

TENTATIVE RULINGS

FOR: May 8, 2019

The Court may exercise its discretion to **disregard** a late filed paper in law and motion matters. (Cal. Rules of Court, rule 3.1300(d).)

Unlawful Detainer Cases – Pursuant to the restrictions in Code of Civil Procedure section 1161.2, no tentative rulings are posted for unlawful detainer cases and appearances are required.

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

In the Matter of The Scruggs Family Irrevocable Trust created by John Scruggs June 23, 2014 and settlement, mediation agreement Dated May 14, 2015

17PR000190

ACCOUNTING

APPEARANCE REQUIRED: At the January 11, 2019 hearing, Mr. Armstead indicated he would need additional time to prepare the accountings depending on the outcome of the court’s ruling on his Second Amended Petition for Instructions. The Court issued an Order ruling on the Second Amended Petition for Instructions on February 2, 2019. No new accounting has been filed. The parties are therefore directed to appear and advise the Court on the status of the preparation of accountings.

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Conservatorship of Zerah Carlisle

18PR000278

AMENDED PETITION FOR APPOINTMENT OF PROBATE CONSERVATOR OF THE PERSON AND ESTATE – LIMITED CONSERVATORSHIP

APPEARANCE REQUIRED

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Vannessa Scott-Allen v. KRM, Inc., et al.

16CV000854

(1) DEFENDANTS’ MOTION TO COMPEL DISCOVERY RESPONSES TO FRENCH LAUNDRY PARTNERS, L.P., FORM INTERROGATORIES – GENERAL (SET ONE), FORM INTERROGATORIES – EMPLOYMENT (SET ONE), AND SPECIAL INTERROGATORIES (SET ONE)

TENTATIVE RULING: Defendants French Laundry Partners, L.P. (dba the French Laundry) (FLP), TKNYC LLC (dba Per Se Restaurant), French Laundry Restaurant Corporation, KRM, Inc., Michael Minnillo, and Thomas Keller move to compel further responses to FLP’s form interrogatories (FI) – general (set one) numbers 2.5, 8.4, 8.6-8.8, 9.1-9.2, 10.2, 12.2-12.3 and 50.1-50.6, FI – employment (set one) numbers 200.4, 201.1-201.2, 204.3, 210.2-210.4, 210.6, and 212.2-212.3, and special interrogatories (SI) (set one) numbers 4-14, 16-21, 23-25, and 27-28.¹ Plaintiff Vannessa Scott-Allen opposes.

A. Separate Statement

Motions to compel further responses to interrogatories require the filing of a separate statement. (Cal. Rules of Court, rule 3.1345(a)(2).) A separate statement must include: (1) the text of each interrogatory, (2) the text of each answer and/or objection, and any further responses or answers, and (3) a statement of the factual and legal reasons for compelling further responses. (*Id.*, rule 3.1345(c).) The separate statement must provide “all the information necessary to understand each discovery request and all the responses to it that are at issue,” and be “full and complete so that no person is required to review any other document in order to determine the full request and the full response.” (*Id.*)

Defendants’ separate statement is not code-compliant as to FI (general) numbers 8.4, 8.6-8.8, 9.1-9.2, 10.2, 12.2, FI (employment) number 210.3, and SI number 16. The separate statement either fails to include the text of the interrogatories, omits the reason for compelling a further response, omits plaintiff’s amended response, and/or includes the wrong response. It is not the Court’s roll to flip through multiple exhibits to cross-reference numerous requests due to poor drafting of the separate statement. The motion as to these interrogatories, therefore, will be denied based on a deficient separate statement. (See *Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894 [the court has the discretion to deny a motion for a deficient separate statement].)

The Court, on its own motion, strikes the amended separate statement defendants filed on May 1, 2019. The amended separate statement violates the notice requirements contained in Code of Civil Procedure sections 1005, subdivision (b), and 1010. Plaintiff has been prejudiced by the filing of the amended separate statement as she based a portion of her opposition on the fact the original separate statement was deficient. Moreover, the separate statement was poorly drafted and even a quick review after the motion was filed would have revealed the deficiencies.

