

Judge Benson – Law & Motion – Wednesday, November 6, 2024 @ 9:00 AM
TENTATIVE RULINGS

1. 23CV01923 Greenberg, Stuart et al v. Jacques, Michael et al

EVENT: Plaintiffs' Motion to Compel Compliance With Third Party Subpoenas, And Request For Sanctions

Plaintiffs' Motion to Compel Compliance With Third Party Subpoenas is GRANTED in PART and DENIED in PART. In light of William Jacques' Affidavit of Custodian of Records signed and dated October 23, 2024, the motion as to William Jacques is moot. However, the Court finds Mr. Jacques' conduct prompted this motion which, should have been unnecessary. As a result Mr. Jacques is sanctioned in the amount of \$3,100.00.

As to Bobi Jacques, the motion is GRANTED. CCP § 2025.410 requires written objections be served at least 3 calendar days before the scheduled deposition. The subpoena required documents produced by July 19, 2024. The opposition states the objections were mailed on July 17, 2024. Thus, the objections were untimely and per CCP § 2025.410 the objections are waived.

Even if the objections were not waived, Mrs. Jacques has failed to meet her burden of substantiating her objections.

As a result, Bobi Jacques is ordered to provide a complete substantive response pursuant to CCP § 2020.430(a) no later than 10 days after service of this order. Bobi Jacques is sanctioned in the amount of \$3,100.00. Bobi Jacques and William Jacques are jointly and severally liable for the \$3,100.00.

Plaintiffs shall prepare and submit a form of order consistent with this ruling within 2 weeks.

2. 21CV00966 Espinoza Bail Bonds, Inc v. Hitchinson, Tilly

EVENT: Motion to Amend and Correct Judgment

The default and judgment are hereby set aside. Additionally, on the Court's motion, the Court's order dated March 17, 2022 is hereby stricken. The Court finds it did not have authority to change the name of a Defendant on the judgment to a name different than the name stated in the summons and complaint. Similarly, the Court finds it has no authority to change the name of Plaintiff on the judgment to a name different than the name stated in the summons and complaint.

Plaintiff is directed to file an amended summons and complaint correcting the errors. The documents will need to be filed and served in compliance with the service of process rules specified in the Code of Civil Procedure. In other words, Plaintiff needs to start over from the beginning.

Plaintiff shall prepare and submit a form of order consistent with this ruling within 2 weeks.

3-5. 23CV02465 Thao, Thai et al v. Callaway, Michael et al.

EVENT: (1) Motion to Compel Further Responses to Form Interrogatories (General), Set One

(2) Motion to Compel Further Responses to Special Interrogatories, Set One

(3) Motion to Compel Further Responses to Production of Documents, Set One

Special Interrogatories

The motion is denied as to no. 12 (The request is moot in light of the FAC)

The motion is granted as to nos. 17-19. Plaintiff has the burden of proving damages. It defies reason that Defendant should be required to incur the time and expense to obtain information Plaintiff will have to prove at trial.

Form Interrogatories

No. 2.6 – denied.

No. 4.1 – granted. (Plaintiff shall identify his health insurance carrier and respond to subparts (a)-(g))

No. 6.4 – granted (For the same reasons as Special Interrogatories 17-19)

No 6.5 – granted (For the same reasons as Special Interrogatories 17-19. Further, the request is not limited to prescribed medications. The response needs to address whether any non-prescribed medications have been taken.)

No. 6.7 – denied.

No. 17.1 (RFA 15,16, 22-24) - granted. Preliminarily, Defendant has not filed a motion seeking to compel further responses to the underlying request for admissions. Consequently, the Court has no jurisdiction to determine whether the underlying responses to request for admissions are code compliant, or whether the objections were waived.

The Court is faced with a highly unusual situation where Defendant is seeking a response to interrogatory 17.1 when the underlying responses are objection only responses for which no motion was made challenging the adequacy of the underlying responses. Interrogatory 17.1 requires some form of response when the underlying response is anything other than an unqualified admission. Technically, Plaintiff's underlying responses fall into that category, so Plaintiff was required to provide some form of response.

However, because Defendant has not challenged the sufficiency of the underlying responses, and the underlying response neither admits nor denies the request, the Court cannot compel a further response to subparts (b)-(d) of 17.1. That's because (b)-(d) are premised on some form of substantive response to the underlying request, which again, was not provided. Consequently, the most the Court can compel is a response by Plaintiff restating the objections made in the underlying responses to requests for admissions.

No. 17.1 (RFA 17,18) – denied. In this Court's opinion, requests for admissions and interrogatory 17.1 is an inappropriate method to attack a pleading. The proper method for challenging a pleading is specifically enumerated in the Code of Civil Procedure.

