Tentative Rulings for January 25, 2022
Department 403

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).)

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 403

Begin at the next page

(20)

Tentative Ruling

Re: ***California Labor Commissioner v. Great American Investments, Inc., et al.***
Superior Court Case No. 19CECG03976

Hearing Date: January 25, 2022 (Dept. 403)

Motion: Motions by Plaintiff to Compel Further Responses to Requests for Production of Documents, Set One

Tentative Ruling:

To grant in part plaintiff's motion to compel defendants A.J. Rassamni, Sharon Rassamni, Liberty Financial Group, and Great American Investments to provide further responses to Request for Production of Documents, set one, nos. 1-7 and 10-12. The motion is denied as to demand nos. 8 and 9. Defendants shall each serve further verified responses without objections and produce all responsive documents to demand nos. 1-7 and 10-12 within 30 days of service of the order by the clerk.

To impose monetary sanctions in favor of plaintiff Labor Commissioner, and against A.J. Rassamni in the sum of $333.00, Sharon Rassamni in the sum of $333.00, Liberty Financial Group in the sum of $333.00, and Great American Investments in the sum of $333.00. (Code Civ. Proc. § 2023.010(f), (h).) Defendants shall pay the sanctions to plaintiff's counsel within 30 days of the clerk's service of the minute order.

Explanation:

Motion to Compel Further Responses from A.J. Rassamni and Sharon Rassamni to Request for Production of Documents

Plaintiff moves to compel further responses to demand nos. 1-12. The demands seek documents relating to the complainant's employment with the responding party, a 6/10/15 OSHA inspection of the Great American Car Wash, communications relating to complainant, personal loans to complainant, documents identified in interrogatory responses, among other topics.

The initial responses to each demand stated, "No such documents exist. Responding Party did not employ Plaintiff." The supplemental responses state that responding party does not have any documents in his personal possession and that documents are already in plaintiff's possession. These responses are not Code-compliant.

The initial responses are non-responsive because the demands seek (for the most part) documents relating to the claimants, not documents relating to plaintiff. Plaintiff is the California Labor Commissioner. There is no contention that defendants employed the California Labor Commissioner. Moreover, the statement of inability to comply is deficient because, aside from being based on a faulty premise, the response does not state that

a diligent search and reasonable inquiry has been made in an effort to locate the documents demanded. (Code Civ. Proc., § 2031.010.)

The supplemental responses are incomplete because they are not verified. (See *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782 ["Verification of the answers is in effect a declaration that the [responding] party has disclosed all information which is available to [it]."]) The supplemental responses are also incomplete because they merely state that there are no documents in the responding party's "personal possession." Responding party must produce all documents in the "possession, *custody, or control* of that party". (Code Civ. Proc., § 2031.220, emphasis added.) Accordingly, the motion is granted as to demand nos. 1-7 and 10-12.

The motion is denied as to demand nos. 8 (all documents identifying each employee of defendant since 2015 [name, date of hire, date of separation and phone number]) and 9 (documents showing discipline of any Great American Car Wash employee).

The motion for order compelling further responses "shall set forth specific facts showing good cause justifying the discovery sought by the demand." (Code Civ. Proc., § 2031.310(b)(1); *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:

- 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
- Specific facts justifying discovery (e.g., why such information is necessary for trial preparation or to prevent surprise at trial).

(*Kirkland, supra*.)

Declarations are generally used to show the requisite "good cause" for an order to compel inspection. The declarations must contain "specific facts" rather than mere conclusions. (*Fireman's Fund Ins. Co. v. Superior Court* (1991) 233 Cal.App.3d 1138, 1141.) 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. (*Kirkland, supra*, 95 Cal.App.4th at p. 98.)

Counsel's declaration does not address the good cause requirement. This action involves the employment of two individuals – complainants Rafael Vazquez and Humberto Lopez. (FAC, ¶ 14.) No good cause is shown for the production of personnel records of persons whose employment is not at issue in this action.

