59 year old Hispanic female, was employed by Savvis as vice president, and Caulfield was Plaintiff's supervisor. In February 2005, she received a sexual harassment complaint from a former employee against Caulfield, and subsequently received further information that 5 or 6 women claimed they were sexually harassed by Caulfield. Plaintiff reported this information to the vice president of human resources. In March 2005, Caulfield began criticizing Plaintiff's work, allegedly because Plaintiff had reported the complaints of sexual harassment against Caulfield. On 6 November 2006, Caulfield informed Plaintiff that he was considering reorganizing the overall structure of Plaintiff's team and his department. On 10 November 2006, Plaintiff was informed that her position had been eliminated, and that she had 90 days to find a new position within Savvis. Defendants also promised to help her find employment. On 14 November 2006, Plaintiff confronted Caulfield, asserting that her track record showed outstanding performance and that Caulfield was discriminating against her in retaliation for reporting the sexual harassment charges. Caulfield allegedly screamed at Plaintiff, claiming that he did not know what Plaintiff was saying.

Plaintiff was eventually unsuccessful in finding other employment within Savvis, and believes there was at least one position available, but this job went to a younger, less qualified, non-Hispanic person. Upon her termination, Plaintiff alleges she was deprived of many benefits that were due to her. Plaintiff believes she was terminated because her race, national origin, disability, and/or age, and because she complained about the discrimination and sexual harassment.

Plaintiff sues Defendants for the following causes of action: racial discrimination; national origin discrimination; age discrimination; failure to prevent discrimination and/or harassment; retaliation; wrongful termination in violation of public policy; violation of Labor Code sections 203 and 227.3, et seq.; conversion; violation of Civil Code sections 1572, 1709-1710; intentional infliction of emotional distress; and violation of Business and Professions code section 17200, et seq.

DISCOVERY DISPUTE

I. Facts Relevant to Defendants' Motion to Compel Further Responses

On 29 April 2008, Defendants served Savvis' first set of Form Interrogatories ("FI") and Requests for Production of Documents ("RPD").²⁵ Responses were due on 2 June 2008.

On 19 June 2008, Defendants' counsel called Plaintiff's counsel to inquire about the status of Plaintiff's responses, and Plaintiff's counsel did not explain why Plaintiff's responses were late or ask for any extension of time to respond.²⁶ The parties discussed scheduling Plaintiff's deposition for 16 July 2008, and Defendants' counsel informed Plaintiff's counsel that it was important that Plaintiff provide substantive responses to the written discovery before the deposition. Plaintiff's counsel assured Defendants' counsel that Plaintiff would serve responses before the deposition.

On 27 June 2008, Plaintiff served her responses on Defendants, which consisted entirely of objections.²⁷ Plaintiff did not produce any documents.

The parties informed the Court that they agreed to resolve the case informally, and engaged in settlement negotiations.²⁸ The parties decided to continue with Plaintiff's deposition without her discovery responses or documents, intending to keep the deposition open until she fully and completely responded to the discovery requests.²⁹

On 14 July 2008, Plaintiff's counsel informed Defendants' counsel that Plaintiff would not be available for deposition, as scheduled.³⁰ The parties agreed to continue the deposition until 29 July 2008.

On 21 July 2008, Defendants' counsel sent a letter to Plaintiff's counsel regarding Plaintiff's deficient responses, and offered an extension of the deadline to file a motion to compel to allow Plaintiff time to supplement her initial responses.³¹ Defendants' counsel requested supplemental responses and production of documents by 25 July 2008.

On 29 July 2008, Plaintiff was deposed.³² Defendants contend that Plaintiff's counsel lodged many objections and instructed Plaintiff not to answer numerous times.

On 7 August 2008, Plaintiff served unverified supplemental responses and produced approximately 400 pages of documents.³³ Defendants assert that Plaintiff's responses were still deficient.

On 22 August 2008, Defendants' counsel sent Plaintiff's counsel a letter addressing the deficiencies in Plaintiff's supplemental responses, requesting further responses by 26 August 2008.³⁴ Defendants claim Plaintiff did not respond to this letter.

