Tentative Rulings for March 30, 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).)

21CECG01100 ***A.G., et al. v. Anglican Diocese of San Joaquin et al.*** **(Dept. 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.

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(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(20) **Tentative Ruling**

Re: ***Endara v. Gregory et al.***
Superior Court Case No. 17CECG02910
Consolidated with
Shelby American, Inc. v. Endara
Superior Court Case No. 20CECG00202

Hearing Date: March 30, 2022 (Dept. 503)

Motion: By Shelby American, Inc., for Determination of Good Faith Settlement

Tentative Ruling:

To grant.

Explanation:

"Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005." (Code Civ. Proc., § 877.6, subd. (a)(1).) A determination that the settlement was made in good faith bars any other joint tortfeasor or co-obligor from further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. (Code Civ. Proc., § 877.6, subd. (c).)

"The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing." (Code Civ. Proc., § 877.6, subd. (b).) The instant motion is opposed by defendant Gregory. "The party asserting the lack of good faith shall have the burden of proof on that issue." (Code Civ. Proc., § 877.6, subd. (d).)

The court determines whether a settlement is within the "good faith ballpark" by considering the following factors (evaluated as of the time of the settlement): (1) a rough approximation of the plaintiffs' total recovery and the settlor's proportionate liability; (2) the amount paid in settlement; (3) a recognition that a settlor should pay less in settlement than if found liable after a trial; (4) the allocation of the settlement proceeds among the plaintiffs; (5) the settlor's financial condition and insurance policy limits, if any; and (6) evidence of any collusion, fraud, or tortious conduct between the settlor and the plaintiffs aimed at making the nonsettling parties pay more than their fair share. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499.)

The court finds these factors favor a finding that the settlement is in good faith, as set forth below.

(1) As to defendant Shelby, plaintiff's likely recovery would be the $120,000 Shelby received for the roller, plus up to around $73,000 in interest. Defendant Gregory contends that Shelby fails to account for punitive damages, treble damages and attorneys' fees. However, neither Gregory's opposition nor plaintiff's first amended complaint identifies any basis for recovery of treble damages or attorneys' fees in this action. Nor is there any apparent basis or likelihood of plaintiff recovering punitive damages against Shelby. Accordingly, the court finds plaintiff's maximum potential recovery from Shelby is approximately $193,000.

(2) Defendant Shelby produces evidence (to which there is no evidentiary objection) that the amount paid in settlement is $35,000, plus a roller valued at $70,000 (see Cummings Decl., ¶ 3). In the opposition, defendant Gregory produces evidence that the roller, with all options, is actually worth $120,545 ($95,995 for the roller plus options costing $24,550). Thus, while the cost of settlement to Shelby appears to be approximately $105,000 (a fact not disputed by Gregory), the value received by plaintiff is approximately $155,545.

(3) The court recognizes that defendant Shelby should pay less in settlement than if found liable after a trial.

(4) Not relevant.

(5) No evidence has been submitted of defendant Shelby's financial condition and insurance policy limits. There is no indication that this factor should support a lower settlement than expected.

(6) The opposition focuses on arguing that there is evidence of fraud and collusion. Defendant Gregory makes no credible argument of fraud. The collusion argument is based on the contention that the moving papers significantly understate the value of the roller in order to leave Gregory on the hook to pay a greater amount in the event he is found liable after trial.

As Gregory notes, when a plaintiff settles with one of several defendants, the settlement discharges the settling defendant from liability to the other defendants for equitable contribution or comparative indemnity, but not for contractual indemnity. The amount paid by the settling defendant reduces the claim against the other remaining defendants. (Code Civ. Proc., § 877, subd. (a) [the settlement "shall reduce the claims against the others in the amount stipulated by the release"].) Thus, plaintiff's claims against Gregory, the remaining defendant, would be reduced by the amount of consideration paid by Shelby.

The $70,000 valuation of the roller (which is not even claimed in the settlement agreement) is not binding. "[O]peration of the section 877, subdivision (a) setoff does not depend upon any express 'offset' provision in the settlement agreement or upon an actual transfer of money." (*Armstrong World Industries, Inc. v. Superior Court* (1989) 215 Cal.App.3d 951, 957.) The $70,000 valuation of what the roller cost for Shelby will not have any effect on the setoff Gregory would receive in the event he is later found liable. Thus, Gregory's concern of collusion is misplaced.

In this case, the settlement, as valued by defendant Gregory, more than makes plaintiff whole, and covers a substantial portion of prejudgment interest, as well. The court finds the settlement to be in good faith.