¹ SI number 15 was not contained in the notice of motion. To the extent defendant seeks a further response as this interrogatory, the motion is denied.

Certainly, when plaintiff filed her opposition on April 25, based in part of the deficient separate statement, defendants could have immediately sought to address the problems identified. They did not. They instead chose to wait, and did not seek any relief from the court before filing.

B. The Discovery Requests

As to the remaining discovery requests, defendants seek further responses as to FI (general) numbers 2.5, 12.3 and 50.1-50.6, FI (employment) numbers 200.4, 201.1-201.2, 204.3, 210.2, 210.4, 210.6, and 212.2-212.3, and SI numbers 4-14, 17-21, 23-25, and 27-28. A party may move to compel further responses to written interrogatories if it deems that the party's responses are incomplete or evasive, or objections lack merit. (Code Civ. Proc., § 2030.300, subd. (a)(1), (a)(3).)

1. Objections

a. General Objections

Generally, a party asserting objections to discovery requests must justify or defend the objections or the objections will be overruled. (*Fairmont Ins. Co. v. Super. Ct.* (2000) 22 Cal.4th 245, 254.) In her responses to the discovery requests, plaintiff raised several objections. Because plaintiff did not defend her objections in her opposition except for the arguments detailed below, all the other objections are not substantiated, and thus are overruled. (*Id.*) However, plaintiff does preserve the attorney-client privilege and work product doctrine merely by asserting them. (*Korea Data Systems Co. v. Super. Ct.* (1997) 51 Cal.App.4th 1513, 1516; *Best Product, Inc. v. Super. Ct.* (2004) 119 Cal.App.4th 1181, 1188.)

b. Duplicative

Plaintiff objects to SI numbers 17-20, 23-25, and 28 as duplicative of the employment interrogatories. With regard to SI numbers 17, 24-25, and 28, plaintiff did not object on this ground when she served her initial responses. There is no provision for filing subsequent objections. Thus, even where a timely response is made, the responding party cannot later add objections without a court order granting relief from the waiver. (*Stadish v. Super. Ct.* (1999) 71 Cal.App.4th 1130, 1141 [a party whose response fails to set forth a particular ground for objection waives its right to raise that objection later]; see Code Civ. Proc., § 2030.240, subd. (b) [setting forth the statutory obligation to state the "specific ground" for the objection when responding to an interrogatory]; *id.*, § 2030.290, subd. (a) [if a party fails to serve a timely response to an interrogatory, the party waives "any objection"]; see also *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 407; *Scottsdale Ins. Co. v. Sup.Ct.* (1997) 59 Cal.App.4th 263, 273.) The objection is deemed waived. As for SI numbers 18-20 and 23, the requests are not duplicative as they seek additional information beyond what was developed by the Judicial Council in the employment interrogatories. The objection is overruled.

c. Expert Testimony

Plaintiff objects to FI (employment) numbers 210.1-210.2, 210.4-210.6, and 212.2-212.3 and SI numbers 4-14 and 28 on the ground the interrogatories call for expert opinion testimony. These interrogatories request information about plaintiff's alter ego theory, emotional distress claims, and lost income. The Judicial Council developed and specifically approved these FI for general use. They do not call for expert opinion testimony. Nor do the SI. SI number 4, for instance, merely asks plaintiff whether she contends a particular defendant is the alter ego of Thomas Keller. An expert is not needed to answer whether plaintiff is making a certain contention. The objection is overruled.