On 9 September 2008, Defendants' counsel informed Plaintiff's counsel of Savvis' intent to file a motion to compel on 12 September 2008.³⁵ Plaintiff's counsel indicated that Plaintiff's position had not changed.

On 12 September 2008, Plaintiff agreed to supplement her responses, and Defendants, in reliance, delayed filing this motion.³⁶

²⁵ Declaration of H. Sager in Support of Defendants' Motion, ¶3.

²⁶ *Id.* at ¶4.

²⁷ *Id.* at ¶5.

²⁸ *Id.* at ¶6.

²⁹ *Id.* at ¶7.

³⁰ *Id.* at ¶8.

³¹ *Id.* at ¶9 and Exh. 1.

³² *Id.* at ¶10.

³³ *Id.* at ¶11.

³⁴ *Id.* at ¶12 and Exh. 2.

³⁵ *Id.* at ¶13 and Exhs. 3-4.

³⁶ *Id.* at ¶14.

On 15 September 2008, Plaintiff agreed that (1) she would provide verified responses to the FI; (2) she would provide a yes/no response to the question of whether Plaintiff has any potential preexisting conditions, and provide specific information regarding Plaintiff's prior treatments for emotional distress-type conditions/symptoms from 1 year prior to her employment with Savvis; and (3) she would supplement these responses by 29 September 2008.³⁷

On 10 October 2008, Plaintiff belatedly served her supplemental responses, which were unverified until 27 October 2008.³⁸

Between 17 October 2008 and 27 October 2008, the parties met and conferred, and Plaintiff's counsel stated that Plaintiff would supplement her responses.³⁹

On 29 October 2008, Defendants' counsel asked Plaintiff's counsel when Plaintiff planned on supplementing her responses, and requested supplemental responses by 1 November 2008.⁴⁰ Defendants assert that Plaintiff has not responded to this letter.

On 10 November 2008, Defendants' counsel called Plaintiff's counsel, informing Plaintiff that Savvis would be filing a motion to compel, and the hearing was set for 19 December 2008.⁴¹

The hearing for the motion was subsequently continued to 16 January 2009.

Defendants request an order compelling Plaintiff to provide further responses to written discovery propounded by Savvis. Specifically, Defendants request an order compelling further responses to FI Nos. 8.8, 10.1-10.2, 210.3-210.4, 212.4-212.5, and 213.1-213.2, and RPD Nos. 5, 10, 25-26, and 44. Defendants argue that (1) Plaintiff's responses are evasive, incomplete, and adequate; and (2) Plaintiff continues to withhold information regarding her alleged physical and mental condition, her estimated damages, and her efforts to mitigate these damages. Defendants request \$2,615.00 in monetary sanctions against Plaintiff's counsel.

Plaintiff does not provide any opposition to this motion.⁴²

II. Facts Relevant to Plaintiff's Motion for Protective Order

On 9 September 2008, the parties exchanged emails, and Plaintiff's counsel indicated Plaintiff's intent to depose former Savvis employees Jonathan Crane ("Crane"), Lori Foster, and Peggy Hohl ("Hohl").⁴³

On 1 October 2008, Defendants offered expedited deposition dates of 23 October 2008 for Crane and 30 October 2008 for Hohl in St. Louis, Missouri ("St. Louis").⁴⁴

On 10 October 2008, Defendants' counsel asked Plaintiff's counsel if the proposed dates for Crane's and Hohl's depositions were acceptable, and Plaintiff's counsel indicated that Plaintiff would respond by 11 October 2008.⁴⁵

On 12 October 2008, Defendants' counsel informed Plaintiff's counsel that Crane and Hohl could no longer hold the proposed dates open, having not received any confirmation from Plaintiff.⁴⁶ Defendants' counsel indicated their willingness to reschedule the depositions for November.

³⁷ *Id.* at ¶14 and Exh. 5.

³⁸ *Id.* at ¶15.