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: KAG on 3/25/2022 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Savala v. Pacheco, et al.***
Superior Court Case No. 20CECG01141

Hearing Date: March 30, 2022 (Dept. 503)

Motion: Defendants Fernando Martin Moreno Pacheco and Lorena Sanchez's Motions to Compel Plaintiff's Responses to (1) Form Interrogatories, (2) Special Interrogatories, and (3) Demand for Production of Documents, and for Monetary Sanctions

Tentative Ruling:

To grant the motions of defendants Fernando Martin Moreno Pacheco and Lorena Sanchez ("defendants") to compel the responses of plaintiff Richard Savala ("plaintiff") to (1) Form Interrogatories; (2) Special Interrogatories, Set One; and (3) Demand for Production of Documents, Set One. Plaintiff shall serve verified responses, without objections, no later than 15 court days from the date of this order, with the time to run from the service of this minute order by the clerk.

To impose monetary sanctions in the total amount of $555 in favor of defendants and against plaintiff, payable within 30 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 Demand

Plaintiff had ample time to respond to the discovery propounded by defendants, and has not done so. 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.) Even though defendants were not required to do so, they gave plaintiff additional time to respond, but to no avail.

Monetary 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].) No opposition was filed, so no facts were presented to warrant finding sanctions unjust. The Court awards sanctions totally $555, which represents one-half hour of attorney time for each unopposed motion and the $60 filing fee for each 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: KAG on 3/28/2022 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Veronica Gonzalez v. County of Fresno***
Superior Court Case No. 18CECG03672

Hearing Date: March 30, 2022 (Dept. 503)

Motion: Defendants Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To deny defendants' motion for summary judgment. To deny the motion for summary adjudication as to the fourth, fifth, sixth, seventh, eighth, and eleventh causes of action. To grant the motion for summary adjudication as to the ninth and tenth causes of action. (Code Civ. Proc., § 437c.) Defendants' evidentiary objection was not ruled upon as it was not material to the determination of the motion. (Code Civ. Proc., § 437c, subd. (q).)

Explanation:

Burden on Summary Judgment

Summary judgment law turns on issue finding rather than issue determination. (*Diep v California Fair Plan Ass'n* (1993) 15 Cal.App.4th 1205, 1207.) The court does not decide the merits of the issues, but merely discovers, through the medium of affidavits or declarations, whether there are issues to be tried and whether the parties possess evidence that demands the analysis of a trial. (*Melamed v City of Long Beach* (1993) 15 Cal.App.4th 70, 76; *Molko v Holy Spirit Ass'n* (1988) 46 Cal.3d 1092, 1107; *Schwoerer v Union Oil Co.* (1993) 14 Cal.App.4th 103, 110.) In short, the motion is not a substitute for a bench trial.

Summary adjudication is the proper mechanism for challenging a particular, "cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

A summary judgment motion must show that the "material facts" are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1).) The pleadings serve as the "outer measure of materiality" in a summary judgment motion, and the motion may not be granted or denied on issues not raised by the pleadings. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74 [pleadings determine the scope of relevant issues on a summary judgment motion].)

A party moving for summary judgment or summary adjudication must support the motion with a separate statement that sets forth plainly and concisely all material facts that the moving party contends are undisputed, and each of these material facts must be followed by a reference to the supporting evidence. (Code Civ. Proc., § 437c, subds. (b)(1), (f)(2).) A separate statement is required to afford due process to the opposing party and to permit the judge to expeditiously review the motion for summary judgment or summary adjudication to determine quickly and efficiently whether material facts are disputed. (*Parkview Villas Ass'n, Inc. v State Farm Fire & Cas. Co*. (2005) 133 Cal.App.4th 1197, 1210; *United Community Church v Garcin* (1991) 231 Cal.App.3d 327, 335.) As a result, the separate statement should include only *material* facts—ones that could make a difference to the disposition of the motion. (Cal. Rules of Court, rule 3.1350(f)(3); see also Cal. Rules of Court, rule 3.1350(a)(2) [defining "material facts"].)

Thus, the moving party must go through its own case and the opposing party's case on an issue-by-issue basis. The moving party must identify for the court the matters it contends are "undisputed," and cite the specific evidence (pleadings admissions, or discovery, or declarations) showing there is no controversy as to such matters and that the moving party is entitled to judgment as a matter of law. "This is the Golden Rule of Summary Adjudication: If it is not set forth in the separate statement, *it does not exist*." (*United Community Church v. Garcin* (1991) 231 Cal.App.3d 327, 337 [superseded by statute on other grounds]; *Allen v. Smith* (2002) 94 Cal.App.4th 1270, 1282; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 173 [failure of defendant's separate statement to address material allegation in complaint was "fatal flaw"].)