Motion to Compel Further Responses from Liberty Financial Group to Request for Production of Documents

The only difference with Liberty Financial's responses from the above is that it did not serve supplemental responses. Its initial responses merely state, "No such documents exist. Responding Party did not employ Plaintiff." As discussed above, that response is deficient.

After Liberty Financial failed to respond to plaintiff's request for pretrial discovery conference, the court ordered it to provide a supplemental response within 30 days of the date of the order. (See 11/12/20.) No supplemental response was served. So plaintiff moves to compel Liberty Financial to serve the supplemental response that it was already ordered to serve. Liberty Financial is again directed to serve the supplemental responses to demand nos. 1-7 and 10-12. As discussed above no good cause is shown as to demand nos. 8 and 9.

Motion to Compel Further Responses from Great American Investments to Request for Production of Documents

The demands propounded on Great American are the same as those propounded on the other defendants. Great American's responses are similar, but not identical, to those of the individual defendants. The initial responses to each demand was, "All documents responsive to this request within Responding Party's possession and/or control will be produced." Unlike Liberty Financial, Great American served supplemental responses, but those responses merely state "Documents are already in Plaintiffs possession." This was not a good faith supplemental response. Defendant merely gave an even less Code-compliant version of the first response.

The initial response was deficient because the statement of intent to comply answer is incomplete – it fails to state that documents in the custody of the answering party would be produced as required by Code of Civil Procedure section 2031.220, leaving open the possibility that responsive documents in defendant's custody are being withheld.

The supplemental response is incomplete because it is not verified. (See *Deyo v. Kilbourne*, supra.) Moreover, a statement of compliance must state that the documents or things in the demanded category that are in the responding party's possession, custody or control will be produced. That the propounding party may already have responsive documents is not a basis for refusing to comply.

Sanctions

The court must impose a monetary sanction against any party who unsuccessfully makes or opposes a motion to compel further responses to interrogatories or production, unless it finds that the one subject to the sanction acted with substantial justification or that the circumstances make the imposition of sanctions unjust. (Code Civ. Proc., § 2031.300, subd. (c).) The court may award sanctions against a party who disobeys a court order to provide discovery or making an evasive response to discovery. (Code Civ. Proc., § 2023.010, subd. (f), (h).)

In the Court's August 5, 2021 Order, the Court specified that sanctions would be calculated based on 10 hours of work for 12 motions, at $400 per hour, resulting in $333 per motion.

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: KCK on 01/21/22.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Aguilar v. Bal***
Superior Court Case Number: 21CECG03169

Hearing Date: January 25, 2022 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. The Court intends to sign the proposed orders. No appearances necessary.

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: KCK on 1/21/22 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Mata v. Toyota Motor Sales U.S.A., Inc.***
Superior Court Case No. 21CECG00296

Hearing Date: January 25, 2022 (Dept. 403)

Motion: Plaintiffs' Motion to Compel Defendant Toyota Motor Sales U.S.A., Inc.'s Further Responses to Requests for Production of Documents, Set One, Request Nos. 37-45

Tentative Ruling:

To grant plaintiffs' motion to compel further responses to Requests for Production of Documents, Set One, as to Requests Nos. 37-45. Defendant, Toyota Motor Sales U.S.A., Inc. ("Toyota") shall serve verified supplemental responses without objections within 20 days of the date of service of this order.

Explanation:

On April 29, 2021, plaintiffs propounded its Request for Production of Documents, Set One ("RFPD, Set One"), containing 53 requests, to Toyota. On June 1, 2021, Toyota served its responses, including objections, to each of the 53 requests. On August 31, 2021, plaintiffs requested a Pre-trial Discovery Conference ("PTDC") on their RFPD, Set One, specifically, Request Nos. 37-45, which are the subject of this motion. On September 16, 2021, the court issued an order that plaintiff may proceed with a motion to compel further responses to the RFPD, Set One. Plaintiff now seeks to compel further responses to the RFPD, Set One, as to Request Nos. 37-45.