³⁹ *Id.* at ¶16 and Exh. 6.

⁴⁰ *Id.* at ¶17 and Exh. 7.

⁴¹ *Id.* at ¶18 and Exh. 8.

⁴² "The failure to file a written opposition or to appear at a hearing or the voluntary provision of discovery shall not be deemed an admission that the motion was proper or that sanctions should be awarded." (CRC 1.030(b).)

⁴³ Declaration of Heather M. Sager in Support of Defendants' Opposition ("Sager Decl."), ¶12 and Exh. 1.

⁴⁴ *Id.* at ¶13 and Exh. 2.

⁴⁵ *Id.* at ¶14.

⁴⁶ *Id.* at ¶15.

On 13 October 2008, Plaintiff's counsel indicated that Plaintiff was entitled to schedule the depositions on back-to-back days, to which Defendants' counsel responded by stating they would make every effort to schedule the deposition dates closer in time.⁴⁷ Defendants disagreed that Plaintiff was entitled to schedule the depositions on consecutive days.

On 29 October 2008, Plaintiff's counsel sent Defendants' counsel Plaintiff's list of intended deponents: John Knoblich ("Knoblich"); Crane; Joe Deney ("Deney"); Hohl; Tawna Henslick ("Henslick"); and Mary Ann Altergott ("Altergott") ("the Deponents").⁴⁸

Defendants subsequently contacted the Deponents regarding their availability, and sent a proposed schedule to Plaintiff's counsel on 7 November 2008.⁴⁹ Knoblich is located in St. Louis and was available on 27 November 2008; Deney is located in St. Louis and was available on 7 January 2009; Henslick is located in St. Louis and was available on 9 January 2009; Crane is located in New Hampshire and is available on 16 January 2009; Hohl is located in St. Louis and will be available on 20 January 2009; and Altergott is located in St. Louis and will be available on 27 January 2009.

Between 7 November 2008 and 17 November 2008, the parties met and conferred regarding the scheduling of the Deponents for deposition by Plaintiff's counsel.⁵⁰ The parties were unable to reach any agreement.

Plaintiff requests a protective order for the depositions of the Deponents to be scheduled consecutively back-to-back. Plaintiff argues that Defendants are forcing Plaintiff's counsel, who is located in Los Angeles, to depose the out-of-state Deponents on different days and months, which is unduly burdensome and costly to Plaintiff. Plaintiff requests \$2,000.00 in monetary sanctions against Savvis and its counsel.

Defendants argue that (1) Plaintiff has not provided any legitimate legal or factual basis for her protective order; (2) rescheduling the depositions would cause Savvis to incur significant expenses and disruption to its business, as well as disruption to the Deponent's work and personal schedules; (3) rescheduling the depositions would disrupt Defendants' counsel's litigation schedule and professional responsibilities; and (4) sanctions against Defendants are not warranted. Defendants request \$2,820.00 in monetary sanctions against Plaintiff's counsel.

DISCUSSION

I. Defendants' Motion to Compel Further Responses

If a party demanding a response to a document request or interrogatory deems: (1) a statement of compliance with the demand or an answer to a particular interrogatory is incomplete; (2) a representation of inability to comply is inadequate, incomplete, or evasive; or (3) an objection in the response or an interrogatory is without merit or too general, that party may move for an order compelling further response to the demand. (Code of Civ. Proc. ("CCP") §§ 2030.300, 2031.310-320.)

The motion is unopposed. Thus, Defendants' motion to compel further responses is GRANTED. Plaintiff shall serve verified, code-compliant responses to FI Nos. 8.8, 10.1-10.2, 210.3-210.4, 212.4-212.5, and 213.1-213.2, and RPD Nos. 5, 10, 25-26, and 44 without objections and produce all responsive documents within 20 calendar days of this order.