In the case at bench, defendants identified in their notice of motion seven issues for summary adjudication. Two of these issues were not found in the separate statement: "4. Defendants are Immune From Liability Based on Negligence[;]" and "7. Plaintiffs Fail to Adequately Allege a Theory of Liability Based on Statute for County Liability." (Notice of Motion, p. 2.) For this reason, summary adjudication of these issues is denied.

<u>*Summary Adjudication*</u>

Issue 1: Deputies' handcuffing plaintiffs was reasonable and does not support a claim of battery

Defendants contend that their act of handcuffing plaintiffs was reasonable as the undisputed material facts are that plaintiffs were detained and handcuffed for officer safety. (UMF Nos. 26, 27, 28.) In opposition, plaintiffs have disputed the assertion that officer safety was a concern (UMF Nos. 26 and 28) with evidence that all plaintiffs were patted down, searched and had no weapons. (Kane Decl. Ex. G, Morse Depo. 38:6-7.) Additionally, plaintiffs have introduced evidence that they were not uncooperative during the encounter. (Kane Decl., Ex. G, Morse Depo., 69:9-13; Kane Decl., Ex. H, Cervantes Depo., 16:17-21.) The confirmed lack of weapons on plaintiffs' persons and cooperation during the incident would support a finding that plaintiffs did not pose a safety concern to the officers requiring the use of handcuffs during the investigation. This evidence is sufficient to create a triable issue of material fact whether the handcuffing was reasonable. Summary adjudication of the fourth cause of action is denied.

Issue 2: Plaintiffs' false imprisonment allegations fail as their detention was reasonable

Plaintiffs' cause of action for false imprisonment states that plaintiffs were intentionally deprived of their freedom of movement by being held by defendants for over two hours and being handcuffed. (Complaint at ¶ 15.) Defendants contend that they are entitled to summary judgment because the detention was reasonable under the circumstances. Where there is a rational belief of criminal activity with which the suspect is connected, a detention for reasonable investigative procedures "infringes no constitutional restraint." (*Dawkins v. City of Los Angeles* (1978) 22 Cal.3d 126, 133.) The totality of the circumstances at the time, including the severity of the crime at issue, whether the plaintiff posed a reasonable threat to the safety of the officer or others, and whether the plaintiff was actively resisting detention or attempting to escape are considered in the reasonableness of the officer's conduct. (*Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 514.)

In the instant case, defendants came to plaintiffs' residence looking for a vandalism suspect. (UMF Nos. 1, 8, 9.) As detailed above, plaintiffs have produced evidence to dispute that they posed a threat to officer safety. Officers confirmed there were no weapons on plaintiffs' persons and they were not uncooperative during the encounter. (Kane Decl. Ex. G, Morse Depo. 38:6-7, 69:9-13; Kane Decl., Ex. H, Cervantes Depo., 16:17-21.) There is evidence to support plaintiff's contention that the detention was not reasonable, and this is sufficient to deny summary adjudication of the issue. Consequently, summary adjudication of the eleventh cause of action is denied.

Issue 3: Defendants did not possess the necessary specific intent to violate plaintiffs' constitutional rights pursuant to California Civil Code section 52.1 (the Bane Act)

The issue on which defendants seek summary adjudication is defendants' *intent* in the acts alleged to have violated plaintiffs' constitutional rights. Defendants cite to *Cornell v. City & County of San Francisco* (2017) 17 Cal.App.5th 766, 803, in support of their contention that specific intent to violate plaintiffs' rights is a necessary element of a Bane Act claim. Plaintiffs counter that there is no such requirement under California Code section 52.1.

"The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., 'threats, intimidation or coercion'), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law." (*Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 955–956, citations omitted.) The act of interference with a constitutional right must itself be deliberate or spiteful in order to support the cause of action. (*Id*. at p. 959.)

The evidence presented by defendants reflecting the intent of defendant officers during the encounter reflects that the officers were at plaintiffs' residence looking for a vandalism suspect and known drug user. (UMF Nos. 3, 4, 7 and 8.) During the investigation, defendant officers encountered a person staying on the property with an outstanding warrant and drugs in his possession. (UMF No. 11.) Additionally, there were

marijuana plants found growing at the property. (UMF No. 19.) Plaintiff Gonzalez remained behind a security door when talking to Deputy Bush. (UMF No. 15.)

Plaintiffs frame the encounter differently. Deputy Bush arrived at the house with her gun drawn, which scared plaintiff Gonzalez. (Plaintiffs' UMF No. 61.) The other plaintiffs were ordered out of the house at gunpoint and searched without consent. (Plaintiffs' UMF Nos. 70 and 71.) Deputies sought consent from plaintiff Gonzalez for the search of her home and she refused. (Plaintiffs' UMF Nos. 65, 66, 67.) Defendants ultimately conducted the search of the home without a warrant. (Plaintiffs' UMF Nos. 68.)

