

Tentative Rulings for September 21, 2022
Department 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

19CECG02841 *David Allen v. State of California* at 3:30 p.m. in Department 503

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(03)

Tentative Ruling

Re: **Blount v. Cheema Transport, Inc.**
Superior Court Case No. 20CECG03421

Hearing Date: September 21, 2022 (Dept. 503)

Motion: Plaintiff's Motion to Quash Subpoena for Production of Records, or in the Alternative for a Protective Order

Tentative Ruling:

To deny plaintiff's motion to quash subpoena seeking plaintiff's California Department of Motor Vehicle ("DMV") records, and the alternative motion for a protective order. (Code Civ. Proc., § 1987.1.) To grant sanctions against plaintiff and his counsel in the amount of \$1,035. (Code Civ. Proc., § 1987.2.) Plaintiff shall pay sanctions to defendant within 30 days of the date of service of this order.

Explanation:

Under Code of Civil Procedure section 1987.1, "[i]f a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person." (Code Civ. Proc., § 1987.1, subd. (a).)

A motion to quash a business records subpoena must be "reasonably made" by the person seeking to quash the subpoena. The statute does not define what "reasonably made" means, however. Nor does the statute contain an express requirement that the moving party meet and confer before bringing the motion.

In *Lee v. Swansboro Country Property Owners Assn.* (2007) 151 Cal.App.4th 575, the Court of Appeal held that the trial court erred in denying a motion to quash a business records subpoena as untimely, where the moving party brought the motion seven days before the document production date. (*Id.* at pp. 583-584.) However, the court's ruling left open the possibility that a motion brought closer to the production date might not be reasonably made, depending on the circumstances. (*Ibid.*)

Here, defendant complains that plaintiff has not "reasonably made" his motion to quash because plaintiff's counsel did not adequately meet and confer before bringing the motion, and because the motion was brought one day before the production date for the documents. However, as stated above, there is no express meet and confer

requirement under section 1987.1 before a person may bring a motion to quash. Nevertheless, the court notes that plaintiff's counsel waited until 10:19 a.m. on the last day before the documents were to be produced before sending an email to defense counsel demanding that he respond and withdraw the subpoena before 2 p.m. the same day. (Exhibit A to Nava Decl.) Thus, plaintiff's counsel only gave defense counsel about three hours and 40 minutes to respond to his meet and confer letter. Such a short period of time to respond does not indicate that plaintiff's counsel made a good faith effort to resolve the dispute before filing the motion to quash.

Also, while neither party states exactly when the subpoena was served, it was apparently served several weeks before plaintiff's counsel sent the meet and confer email. (See Defendant's Opposition Brief, p. 3:16, implying that the subpoena was served on July 25, 2022.) Assuming that the subpoena was served on July 25, it was not reasonable for plaintiff's counsel to wait until the last day before the documents were to be produced before filing his motion to quash. Thus, the court finds that the motion was not "reasonably made" under section 1987.1, which is a sufficient ground in itself to deny the motion.

In any event, even if the court were to consider the merits of the motion, plaintiff has failed to show that the subpoena should be quashed. Plaintiff argues that the subpoena is overbroad and seeks private documents. Yet, according to defense counsel, the subpoena only seeks documents from January 1, 2019 to the present, which does not appear on its face to be an unreasonably broad timeframe.¹ Therefore, the overbreadth objection is not well taken, and the court overrules it.

Also, to the extent that plaintiff argues that the subpoena seeks information protected by the right to privacy, he does not cite to any statutes or cases that hold that DMV records are considered the type of private information protected by the right to privacy. Plaintiff seeks to compare the DMV records to personnel records, yet DMV records are not the same as employment records, which are clearly protected by the right to privacy. The DMV did not employ plaintiff, and its records are not equivalent to the personnel file of an employer regarding its employee.

In addition, the Court of Appeal has expressly stated that DMV records are not privileged documents that are exempt from production, even though Vehicle Code section 1808.5 states that DMV records regarding a person's physical or mental condition are confidential and not open to public inspection. (*Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363, 370-373.) Thus, the requested documents are not privileged from disclosure.

Furthermore, even assuming that the DMV records contain some private information about plaintiff, such as his medical or employment history, the requested documents are directly relevant to plaintiff's claims and damages, and plaintiff has not shown that his privacy rights outweigh defendant's need for the information. While the

¹ Again, it would have been helpful to have a copy of the actual subpoena so that the court could know what the timeframe was for the documents. Unfortunately, neither party has provided the court with a copy of the subpoena.

California Constitution establishes a right of privacy, even private information may be discovered upon a proper showing.

"The party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552, citing *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 35-37.) In *Williams*, the California Supreme Court also rejected the requirement that a party must show a "compelling state interest" or "compelling need" for private information before it may be disclosed, unless there is "an obvious invasion of an interest fundamental to personal autonomy." (*Id.* at pp. 556-557, disapproving prior cases that required a showing of a "compelling interest or need" to require disclosure of private information.)

Here, defendant has shown that the DMV documents are directly relevant to the subject matter of plaintiff's claims, as plaintiff, a truck driver, is suing defendant for retaliating against him and firing him for refusing to drive more than 11 hours per day without rest, which allegedly violated federal regulations. Plaintiff also seeks damages for lost wages that he would have received if he had not been fired. Thus, plaintiff must show that he held and still holds a valid license as a commercial truck driver, and that he is able to continue working as a truck driver in order to recover "front pay" damages.

However, just before plaintiff was fired, defendant received a notice from the DMV that plaintiff's license had been placed on administrative hold, which suggests that he could not have continued working as a driver even if defendant had not fired him for other reasons. (See Exhibit A to Thomas Decl.) In his deposition, plaintiff answered evasively when asked whether he had a valid license at the time he worked for defendant or whether his license had been revoked or suspended, and he stated that only the DMV would know whether he had a valid license. (Exhibit B to Thomas Decl.) Plaintiff also stated in his opposition to the summary judgment motion that he had a stroke and brain hemorrhage after he was fired by defendant, which suggests that he may no longer have a commercial driver's license and that he cannot continue working as a truck driver. (Blount Decl. in Opposition to Motion for Summary Judgment, ¶ 24.) If plaintiff cannot work as a truck driver because of medical or other issues that prevent him from maintaining a license, then he cannot recover damages based on lost wages for the time after he was fired by defendant.

Therefore, it appears that the documents sought by the subpoena are directly relevant to plaintiff's claim, as well as his request for "front pay" damages. While plaintiff may have some interest in keeping the DMV documents private, he has failed to show that his privacy interests outweigh defendant's interest in obtaining the documents to defend against his claims. As a result, the court denies the motion to quash the subpoena for plaintiff's DMV records, as well as the alternative motion for a protective order.

Finally, defendant has requested sanctions against plaintiff and his counsel for bringing a frivolous motion to quash. Code of Civil Procedure section 1987.2 does provide