d. Privacy

Plaintiff objects to FI (general) number 2.5 on the ground of privacy. The interrogatory asks for plaintiff's current address, addresses for the past five years, and the dates she lived at each address. Plaintiff has not established a legally protected privacy interest in her current address or past addresses. (*Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 552-58 [party asserting privacy must establish a legally protected privacy interest, an objectively reasonable expectation of privacy and a threatened intrusion that is serious to be balanced against allegedly legitimate and important countervailing interests in discovery]; *Hill v. Nat'l Collegiate Athletic Ass'n* (1994) 7 Cal.4th 1, 26.) There is no reason why plaintiff could not have provided a code-compliant response to this interrogatory or resolved this issue during the meet-and-confer process. The objection is overruled.

e. Work Product Doctrine

Plaintiff objects to FI (general) number 12.3 because, according to plaintiff, it infringes on the work product doctrine by calling for information about witnesses her counsel may have interviewed. Plaintiff's characterization of the interrogatory is not accurate. The interrogatory asks plaintiff if she has obtained a written or recorded statement from any individual, and if so, to state, *inter alia*, the name, address, and phone number of that individual. Plaintiff represents it is "well-established" in California that this interrogatory infringes upon the work product doctrine, citing *Nacht & Lewis Architects v. Super. Ct.* (1996) 47 Cal.App.4th 214, 217-18, and *Coito v. Super. Ct.* (2012) 54 Cal.4th 480, 494-502. This is a legal misrepresentation.

Coito "significantly limited" *Nacht*: "Because it is not evident that form interrogatory No. 12.3 implicates the policies underlying the work product privilege in all or even most cases, we hold that information responsive to form interrogatory 12.3 is not automatically entitled as a matter of law to absolute or qualified work product privilege. Instead, the interrogatory usually must be answered. However, an objecting party may be entitled to protection if it can make a preliminary or foundational showing that answering the interrogatory would reveal the attorney's tactics, impressions, or evaluation of the case, or would result in opposing counsel taking undue advantage of the attorney's industry or efforts. Upon such a showing, the trial court should then determine, by making an in camera inspection if necessary, whether absolute or qualified work product protection applies to the material in dispute." (*McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 474, quoting *Coito, supra*, 54 Cal.4th at p. 502.) Because plaintiff

has not made a preliminary or foundational showing that answering the interrogatory would reveal her counsel's tactics, impressions, or evaluation of the case, the objection is overruled.

f. Equally Available and "Work Product"

Plaintiff objects to FI (general) numbers 50.1-50.6, FI (employment) numbers 200.4 and 201.1-201.2, and SI numbers 4-14, 17-20, 23, and 27 on the grounds they seek information equally available to defendants and "work product." Plaintiff does not adequately explain why the information requested in the interrogatories are equally available to defendants. The objection is not substantiated and is overruled.

The objection based on "work product" is based on plaintiff's belief her counsel must sift through information. But that is the point of discovery – to sift through information and provide it to the opposing party. Because plaintiff has not made a preliminary or foundational showing that answering the interrogatories would reveal her counsel's tactics, impressions, or evaluation of the case, the objection based on "work product" is overruled. (See *id.*)

g. Relevance

Plaintiff objects to FI (employment) number 204.3 as not relevant because it is intended for use in disability discrimination cases, and she has not brought a disability discrimination action as confirmed in her response to number 204.1. Plaintiff's response to number 204.1, however, is qualified. The interrogatory asks plaintiff to name and describe each disability alleged in the pleadings. Plaintiff responded she did not allege "an actual disability requiring an accommodation" at the time of defendants' discriminatory conduct alleged in the pleading. Plaintiff's qualified response does not clearly state she is not claiming a disability. Indeed, a review of plaintiff's first amended complaint reveals allegations regarding "pregnancy disability." (See First Amended Compl., ¶¶ 71-73, p. 13:23.) Defendants are permitted to explore these allegations with disability interrogatory number 204.3. The objection is overruled.