Request Nos. 37-45 requests documents relating to the particular complaints reported by owners of vehicles with the same year, make, and model as the subject vehicle in this case, a 2020 Toyota Highlander, Vehicle Identification No. 5TDGZRAHXLS502948 ("Subject Vehicle"). More specifically, these complaints consisted of: (1) "a noise coming from rear shock absorbers when going over bumps" (Plaintiffs' Sep. Statement, Request Nos. 37-39.); (2) "the suspension" (Plaintiffs' Sep. Statement, Request Nos. 40-42.); and (3) "the fuel system" (Plaintiffs' Sep. Statement, Request Nos. 43-45.) The responses to Request Nos. 37, 39, 40, 42, 43 and 45 are essentially identical, as follows:

> Objection. This request is overbroad, burdensome, and oppressive as to documents "evidence, describe, relate, or refer to." [sic] In addition, the request is vague, ambiguous, and overbroad as to "[each specified issue as noted above]," and calls for speculation. Further, the request is disproportionately burdensome and not reasonably limited in scope to the vehicle at issue. The request violates the attorney-client, attorney work product and/or consulting expert privileges. Moreover, the request seeks the production of confidential and proprietary information. The request

> constitutes an unreasonable invasion of privacy, violates third party privacy rights, seeks documents irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Finally, the request seeks documents in the possession of third parties.

(*Id*., Response to Request Nos. 37, 39, 40, 42, 43, 45, [brackets added].)

Additionally, the responses to Request Nos. 38, 41, and 44 are essentially identical, as follows:

> Objection. This request is overbroad, burdensome, and oppressive. In addition, the request is vague, ambiguous, and overbroad as to "[each specified issue as noted above]," and calls for speculation. Further, the request is disproportionately burdensome and not reasonably limited in scope to the vehicle at issue. The request violates the attorney-client, attorney work product and/or consulting expert privileges. Moreover, the request seeks the production of confidential and proprietary information. The request constitutes an unreasonable invasion of privacy, violates third party privacy rights, seeks documents irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Finally, the request seeks documents in the possession of third parties.

(*Id*., Response to Request Nos. 38, 41, 44, [brackets added].)

In sum, Toyota raises objections on multiple grounds: oppressive, unduly burdensome, ambiguous, irrelevant, privilege: attorney-client, work product, and confidential and/or proprietary, invasion of privacy and third party privacy and that the documents were in the custody, control or possession of third parties. Additionally, Toyota also argues in its opposition that plaintiffs' requests were not made in compliance with Code of Civil Procedure, section 2031.030, subdivision (c)(1), in that they fail to identify the documents sought with reasonable particularly.

Most of Toyota's objections are without merit. For example, Toyota has failed to meet its burden to show the amount of work required to respond to support its oppression and undue burden objections. (*Mead Reinsurance Co. v. Superior Court* (1986) 188 Cal.App.3d 313, Likewise, Toyota does no more to support its privacy objections than merely providing a blanket statement asserting an invasion of privacy and an invasion of third party privacy. It is impossible to determine the merit of Toyota's privacy objections, where Toyota has failed to establish a legally protected privacy interest, an objectively reasonable expectation of privacy and a threatened intrusion. (*Hill v. National Collegiate Athletic Ass'n* (1994) 7 Cal.4th 1, 26.)

Moreover, asserting that documents are in the possession of a third party is not a valid ground for objecting to an inspection demand. Rather, if the responding party is unable to comply to the request, the response must state that a diligent search and reasonable inquiry has been made in effort to locate the item demanded and the reason the party is unable to comply, i.e., the document is not in the possession, custody or

control of the responding party, in which case, the response must state the name and address of anyone believed to be in possession of the document. (Code Civ. Proc., § 2031.230.)

