

Tentative Rulings for March 30, 2022
Department 501

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.

21CECG02579	<i>Mariscal v. Sunwest Fruit Co., Inc.</i> is continued to Thursday, April 21, 2022 at 3:30 p.m. in Dept. 501
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(36)

Tentative Ruling

Re: **Redwood Fire & Casualty Insurance Company v. Alta Standard Builders, Inc.**
Superior Court Case No. 21CECG00099

Hearing Date: March 30, 2022 (Dept. 501)

Motion: by Plaintiff for an Order Compelling Defendant's Further Responses to Form Interrogatories, Set One and for Monetary Sanctions

Tentative Ruling:

To deny. (Code Civ. Proc., § 2030.300, subd. (c); Code Civ. Proc., § 1010.)

Explanation:

Procedural Defects:

Notice of a motion to compel a party's further responses to interrogatories must be "given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing..." (Code Civ. Proc., § 2030.300, subd. (c).) "Notices must be in writing, and the notice of a motion, other than for a new trial, must state when, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based." (Code Civ. Proc., § 1010.)

The moving party must also submit a separate statement listing each interrogatory to which a further response is requested, the response given, and the factual and legal reasons for compelling it. (Cal. Rules of Court, rule 3.1345(a)(2) and (c).) "The separate statement must 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. Material must not be incorporated into the separate statement by reference." (Cal. Rules of Court, rule 3.1345, subd. (c).) Alternatively, the moving party may "submit a concise outline of the discovery request and each response in dispute." (Code Civ. Proc., § 2030.300, subd. (b)(2).)

Here, defendant has provided two sets of responses to plaintiff's Form Interrogatories, Set One—the first served on April 7, 2021 ("Original Responses"), and the second served on August 18, 2021 ("Supplemental Responses"). Notably, plaintiff's notice of motion, memorandum of points and authorities and separate statement does not mention the Supplemental Responses and are directed only to defendant's Original Responses.

To the extent plaintiff's motion is made on grounds based on the Original Responses, the motion is rendered moot by defendant's Supplemental Responses. While a court may—but is not required to—address the merits of discovery responses filed after

a motion to compel¹, the Supplemental Responses were provided to plaintiff *before* plaintiff even filed its motion. Accordingly, in light of defendant's Supplemental Responses, with verifications, plaintiff's motion to compel is moot.

If plaintiff's motion is made on grounds based on the Supplemental Responses, plaintiff has failed to properly notice the opposing party and provide either a complete separate statement or concise outline of the discovery request. Although the Supplemental Responses are referred to in one paragraph of counsel's declaration², this is insufficient to meet the statutory notice requirements.

Monetary Sanctions:

A court may impose monetary sanctions against a party, person or attorney who unsuccessfully makes or opposes a motion to compel "after notice to any affected party, person or attorney, after opportunity for hearing." (Code Civ. Proc., § 2023.030, subd. (a).) While a sanctions request in the opposition can satisfy these notice requirements, the opposition must contain all the information required in a noticed motion. (Edmon & Curtis Cal. Prac. Guide: Civ. Proc. Before Trial (TRG 2021) § 8:1991.) A notice of motion must: (1) identify every party against whom the sanction is sought; (2) specify the type of sanction sought; (3) cite the authority for such sanctions; and (4) be accompanied by a declaration setting forth facts supporting the amount requested. (Code Civ. Proc., § 2023.040.) Here, although defendant is the prevailing party, defendant fails to provide the requisite authority and declaration to support its request for sanctions. Defendant has failed to satisfy the statutory notice requirements, thus its sanctions request is not granted.

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: DTT **on** 3/28/2022.
(Judge's initials) (Date)

¹ *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409.

² Declaration of Kathleen A. Sauer, ¶ 25.

(36)

Tentative Ruling

Re: ***Thelen v. City of Fresno, et al.***
Superior Court Case No. 21CECG01487

Hearing Date: March 30, 2022 (Dept. 501)

Motion: by Plaintiff:

- (1) For an Order Deeming Requests to Admit Truth of Facts against Defendant Lola M. Hart;
- (2) For an Order Compelling Defendant Lola M. Hart's Responses to: (1) Form Interrogatories, Set One; (2) Special Interrogatories, Set One; and (3) Requests for Production, Sets One and Two; and
- (3) For Monetary Sanctions

Tentative Ruling:

To grant, but to require plaintiff to pay \$240 for motion fees to the clerk (in addition to the \$60 for the motion fees already paid) for the correct total motion fee of \$300 (5 motions x \$60 each). The additional filing fees must be paid on or before April 13, 2022.

Defendant Lola M. Hart is ordered to serve verified responses, without objections, to plaintiff Terry L. Thelen's Form Interrogatories, Set One, Special Interrogatories, Set One, Requests for Production, Set One, and Requests for Production, Set Two, no later than 20 court days from the date of this order, with the time to run from the service of this minute order by the clerk.

The matters specified in plaintiff's Request for Admission, Set One, are deemed admitted, unless defendant serves, before the hearing, a proposed response to the requests for admission that is in substantial compliance with Code of Civil Procedure, Section 2033.220.

To award monetary sanctions in the total amount of \$1,950, for all motions, in favor of plaintiff and against defendant Lola M. Hart and her counsel of record, John T. Aldrich, jointly and severally, payable within 20 days of the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Interrogatories and Document Production:

If a party to whom discovery was directed fails to serve a timely response, the propounding party may move for an order compelling responses and for a monetary sanction. (Code Civ. Proc., § 2030.290, subd. (b) [Interrogatories]; Code Civ. Proc., § 2031.300 [Document demands].) Moreover, failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and "work

product" protection. (Code Civ. Proc. § 2030.290, subd. (a), 2031.300, subd. (a); see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.)

