<u>Tentative Rulings for February 7, 2023</u> <u>Department 403</u>

these matters. If a p Otherwise, parties s	ve rulings for the following cases. The hearing will go forward on erson is under a court order to appear, he/she must do so. hould appear unless they have notified the court that they will ithout an appearance. (See California Rules of Court, rule 3.1304(c).)
	inued the following cases. The deadlines for opposition and reply he same as for the original hearing date.
22CECG01343	Garduno v. Cobb is continued to Thursday, February 16, 2023 at 3:30 p.m. in Department 403

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Tentative Rulings for Department 403

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Tentative Ruling

Re: Aguilar v. Steitz & Der Manouel, Inc.

Superior Court Case No. 21CECG02173

Hearing Date: February 7, 2023 (Dept. 403)

Motions: by Plaintiff for an Order Compelling Defendant Erik Scott's

Responses to Form Interrogatories, set one and Requests for

Production of Documents, set one; Sanctions

Tentative Ruling:

To grant the motions unless proof that Defendant Scott's responses have been served to Plaintiff before the hearing on this motion. (Code Civ. Proc. §§ 2030.290, subd. (b) and 2031.300, subd. (b).)

To impose monetary sanctions in favor of Plaintiff Noe Aguilar and against Defendant Erik Scott. (Code Civ. Proc. §§ 2030.290, subd. (c) and 2031.300, subd. (c).) Defendant is ordered to pay monetary sanctions in the amount of \$600 to the Grossman Law Offices, APLC law firm within 30 days of the clerk's service of the minute order.

Explanation:

A party that fails to serve a timely response to a discovery request waives "any objection" to the request. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a).) The propounding party may move for an order compelling a party to respond to the discovery request. (Code Civ. Proc. §§ 2030.290, subd. (b), 2031.300, subd. (b).)

Where responses are served after the motion is filed, the motion to compel may still properly be heard. (Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants (2007) 148 Cal.App.4th 390, 409.) Unless the propounding party takes the matter off calendar, the court may determine whether the responses are legally sufficient, and award sanctions for the failure to respond on time. (Ibid.)

In the case at bench, Respondent served form interrogatories, set one and request for production of documents, set one, on Defendant Erik Scott, in pro per, April 13, 2022 by mail. (Kreit Decl. \P 2, Exh. A and B.) Counsel for plaintiff corresponded with counsel for Defendant Steitz & Der Manouel, Inc. on August 17, 2022 and was advised Ms. Konczal would be representing Mr. Scott once he signed a substitution of attorney. (*Id.* at \P 4, Exh. C.) Ms. Konczal was advised of the outstanding discovery in further email correspondence on September 2, 2022 but confirmed she had not yet been substituted as counsel for Mr. Scott. (*Id.* at \P 5, Exh. D.) Counsel for plaintiff again emailed on September 22, 2022 and October 14, 2022 to inquire regarding Mr. Scott's representation and discovery responses and was advised he remained in pro per. (*Id.* at \P 6-7, Exhs. E and F.) Counsel for plaintiff filed the instant motion on November 1, 2022.

On November 21, 2022 Mr. Scott obtained counsel. In opposition to the motions to compel responses, counsel for defendant advises that he did not learn about this motion to compel until receiving the court's notice of change of department. (Johnson Decl. ¶ 5.) He further represents that since he began representing Mr. Scott, counsel for plaintiff had not mentioned the outstanding discovery or provide responses. (*Ibid.*) Although this appears to have shortened the amount of time to respond to the motions, there is no meet and confer requirement before filing a motion to compel responses to interrogatories or requests for production where no responses have been served. (See *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants, supra,* 148 Cal.App.4th 390, 404.)

Counsel also represents that they are working to provide responses to the discovery before the hearing on this motion. (Johnson Decl. ¶ 4.) In the event responses are served before the hearing on this motion any order compelling responses would be rendered moot. However, the court has not been advised that responses were received or that the motions have been taken off calendar. As a result, plaintiff is entitled to an order compelling Defendant Scott to respond to Form Interrogatories, Set One, and Requests for Production, Set One. (Code Civ. Proc. §§ 2030.290, subd. (b) [interrogatories], 2031.300 [document demands].) In addition, since defendant did not respond to the discovery in a timely manner, he has waived all objections. (Code Civ. Proc. §§ 2030.290, subd. (a), 2031.300, subd. (a).)

<u>Sanctions</u>

The court may award sanctions against a party that fails to provide discovery responses. (Code Civ. Proc. §2023.010(d), (h).) The court shall impose a monetary sanction against the party or attorney, or both, who unsuccessfully opposes a motion to compel responses, 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. (Code Civ. Proc. §§ 2030.290, subd. (c) and 2031.300 subd. (c).) Where responding party provides the requested discovery after the motion to compel was filed, the court is authorized to award sanctions. (Cal. Rules of Court, rule 3.1348(a).)

Here, while still in pro per, Defendant Scott was served with discovery and having failed to response in the six months that followed, was served with the motions to compel now before the court. There is no evidence before the court to determine whether Defendant Scott acted with substantial justification in his failure to provide responses. As a result, sanctions are imposed in the amount of \$300 for each motion. (Code. Civ. Proc. §§ 2023.010, subd. (d) and (h), 2030.290, subd. (c), 2031.300, subd. (c).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling						
Issued By:	JS	on	2/6/2023			
	(Judge's initials)		(Date)			