In support of its objection based on relevancy, Toyota argues that plaintiffs are limited to discovering information pertaining only to the Subject Vehicle. More specifically, that plaintiffs have asserted claims under the Song-Beverly Consumer Warranty Act, which "focuses on the nonconformities and repair attempts of the *specific vehicle* relating to a *specific buyer*"[1] and that "[p]laintiffs' requests for production of documents that are the subject of this motion are unrelated to proving the asserted claim that the [Subject Vehicle] exhibited a non-conformity that was not timely repaired[.]" (Toyota's Separate Statement, 7:12-15 [brackets added].)

"For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement.' Admissibility is not the test and information, unless privileged, is discoverable if it might reasonably lead to admissible evidence. The phrase 'reasonably calculated to lead to the discovery of admissible evidence' makes it clear that the scope of discovery extends to any information that reasonably might lead to other evidence that would be admissible at trial. 'Thus, the scope of permissible discovery is one of reason, logic and common sense.' These rules are applied liberally in favor of discovery." (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611–1612 [internal citations and italics omitted].)

Additionally, the Court of Appeal has held in a similar "lemon law" case that evidence of non-warranty repairs to the plaintiff's vehicle was relevant and admissible, as it had a tendency to establish that the transmission problems were not repaired in conformity with the warranty. (*Donlen v. Ford Motor Co*. (2013) 217 Cal.App.4th 128, 148-149.) The Court of Appeal also found that the trial court did not err when it admitted evidence of other customers' vehicles of the same make and model with similar transmission problems.

Here, it seems obvious that information relating to similar issues experienced by other owners of vehicles with the same year, make, and model as the Subject Vehicle is highly relevant to plaintiffs' claims, or at least likely to lead to the discovery of admissible evidence, because plaintiffs are alleging that the Subject Vehicle is defective and nonconforming. Likewise, any documents related to other complaints about similar problems with the same type of vehicle that plaintiffs own would tend to be probative of whether Toyota knew that its 2020 Highlanders were experiencing the same kinds of issues that plaintiffs complained of, and yet it refused to repurchase the Subject Vehicle. Such evidence could allow plaintiffs to establish that they are entitled to penalties against Toyota for its willful refusal to repurchase the Subject Vehicle despite its knowledge of other similar problems with other vehicles.[2] Thus, plaintiffs have a strong interest in learning such experiences of other vehicle owners to prove that the Subject Vehicle was in fact, defective and/or nonconforming.

---

[1] (Toyota's Separate Statement, 6:24-25.)

[2] While *Donlen* was not a Discovery Act case, its holding is nevertheless applicable to the issue of whether the same type of evidence that plaintiff seeks is relevant and admissible, which is more than enough to support an order compelling defendant to produce the requested documents.

Additionally, in consideration of the fact that the demanding parties are likely seeking documents they have never seen, and which may or may not exist, out of files with which they have no familiarity, the requests are reasonably particularized to seek specific information pertaining to a limited and well-defined category of documents, so they are not overly vague, overbroad or ambiguous. The requests are limited to specified complaints about vehicles of the same make, model and year of the Subject Vehicle. Toyota argues that the discovery propounded is "never-ending" and "ridiculously wide"; however, the specific examples Toyota provides do not support this argument. Toyota argues that plaintiffs' requests would require it to produce all of the following:

> [A] handwritten note made by a Highlander owner in Maine in 2020 relating to an upcoming appointment, a repair order from in [sic] independent mechanic regarding an oil change on a Supra in Ohio and a demand for arbitration filed by an owner in Florida. More importantly, the overreaching nature of the request would include information protected by the attorney-client privilege and unrelated to this case, including an internal correspondence between [Toyota] and counsel relating to an assessment of a lawsuit filed in West Virginia.

(Toyota's Sep. Statement, 9, fn. 3 [brackets added].)

In each of the requests which are the subject of this motion, plaintiffs narrowly construe a particular category of documents that pertain to complaints made by owners of the same year, make, and model as the Subject Vehicle. It is obvious that any documents pertaining to a Toyota Supra, a vehicle that is not the same year, make, and model as the Subject Vehicle would not need to be produced. Similarly, without further information, it appears the other specific examples provided by Toyota do not fall under the specific categories provided by plaintiffs in each of their requests.