II. Plaintiff's Motion for Protective Order

For "good cause shown," the Court can make whatever orders are appropriate to control the deposition proceedings and protect any party from "unwarranted annoyance, embarrassment or oppression, or undue burden and expense." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) ("Weil & Brown") at ¶¶8:642, 8:875, citing CCP § 2025.420.) The Court may order that the deposition "be taken at a different time." (CCP § 2025.420(b)(2).)

⁴⁷ *Id.* at ¶6 and Exh. 3.

⁴⁸ *Id.* at ¶7 and Exh. 4.

⁴⁹ *Id.* at ¶8.

⁵⁰ Declaration of Elizabeth C. Bendana in Support of Plaintiff's Motion, ¶¶8-10 and Exhs. B-D.

"The motion for protective order must be accompanied by a declaration stating facts showing a 'reasonable and good faith attempt' to resolve the matter outside court." (Weil & Brown, *supra*, at ¶18:688, citing CCP § 2025.420(a).) The moving party has the burden of establishing "good cause" for the requested relief, which requires a showing that "the burden, expense, or intrusiveness involved in ... [the discovery procedure] clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." (*Id.* at ¶18:689, citing *Emerson Electric Co. v. Super. Ct.* (1997) 16 Cal.4th 1101, 1110.)

Good Cause⁵¹

Plaintiff asserts there is good cause for the protective order, as the current deposition schedule would require Plaintiff to fly back and forth from Los Angeles to St. Louis and New Hampshire 12 times to depose the Deponents. Plaintiff contends that Defendants refuse to reschedule the depositions consecutively around same time frame to curb any unnecessary burden and expense on Plaintiff.

Defendants argue that Plaintiff has failed to provide any legal basis for compelling 6 consecutive days of depositions. Defendants further contend that Plaintiff has failed to provide facts to support her claims of burden and expense. Defendants assert that they will incur the same types and amounts of expenses that Plaintiff will incur, as they would have to take the same number of flights from San Francisco and spend the same amount of time in deposition. Moreover, Defendants contend that allowing the protective order would be burdensome on Savvis and the Deponents, as Deney, Knoblich, and Altergott are high-level employees of Savvis with management responsibilities and demanding schedules. Defendants' counsel also indicates that he is the only one authorized to cover high-level depositions for Savvis, and testifies that his schedule is limited, as his trial schedule in spring of 2009 would not allow him to be out of the office for 6 consecutive days.⁵²

While there is no authority that expressly requires a deposition to be completed on consecutive dates, the Court is empowered to protect a deponent from unwarranted annoyance or oppression. However, it is Plaintiff's burden to demonstrate good cause for issuance of a protective order. Plaintiff fails to meet this burden. Plaintiff has not cited any factual details to support a finding that allowing a deposition to take place on non-consecutive days would be unduly burdensome and costly. Plaintiff's conclusory assertion that the Court should intercede to prevent undue expense and burden, unsupported by any facts, is insufficient to demonstrate good cause.

Conclusion

As Plaintiff has failed to establish good cause for the protective order, Plaintiff's motion for a protective order is DENIED. The parties are ordered to meet and confer to find a mutually agreeable deposition schedule that meets both parties' needs and schedules.

III. Sanctions

In connection with their motion to compel, Defendants request \$2,615.00 in monetary sanctions against Plaintiff's counsel, pursuant to CCP section 2023.010. The motion is unopposed. Under CRC 3.1030(a), the Court may award sanctions in favor of a party who files an unopposed motion to compel discovery.

Defendants' counsel testifies that he spent 4.0 hours at \$295.00 per hour preparing the motion and conferring with Plaintiff's counsel, and his associate spent 7.0 hours at \$205.00 per hour preparing the motion. The Court does not award sanctions for meeting and conferring, as the parties are already obligated to meet and confer. The Court also finds the sanctions requested excessive, given the straightforward issues involved. Defendants shall be awarded \$900.00 in monetary sanctions.

Thus, Defendants' request for monetary sanctions in connection with their motion to compel is GRANTED. Plaintiff's counsel shall pay Defendants \$900.00 within 20 calendar days of this order.