2. The Remaining Interrogatories

Plaintiff maintains she already has fully responded to the remaining interrogatories consisting of FI (general) numbers 2.5, 12.3 and 50.1-50.6, FI (employment) numbers 200.4, 201.1-201.2, 204.3, 210.2, 210.4, 210.6, and 212.2-212.3, and SI numbers 4-14, 17-21, 23-25, and 27-28. A perusal of the amended responses belies that contention as to most of the interrogatories. Plaintiff did not respond to the sub-parts of FI (general) number 2.5 asking for her address and past addresses. Plaintiff provided no responses other than objections, which have been overruled, as to FI (general) numbers 12.3 and 50.1-50.6, and FI (employment) numbers 200.4, 201.1-201.2, 204.3. Plaintiff's response to FI (employment) number 212.2 is incomplete. SI numbers 4-14, dealing with alter ego, contain a rambling list of objections and excuses for not responding. No answers were provided. Plaintiff is required to provide complete and straight straightforward, non-evasive responses based on personal knowledge or state her lack of personal knowledge. (Code Civ. Proc., §§ 2030.220, 2030.300, subd. (a)(1).) Further responses are warranted.

Plaintiff failed to provide responses as to FI (employment) number 210.6 and SI numbers 17-21, 23-25, 27-28 that do not reference a response to another discovery request. Plaintiff's responses referencing another discovery request are inadequate because each answer must be complete in and of itself. (*Id.*, § 2030.220, subds. (a)-(b).) Defendants are entitled to responses that specifically respond to the interrogatories and provide responsive information. Further responses are warranted.

Regarding FI (employment) numbers 210.2, 210.4, and 212.3, plaintiff provided a detailed response to the total amount of income, benefits, or earning capacity she has lost to date and how the amount was calculated as requested for number 210.2, a response to whether she attempted to minimize the amount of her lost income as requested for number 210.4, and a response to describe her injury, whether her complaints are subsiding or becoming worse, and the frequency of the duration as requested for number 212.3. By failing to tailor their separate statement arguments to any purported deficiencies with these specific interrogatories, defendants have not adequately explained why the responses are inadequate. Further responses are not warranted.

C. Conclusion

Defendants' motion to compel further responses to FLP's FI general (set one) numbers 2.5, 8.4, 8.6-8.8, 9.1-9.2, 10.2, 12.2-12.3 and 50.1-50.6, FI employment (set one) numbers 200.4, 201.1-201.2, 204.3, 210.2-210.4, 210.6, and 212.2-212.3, and SI (set one) numbers 4-14, 16-21, 23-25, and 27-28 is GRANTED IN PART AND DENIED IN PART. The motion is granted as to FI (general) numbers 2.5, 12.3 and 50.1-50.6, FI (employment) numbers 200.4, 201.1-201.2, 204.3, 210.2, 210.6, and 212.2, and SI numbers 4-14, 17-21, 23-25, and 27-28. Plaintiff shall serve verified code-compliant further responses, without objections except those based on the attorney-client privilege and work product doctrine (other than FI (general) numbers 12.3 and 50.1-50.6, FI (employment) numbers 200.4 and 201.1-201.2, and SI numbers 4-14, 17-20, 23, and 27), within 10 calendar days of service of notice of entry of order. The motion is denied as to FI (general) numbers 8.4, 8.6-8.8, 9.1-9.2, 10.2, 12.2, FI (employment) numbers 210.2-210.4, and 212.3, and SI number 16.

Defendants' request for monetary sanctions for bringing their motion is DENIED. A declaration setting forth facts supporting the amount of any monetary sanction sought must accompany the notice of motion. (*Id.*, § 2023.040.) Defendants submit a declaration, but it does not support the monetary sanctions they seek because all time is estimated. (See Dubin Decl., ¶ 16 ["Defendants' counsel estimates that they will spend seven hours preparing this motion, four hours reviewing . . . and two hours appearing at the hearing[.]".]) Monetary sanctions, however, are awarded only for expenses *actually* incurred. (*Tucker v. Pacific Bell Mobile Services* (2010) 186 Cal.App.4th 1548, 1551.) Moreover, the request to impose monetary sanctions against plaintiff's counsel is not code-compliant. Defendants did not cite in the notice of motion the name of the attorney against whom sanctions are being sought. (Code Civ. Proc., §§ 2023.030-2023.040; see Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (Rutter Group 2018) at § 8:2000 ["The notice of motion must contain a request for sanctions and must: . . . *Name all parties and attorneys* against whom sanctions are being sought."].)