Moreover, while Toyota repeatedly asserts that some of the documents requested are privileged attorney-client or work product information, Toyota has not produced a privilege log or made any attempt to show that the documents are protected by attorney-client privilege or work product doctrine. Toyota's argument that it is impossible to create a privilege log, without further information, is not well taken. Similarly, Toyota has not made any attempt to show that the documents are protected by a trade secret privilege. (*Amgen Inc. v. California Correctional Health Care Servs.* (2020) 47 Cal.App.5th 716, 733 [A party that is claiming a trade secret privilege under Evidence Code, section 1060, has the burden of proving that party's entitlement to that privilege.].)

Finally, Toyota argues that plaintiffs' motion to compel furthers should be denied because plaintiffs have made similar objections to Toyota's Request for Production of Documents, Set One. The court knows of no legal support for that argument, nor did Toyota provide any.

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: KCK on 01/24/22.
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: ***Suburban Propane v. DiPasquale***
Superior Court Case No. 20CECG02259

Hearing Date: January 25, 2022 (Dept. 403)

Motions: Motion to Compel Further Responses to Request for Production of Documents, Set One, and for Related Sanctions, by Defendant Dorn's Gas

Motion to Stay Depositions, Quash Deposition Notices, and for Protective Order and Sanctions, by Defendant John DiPasquale

Tentative Ruling:

To deny defendant Dorn's Gas motion to compel further responses to request for production of documents, set one. To nonetheless impose sanctions in the reduced amount of $2,510. (Code Civ. Proc., § 2031.300, subd. (c).) Plaintiff is ordered to pay $2,510 in sanctions to the Law Office of Whitney, Thompson & Jeffcoach, within 30 days of the clerk's service of the minute order.

To issue a protective order, requiring the nineteen (19) third-party depositions at issue to be continued to a mutually convenient date and time. To impose sanctions in the reduced amount of $2,720. (Code Civ. Proc., §§ 2025.410, subd. (d), 2025.420, subd. (h).) Plaintiff is ordered to pay $2,720 in sanctions to the Law Office of Betts & Rubin, within 30 days of the clerk's service of the minute order.

Explanation:

Motion to Compel Furthers

A motion to compel can be denied as moot where responses to discovery are provided prior to the related hearing. (See e.g., *Villa v. Cole* (1992) 4 Cal.App.4th 1327, 1333.)

It is undisputed that defendant Dorn's Gas received verified amended responses to the discovery at issue on or about September 9, 2021. As such, the court finds the pending motion moot. Dorn's Gas asks the court to rule regarding responses to request numbers 8, 30, 31, and 32 based upon the moving papers it has provided. However, those papers concerned plaintiff's initial responses, and the amended responses are different than those initially provided. For example, the amended responses to request numbers 8, 30, 31, and 32 now state that documents will be produced and make reference to documents bate stamped Suburban 000001-1639. (See Decl. Cunningham, ¶ 15, Ex. 2.)

Sanctions are nonetheless imposed against plaintiff. Plaintiff did not act with substantial justification in serving boilerplate objections to each request for production and supplemental responses were not provided until after the instant motion to compel

further responses was filed. However, the amount requested was unreasonable and not fully supported. Attorney Cunningham did not provide her hourly rate or the number of hours that she worked on the motion; instead she states she spent over 10 hours on the reply. Without sufficient substantiation, these fees will not be awarded. However, attorney Marshall's fees are substantiated and will be awarded.

Motion for Protective Order

Defendant John DiPasquale's request for a protective order is granted. The nineteen (19) third-party depositions at issue are to be continued to a mutually convenient date and time.

Plaintiff asks the court to order the parties to share equally in the cost of re-noticing the depositions. However, no authority for this request is provided. For this reason, the request is denied. Sanctions are justified as the notice was unreasonable.

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: KCK on 01/24/22 .
(Judge's initials) (Date)