In connection with her motion for protective order, Plaintiff requests \$2,000.00 in monetary sanctions against Savvis and its counsel. In connection with their opposition to Plaintiff's motion for protective order, Defendants

⁵¹ Defendants do not assert that Plaintiff failed to meet and confer. Thus, the Court finds that Plaintiff adequately met and conferred.

⁵² Sager Decl., ¶113.

request \$2,820.00 in monetary sanctions against Plaintiff's counsel. Both parties seek sanctions pursuant to CCP sections 2023.010 and 2025.420. CCP section 2025.420 requires the court to sanction the losing party to a motion for protective order, unless that party acted with substantial justification. As Defendants prevailed on this motion, Defendants are entitled to monetary sanctions. With respect to sanctions pursuant to CCP section 2023.010, the Court does not find that either party misused the discovery process. Thus, sanctions pursuant to this section are not warranted, and Plaintiff's request for monetary sanctions is DENIED.

Defendants' counsel testifies that he spent 4.0 hours at \$295.00 per hour preparing the motion and conferring with Plaintiff's counsel, and his associate spent 7.0 hours at \$205.00 per hour preparing the motion. The Court does not award sanctions for meeting and conferring, as the parties are already obligated to meet and confer. The Court also finds the sanctions requested excessive, given the straightforward issues involved. Defendants shall be awarded \$700.00 in monetary sanctions.

Thus, Defendants' request for monetary sanctions in connection with their opposition to Plaintiff's motion for protective order is GRANTED. Plaintiff's counsel shall pay Defendants \$700.00 within 20 calendar days of this order.

CONCLUSION

Defendants' motion to compel further responses is GRANTED. Plaintiff shall serve verified, code-compliant responses to FI Nos. 8.8, 10.1-10.2, 210.3-210.4, 212.4-212.5, and 213.1-213.2, and RPD Nos. 5, 10, 25-26, and 44 without objections and produce all responsive documents within 20 calendar days of this order.

Defendants' request for monetary sanctions in connection with their motion to compel is GRANTED. Plaintiff's counsel shall pay Defendants \$900.00 within 20 calendar days of this order.

Plaintiff's motion for a protective order is DENIED. The parties are ordered to meet and confer to find a mutually agreeable deposition schedule that meets both parties' needs and schedules.

Plaintiff's request for monetary sanctions in connection with her motion for protective order is DENIED.

Defendants' request for monetary sanctions in connection with their opposition to Plaintiff's motion for protective order is GRANTED. Plaintiff's counsel shall pay Defendants \$700.00 within 20 calendar days of this order.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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**SUPERIOR COURT, STATE OF
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AL V., INC. v. COTE, et al.

Date: 16 January 2009

Time: 10:00 a.m.

Case No.: 1-08-CV-107077

Line Number: 11

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 7 in the Downtown Superior Courthouse, 3rd Floor, 191 North First Street, San Jose. Any party opposing the tentative ruling must call Department 7 at 408.882.2170 and the opposing party no later than 4:00 PM on Thursday 15 January 2009. Please be specific about the nature of the objection. If you use the email notice protocol, please send a copy to all counsel.

The motion of plaintiff Al V., Inc. ("Plaintiff") to compel defendants Hollings Cartaway Hunger Relief Organization, Inc., Gilroy Aviation Sciences, Technology & Alternative Energy Investment Fund, Inc., and Gilroy Independence Hanna Square Homeowners Association (collectively, "Defendants") to comply with a prior court order compelling responses to Special Interrogatories ("SI") and Requests for Production of Documents ("RPD"), and request for monetary and issue sanctions came on regularly for hearing before the Honorable Socrates Peter Manoukian on 16 January 2009 at 10:00 a.m. in Department 7. The matter having been submitted, the Court finds and orders as follows:

BACKGROUND

In February 2007, Plaintiff was solicited by defendant Christopher M. Cote ("Cote") to construct an 18-unit subdivision ("Project") as general contractor. Plaintiff commenced working on the Project. In December 2007, Defendants stopped paying Plaintiff. Plaintiff claims Cote and Defendants misrepresented the financing of the Project and misappropriated the construction funds. Plaintiff sued for fraud, rescission, breach of contract, declaratory relief, foreclosure of lien, libel and slander, and various common counts.