(2) PLAINTIFF'S MOTION FOR SANCTIONS RELATED TO DEFENDANTS' REFUSAL TO COMPLY WITH ALTER EGO DISCOVERY

TENTATIVE RULING: Plaintiff Vanessa Scott-Allen's motion against defendants French Laundry Partners, L.P. (dba the French Laundry) (FLP), TKNYC LLC (dba Per Se Restaurant), French Laundry Restaurant Corporation, KRM, Inc., Michael Minnillo, and Thomas Keller for issue sanctions regarding alter ego and for evidentiary sanctions to bar Nicholas Mazzara's testimony is DENIED. Plaintiff represents in her reply that she is no longer seeking these sanctions.

Plaintiff's motion for an issue sanction against defendants because they produced privileged documents bates-labelled KRM000299-KRM059282, but failed to identify the privileged documents by bates number in violation of the Court's January 14, 2019 Order is DENIED. Plaintiff seeks an issue sanction that defendants have waived any claim of privilege with regard to these k-series bates numbered documents under Code of Civil Procedure section 2023.030. (Ntc. at p. 3:8-9.) This code provision authorizes the Court to impose two types of issue sanctions: (1) an order that designated facts shall be taken as established in the action; and (2) an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses. (Code Civ., § 2023.030, subd. (b).) Because plaintiff seeks neither of these code-authorized issue sanctions, the motion necessarily fails.

Moreover, a motion for issue sanctions must be accompanied by a separate statement. (Cal. Rules of Court, rule 3.1345(a)(7).) Plaintiff did not file a separate statement. A separate statement would have been helpful since plaintiff buried additional requests for the issuance of an issue sanction in her memorandum of points and authorities (request to prevent defendants from opposing plaintiff's review or use of the documents on page 12:25) and reply (request that her counsel not be disqualified for reviewing the k-series documents). Neither of these requests are properly before the Court as the requests were not made in the notice of motion or contained in a separate statement. The motion, therefore, also is denied based on a failure to file a separate statement. (See *Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894 [the court has the discretion to deny a motion for the failure to file a separate statement].) Even if the requests were made, as noted, the requests are not a proper issue sanction authorized under the code.

Plaintiff's request for monetary sanctions against TKNYC to reimburse plaintiff's counsel for the costs and fees incurred in bringing this motion is DENIED. Because plaintiff was not successful in bringing her motion, the request for monetary sanctions fails.

Plaintiff's request for monetary sanctions against TKNYC to reimburse plaintiff's counsel for the costs and fees incurred to travel twice to New York City for Mazzara's deposition is DENIED. Defendants adequately explain Mazzara's illness prevented him from initially appearing for his deposition on January 31, 2019. (Dubin Decl., ¶ 19, Ex. 13.) And it appears plaintiff's counsel flew to New York City to depose four other deponents from January 30 to February 1, 2019, not just Mazzara, so an award of costs and fees would be unjust. (*Id.*, ¶ 18, Ex. 12.) Mazzara has since been deposed after the filing of this motion. Plaintiff's claim for fees associated with the deposition is not well-taken because plaintiff was well-aware Mazzara

had agreed to sit for his deposition before the filing of this motion. (*Id.*, ¶ 26, Ex. 23.) Finally, there is no definitive indication defendants misrepresented Mazzara's resignation to avoid producing him for a deposition as plaintiff claims, and even if there was, the issue is moot.