Production of Documents

Nos. 1-3 – granted.

Nos. 5,6 – denied.

Nos. 11,13,14, and 18 – granted.

Defendant's request for sanctions is DENIED.

To the extent the motions are granted, Plaintiff shall provide further responses within 20 days of notice of this order. Defendant shall prepare and submit a form of order consistent with this ruling within 2 weeks.

6. 23CV03464 Sornoso, Ellena v. The Buckle Inc

EVENT: Motion to Approve Private Attorneys General Act Settlement

Motion to Approve Private Attorneys General Act Settlement is Continued to December 11, 2024 at 9:00am.

In reviewing the moving papers, unless the Court is mistaken, the Court is not finding an estimate of the number of aggrieved employees subject to this settlement. To determine whether the settlement is fair and reasonable, the factual record must be sufficiently developed. (See *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 130). Without at least an estimate of the number of employees, the Court cannot determine whether the settlement amount is reasonable.

On another matter, the Court notes the proposed order requests that “the PAGA claims be dismissed.” In reviewing the Complaint, it appears to the Court that the only cause of action in this case is a PAGA cause of action. If correct, then it would appear the entire case should be dismissed.

7. 24CV00371 995 Nord Retail, LLC v. Ballesteros, Tina

EVENT: Motion for Order That Matters in Request For Admissions Be Deemed Admitted

Motion for Order That Matters in Request For Admissions Be Deemed Admitted is GRANTED. The Court notes the proposed order indicates the request for admissions are attached to the order, but the attachment appears to be omitted. Plaintiff shall prepare and submit a form of order within 2 weeks.

8-9. 24CV01764 Miller, Lisa v. 1200 Park Avenue LP et al.

EVENT: (1) Defendants’ 1200 Park Ave. LP and AWI Management Corporation’s Demurrer to Complaint

(2) Defendants’ 1200 Park Ave. LP and AWI Management Corporation’s Motion to Strike Complaint

Defendants’ 1200 Park Ave. LP and AWI Management Corporation’s Demurrer to Complaint and Motion to Strike Complaint are DENIED as moot in light of the filing of the First Amended Complaint.

10. 24CV03126 In re: Thrailkill, Katherine Kimiko

EVENT: Change of name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

11. 24CV02665 In re: Carmack, Jenna Renee

EVENT: Change of Name (Adult) (Continued from 10/23/24)

There is no proof of publication on file. If there is no proof of publication on file at the time of the hearing and there are no appearances, the Petition will be denied without prejudice.

12. 23CV01731 Rodriguez, Salvador, Jr. v. RGIS LLC

EVENT: Motion for Preliminary Approval of Settlement (Continued from 10/30/24)

Motion for Preliminary Approval of Settlement is GRANTED. A final approval hearing is set for February 19, 2024 at 9:00am. The Court will sign the proposed order with this modification. The Case Management Conference currently scheduled for November 13, 2024 is hereby continued to trail the final approval hearing.

13. 22CV00964 Barton, John et al. v. Pillai, Josephine et al.

EVENT: Defendants America's Best Value Inn Chico and Josephine Pillai's Motion for Order Imposing Terminating Sanctions and Monetary Sanctions Or, In the Alternative, Evidentiary Issue Sanctions (Continued from 10/30/24)

Defendants America's Best Value Inn Chico and Josephine Pillai's Motion for Order Imposing Terminating Sanctions and Monetary Sanctions is GRANTED. It is apparent that, after almost a year of inactivity, Plaintiffs have abandoned the case. Further sanctions are imposed against Plaintiffs, but not Plaintiffs' counsel in the amount of \$1,860.00.

To summarize, the Court has imposed monetary sanctions against Plaintiffs as follows:

\$2,640.00 on order dated 5/10/24

\$2,400.00 on order dated 9/6/24

\$1,860.00 on the instant order

Total Sanctions Due: \$6,900.00

Total sanctions shall be paid to Defendants within 30 days of notice of this order.

All claims against moving Defendants America's Best Value Inn Chico and Josephine Pillai are dismissed with prejudice. (Note: The Court does not believe it has the authority to strike the complaint in an instance such as this where another non-moving defendant (Red Lions Hotel Corporation) exists)

Defendants shall prepare a form of order consistent with this ruling within 2 weeks.

14. 24CV03666 Butte County Animal Control v. Timone, Regina et al.

EVENT: Petition to Determine if Dog is Vicious ("Baby")

The Court will conduct a hearing.

15. **24CV03667 Butte County Animal Control v. Timone, Regina et al.**

EVENT: Petition to Determine if Dog is Vicious ("Kila")

The Court will conduct a hearing.