DISCOVERY DISPUTE

On 19 June 2008, Plaintiff served Defendants with its first set of SI, RPD, and Requests for Admissions ("RFA").⁵³ Defendants failed to serve responses, and Plaintiff filed a motion to compel.

On 12 September 2008, the Court granted Plaintiff's motion to compel, and ordered Defendants to serve discovery responses by 2 October 2008.⁵⁴ The Court deemed all objections waived and the RFA admitted.

On 3 October 2008, Plaintiff received Defendants' responses to Plaintiff's SI and RPD.⁵⁵

On 17 October 2008, Plaintiff's counsel sent a letter to Defendants' counsel, regarding the deficiencies in Defendants' responses.⁵⁶

On 24 October 2008, Defendants served Plaintiff with supplemental responses.⁵⁷

⁵³ Declaration of Christine O. Breen in Support of Plaintiff's Motion, ¶2.

⁵⁴ *Id.* at ¶3.

⁵⁵ *Id.* at ¶4 and Exh. A.

⁵⁶ *Id.* at ¶5 and Exh. B.

⁵⁷ *Id.* at ¶6.

On 11 November 2008, Plaintiff's counsel advised Defendants' counsel that Plaintiff intended to file a motion to compel further responses.⁵⁸

On 22 December 2008, Defendants' counsel sent a letter to Plaintiff's counsel, asserting that Plaintiff failed to meet and confer.⁵⁹

Plaintiff requests an order compelling Defendants to comply with the Court's prior order compelling responses to SI and RPD, and order Defendants to provide further responses and produce all responsive documents. Plaintiff argues that it has good cause for the requested discovery, as Defendants' responses are deficient. Plaintiff seeks \$1,125.00 in monetary sanctions against Defendants and their counsel, as well as issue sanctions.

Defendants argue that (1) Plaintiff has failed to meet and confer; (2) all of Defendants' records were either stolen or damaged beyond recognition; (3) Defendants have diligently searched for the discovery requested and have produced everything found; and (4) most of the records are in the possession of defendant United American Bank ("UAB") or Plaintiff, and therefore there are alternative sources for the information sought. Defendants seek sanctions against Plaintiff and its counsel.

DISCUSSION

I. Motion to Compel Further Responses

If a party demanding a response to a document request or interrogatory deems: (1) a statement of compliance with the demand or an answer to a particular interrogatory is incomplete; (2) a representation of inability to comply is inadequate, incomplete, or evasive; or (3) an objection in the response or an interrogatory is without merit or too general, that party may move for an order compelling further response to the demand. (Code of Civ. Proc. ("CCP") §§ 2030.300, 2031.310-320.)

Regarding interrogatories, if a timely motion is filed, the burden is on the responding party to justify any objection or failure to fully answer the interrogatories. (*Coy v. Super. Ct.* (1962) 58 Cal.2d 210, 220-221.) In ruling on the motion, the Court may consider various factors, including: (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. Super. Ct.* (1968) 263 Cal.App.2d 12, 19; CCP § 2030; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2007) ("Weil & Brown") at ¶8:1181.)

Regarding requests for production of documents, "[t]he motion for order compelling further responses shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand." (*Id.* at ¶8:1495, citing CCP § 2031.310, *Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) "To establish 'good cause,' the burden is on the moving party to show both (1) relevance to the subject matter (e.g. how the information in the documents would tend to prove or disprove some issue in the case); and (2) specific facts justifying discovery (e.g. why such information is necessary for trial preparation or to prevent surprise at trial). The fact that there is no alternative source for the information sought is an important factor in establishing 'good cause' for inspection. But it is not essential in every case." (*Id.* at ¶8:1495.6.)