Here, defendant served untimely unverified responses, consisting of objections to plaintiff. (Kalajian, Decl., ¶6, 7.) It is unclear whether the response consisted of both answers and objections or whether the response consisted entirely of objections. Defendant argues that (1) her objections have not been waived; (2) plaintiff has inappropriately filed motions to compel *initial* responses, where motions to compel *further* responses are required; and (3) plaintiff's time to file such motion(s) has expired.

First, by failing to timely respond, defendant has waived all objections to plaintiff's requests for admission. Defendant relies on *Food 4 Less Supermarkets* to argue that her objections have not been waived. (*Food 4 Less Supermarkets, Inc. v. Superior Court* (1995) 40 Cal.App.4th 651, 657 [An unverified response containing both answers and objections is effective to preserve those objections. The lack of verification renders the fact-specific answers untimely; but that only creates a right to move for orders and sanctions. It does not result in a waiver of the objections made.].) However, the rationale in *Food 4 Less Supermarkets* is inapplicable here, because the issue addressed was whether the lack of verification resulted in a waiver of the objections where "a party files a *timely* but unverified response raising objection..." (*Id.*, 652 [emphasis added; emphasis in original omitted].) Here, defendant's response raising objections was untimely served; thus, all objections are waived.

Second, an unverified response renders the fact-specific answers untimely. (*Id.*, 657.) Where verification is required, an unverified response is equivalent of no response at all. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.) But no verification is required to preserve objections. (Code Civ. Proc., § 2033.240, subd. (a).) Thus, defendant's unverified fact-specific answers are untimely and equivalent of no response at all. Additionally, while no verification is required to preserve objections, as previously explained, defendant waived all objections prior to the service of her responses. Since defendant has essentially failed to respond by serving unverified responses and objections (where objections have been waived), plaintiff's motions to compel initial responses are appropriate.

Third, no statute contains any time limitation for a motion to compel where *no* responses have been served. (Code Civ. Proc., § 2030.290; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*, (2007) 148 Cal.App.4th 390, 410-411.) A motion to compel further responses must be served "within 45 days of the service of the *verified* response..." (Code Civ. Proc., § 2030.300, subd. (c).) Here, no verified response has been served to start the accrual of the 45-day timeframe.

Plaintiff had ample time to respond the discovery propounded by defendant, and she has not done so; therefore, the motions are granted.

Requests for Admissions:

Failure to timely respond to Requests for Admission results in a waiver of all objections to the requests. (Code Civ. Proc., § 2033.280, subd. (a).) The statutory language leaves no room for discretion. (*Tobin v. Oris* (1992) 3 Cal.App.4th 814, 828.) "The

law governing the consequences for failing to respond to requests for admission may be the most unforgiving in civil procedure. There is no relief under section 473. The defaulting party is limited to the remedies available in [Code of Civil Procedure section 2033.280]....” (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 394–395, disapproved on other grounds in *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 983, fn. 12.)

But the court may relieve the party who fails to file a timely response if, before entry of the order deeming the requested matters admitted, the party in default (1) moves for relief from waiver and shows that the failure to serve a timely response was due to “mistake, inadvertence or excusable neglect;” and (2) serves a response in “substantial compliance” with Code of Civil Procedure section 2033.220. (Code Civ. Proc., § 2033.280(a)-(c); See *Brigante v. Huang* (1993) 20 Cal.App.4th 1569, 1584.) “If the party manages to serve its responses before the hearing, the court has no discretion but to deny the motion . . . Everything, in short, depends on submitting responses prior to the hearing.” (*Demyer v. Costa Mesa Mobile Homes Estates* (1995) 36 Cal. App. 4th 393, 395–396.) However, unsworn responses are equivalent to no response at all and therefore not in substantial compliance with section 2033.240, subd. (a). (*Allen-Pacific, Ltd. V. Superior Court* (1997) 57 Cal.App.4th 1546, 1551.)

Here, defendant served untimely unverified responses, consisting of objections to plaintiff. (Kalajian, Decl., ¶6, 7.) As explained above, since defendant did not comply with responding to the Requests for Admission, and there is no evidence that she has either requested relief from her failure to respond or submitted proper responses before the hearing, this motion is granted.

Sanctions:

Sanctions are mandatory unless the court finds that the party acted “with substantial justification” or other circumstances that would render sanctions “unjust.” (Code Civ. Proc., § 2030.290, subd. (c) [Interrogatories]; 2031.300, subd. (c) [Document demands].) Moreover, the California Rules of Court authorizes an award of sanctions for failure to provide discovery even if “the requested discovery was provided to the moving party after the motion was filed.” (Cal. Rules of Court, rule 3.1348, subd. (a).) Here, defendant indicates that circumstances including her age, health, relocation and the loss of her husband precluded her from being able to comply with responding to the discovery requests. Defense counsel also provides that it was difficult to contact defendant, because she did not provide her new address to counsel. While the court appreciates the difficulties defendant is facing, plaintiffs have had almost eight months to serve meaningful responses to plaintiff. During the course of this time, defendant was at all times represented by counsel and plaintiff granted defendant's requests for extensions of time to respond, to no avail. Moreover, if counsel was struggling to communicate with his client, he could have sought an order to be relieved as counsel.

The court finds it reasonable to allow 4 hours for the preparation of these simple discovery motions and 1.5 hours for the preparation of plaintiff's reply brief, at the hourly rate of \$300. The court also allows \$300 for the cost of filing these motions. Therefore, the total amount of sanctions award against defendant and her counsel of record, John T. Aldrich, is \$1,950. Should the parties' appearance be necessary at hearing, the court will consider awarding additional time.

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: DTT **on** 3/28/2022.
(Judge's initials) (Date)