"If 'good cause' is shown by the moving party, the burden is then on the responding party to justify any objections made to document disclosure." (*Id.* at ¶8:1496, citing *Kirkland, supra*, 95 Cal.App.4th at 98.) In *Kirkland*, the court held that, "absent 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, supra*, 95 Cal.App.4th at 98.)

Meet and Confer

Defendants assert that Plaintiff failed to meet and confer. After examining the correspondence between the parties, the Court finds the parties did engage in reasonable and good faith attempts at informal resolution. Both

⁵⁸ *Id.* at ¶7 and Exh. C.

⁵⁹ Declaration of Charles J. Naegele in Support of Defendants' Opposition, ¶12 and Exh. A.

parties have sent correspondence to each other and responded to such correspondence. They have presented their respective arguments, and have attempted to reach an agreement, but have not been successful. Thus, the Court finds the parties adequately met and conferred.

Substantive Responses⁶⁰

1. Inability to Find Documents Due to Break-In

For SI Nos. 1-10 and RPD Nos. 1-25, Defendants respond with a paragraph describing the recent break-in of Cote's home resulting in document damage and loss. Defendants assert that they have made a diligent search and reasonable inquiry in an effort to comply with the discovery requests, and believe that the responsive documents are lost, misplaced, or stolen. Defendants claim that they do not know of any other party with the information, other than Plaintiff or UAB, and cannot locate the documents. Defendants state that they will diligently search and produce them, if and when they are located.

a. SI

With respect to the SI, each response "must be 'as *complete* and *straightforward* as the information reasonably available to the responding party permits.... [i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible.'" (Weil & Brown, *supra*, at ¶8:1047, citing CCP § 2030.200(a) & (b) [emphasis in original].) Defendants' statements of inability to comply is neither a valid objection excusing a response,⁶¹ nor a valid substantive response to the SI.

b. RPD

With respect to the RPD, this paragraph is a statement of inability to comply. A statement that the party lacks the ability to comply with the particular demand must state: (1) that a diligent search and reasonable inquiry has been made in an effort to locate the item demanded; and (2) the reason the party is unable to comply. (Weil & Brown, *supra*, at ¶8:1473, citing CCP § 2031.230.) If the reason the party is unable to comply is because the document is not in their possession, custody, or control, the response must state the name and address of anyone believed to have the document. (*Id.*)

Defendants state that, after a diligent search and reasonable inquiry, the responsive documents are lost, misplaced, or stolen, which, alone, is a code-compliant response to RPD Nos. 1-25. However, Defendants also state that possibly Plaintiff or UAB have possession of the documents, and argue in their opposition that Defendants believe "99.9% of the records that Plaintiff seeks are in the possession of ... [UAB], or Plaintiff... or one of [Plaintiff's] subcontractors." Thus, Defendants also indicate that the documents are not in their possession, custody, or control, and must state the name and address of anyone believed to have the document. While Defendants name Plaintiff and UAB in their responses, Defendants fail to include the names of Plaintiff's subcontractors, or the addresses of Plaintiff, UAB, and Plaintiff's subcontractors. Thus, the Court finds Defendants' responses to RPD Nos. 1-25 are not code-compliant. Plaintiff's motion to compel further responses to the RPD is GRANTED.

2. SI

a. Substantive Response

In addition to the above paragraph describing Defendants' inability to find documents due to a break-in of Cote's home, Defendants provide substantive responses to SI Nos. 1-5. SI Nos. 1 and 4 request the total amounts paid for construction of the Project and the amount paid for each parcel of real property on which the Project is located. Defendants provide estimated amounts paid, which the Court finds are code-compliant responses to these SI. Thus, Plaintiff's motion to compel further responses to SI Nos. 1 and 4 is DENIED.

SI Nos. 2-3 and 5 request (1) the identities and contact information of those Defendants that were paid money for the Project; (2) the amount of money paid to each person or entity; and (3) the encumbrances on each parcel of

⁶⁰ Defendants do not argue that Plaintiff has failed to establish good cause for the RPD. Thus, the Court finds that Plaintiff has established good cause for the RPD.

⁶¹ Even if it is a valid objection, the Court has deemed all objections waived.

real property on which the Project is located, including the name of person/entity encumbering the parcel and amount of the encumbrance. Defendants respond by stating it paid Plaintiff for the Project, except for indirect construction activities, and provides the amounts paid. Defendants fail to provide contact information for those who were paid money and failed to indicate exactly who it paid for indirect construction activities. With regard to the encumbrances, Defendants break down the amounts of each encumbrance, but fail to include the identities of all persons or entities encumbering the parcels. Thus, the Court finds these responses are not code-compliant. Plaintiff's motion to compel further responses to SI Nos. 2-3 and 5 is GRANTED.

b. No Response

For SI Nos. 6-10, Defendants do not provide any substantive responses beyond the paragraph explaining their inability to find documents. For SI Nos. 17 and 19, Defendants fail to provide any response. The Court finds these responses are not code-compliant, and Plaintiff's motion to compel further responses to SI Nos. 6-10, 17, and 19 is GRANTED.

Conclusion

Plaintiff's motion to compel SI Nos. 1 and 4 is DENIED. Plaintiff's motion to compel SI Nos. 2-3, 5-10, 17, and 19 and RPD Nos. 1-25 is GRANTED. Defendants shall provide verified, code-compliant further responses without objections to SI Nos. 2-3, 5-10, 17, and 19 and RPD Nos. 1-25 within 20 calendar days of this order.

II. Sanctions

Pursuant to CCP section 2023.030, Plaintiff seeks issue sanctions against Defendants.⁶² The Court may impose issue sanctions, ordering that designated facts be taken as established. (CCP § 2023.030(b).) Plaintiff requests issue sanctions, but does not provide any details as to what facts it requests be taken as established. Without further details as to what types of issue sanctions are requested, the Court is unable to evaluate Plaintiff's request. Thus, Plaintiff's request for issue sanctions is DENIED.

Pursuant to CCP sections 2023.030 and 2031.310, Plaintiff also seeks \$1,125.00 in monetary sanctions against Defendants and their counsel. CCP section 2031.310 requires the Court to sanction the losing party to a motion to compel further responses, unless that party acted with substantial justification. As Plaintiff substantially prevailed on its motion to compel further responses, sanctions pursuant to CCP section 2031.310 are warranted.

Plaintiff's counsel testifies that she spent 5.0 hours at \$225.00 per hour preparing this motion. Plaintiff's request for monetary sanctions is GRANTED. Plaintiff shall be awarded \$1,125.00 in monetary sanctions. Defendants and their counsel shall pay Plaintiff \$450.00 in monetary sanctions within 20 calendar days.

Defendants seek sanctions against Plaintiff and its counsel, but fails to identify the type of sanctions requested, and does not provide any supporting declaration for the requested sanctions. (See Weil & Brown, *supra*, at ¶¶8:867, 8:1194, 8:1196, citing CCP § 2023.040.) Thus, Defendants' request for sanctions is not code-compliant and is DENIED.

CONCLUSION

Plaintiff's motion to compel SI Nos. 1 and 4 is DENIED. Plaintiff's motion to compel SI Nos. 2-3, 5-10, 17, and 19 and RPD Nos. 1-25 is GRANTED. Defendants shall provide verified, code-compliant further responses without objections to SI Nos. 2-3, 5-10, 17, and 19 and RPD Nos. 1-25 within 20 calendar days of this order.

Plaintiff's requests for non-monetary sanctions are DENIED.

⁶² Plaintiff improperly requests terminating sanctions in its memorandum of points and authorities, without having requested it in its notice of motion. (Weil & Brown, *supra*, at ¶¶8:867, 8:1194, citing CCP § 2023.040.) Thus, Plaintiff's request for terminating sanctions is DENIED.

Plaintiff's request for monetary sanctions is GRANTED. Defendants and their counsel shall pay Plaintiff \$1,125.00 in monetary sanctions within 20 calendar days.

Defendants' request for sanctions is DENIED.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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