Plaintiffs' evidence is sufficient to support their characterization of the events as a violation of the Bane Act. Thus, the court denies summary adjudication of the eighth cause of action's element of defendants' intent.

Issue 4: Conduct of the officers did not exceed the bounds of that tolerated in a civilized community

Defendants contend that their conduct during the encounter with plaintiffs did not rise to the level of outrageous conduct so extreme so as to exceed the bounds of that tolerated in a civilized community. In support, they argue that the intent of the officers was never to cause emotional distress to plaintiffs, the intent in the detention of plaintiffs and events that followed was to locate a vandalism suspect and drug user known to frequent the residence. (UMF Nos. 2, 3, 7, 8, 9.)

Plaintiffs' frame the issue differently, that a search for a vandalism suspect never should have led to the handcuffing and detention of plaintiffs outside their home while a warrantless search took place and the family dog was ultimately shot. (Plaintiffs' UMF Nos. 61-62, 68, 70, 76, 83-84.) Plaintiffs and defendants have a different perspective of the same events, and a reasonable trier of fact could be swayed by either characterization. Therefore, summary adjudication is denied as to the sixth cause of action for intentional infliction of emotional distress.

Issue 5: Deputy Cervantes' defense of himself and his K9 do not support a claim of trespass to chattels/conversion

Defendants assert that Officer Cervantes' use of deadly force against plaintiffs' dog was in defense of himself and his K9 and as such cannot be a trespass to chattel or conversion. (*Church of Scientology v. Armstrong* (1991) 232 Cal.App.3d 1060, 1072.) In an unpublished, federal opinion, the principle of self-defense of another was extended to defense of a police canine. (*Perez v. City of Placerville* (E.D. Cal. 2008) 2008 WL 4279386.) The issue was summarily adjudicated where "plaintiff had not produced 'any evidence to dispute that [the officer] killed plaintiff's dog in defense of his fellow officer and police canine.'" (*Id*. at p. *9.) Defendants have presented evidence that the shooting of plaintiffs' dog was in the officer's defense of himself and his K9. (UMF Nos. 37-40.)

Plaintiffs contend non-lethal force should have been used against their dog. Plaintiff's expert, Scott DeFoe, opines that non-lethal force should have been used against the dog in the form of kicking the dog, or using a baton or pepper spray. (DeFoe

Decl., Ex. K.) Plaintiffs' expert does not address whether the action was taken against the dog in the officer's defense of himself and his K9. Plaintiffs dispute that their dog bit and held onto the K9 by citing Officer Cervantes' testimony that the bite lasted maybe two seconds. (Kane Decl., Cervantes Depo. 44:1-3.) Plaintiffs dispute that there was potential for a dog fight by arguing that Officer Cervantes did not state that there was potential for a dog fight. (*Id.* at 42:16-19.) The evidence presented does not negate that Officer Cervantes' actions were in defense of himself and the K9. Both parties cite to the testimony of Officer Cervantes that his K9 was trying to lunge, that it was very chaotic, and that there was not enough distance between the Officer and plaintiffs' dog to make physical contact. (*Ibid.*)

Plaintiffs have not presented evidence to dispute that the officer's action against the dog was undertaken in his and his K9 companion's defense. The motion for summary adjudication as to the ninth and tenth causes of action for trespass to chattels and conversion is 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: KAG on 3/28/2022 .
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Nutt v. ASFC, LLC***
Superior Court Case No. 21CECG00531

Hearing Date: March 30, 2022 (Dept. 503)

Motion: Motions by Plaintiff to Compel Further Responses to Form Interrogatories, Set One; Special Interrogatories, Set One; and for Request for Production of Documents, Set One

Tentative Ruling:

To grant plaintiffs' motions to compel defendant ASFC, LLC dba Sierra Vista Healthcare ("defendant") to provide further responses to Form Interrogatory No. 15.1, Special Interrogatories Nos. 6, 28, 29, and 32, and Request for Production of Documents Nos. 12, 31, and 34. Defendant shall serve further verified responses without objections and produce all responsive documents within 30 days of service of the order by the clerk. Private patient information shall be redacted and be limited to the time period ten days prior to the decedent's admission.

To deny the motions as they relate to Special Interrogatory No. 5 and Request for Production of Documents No. 16.

Explanation:

Introduction

Plaintiffs' reply papers state that the disputed discovery has been reduced to one form interrogatory, five special interrogatories, and four requests for production of documents. In reviewing plaintiffs' motions, the court is guided by the principle that discovery requests are generally afforded liberal construction. (See Code of Civ. Proc., § 2017.010; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 541.)

Motion to Compel Further Responses to Interrogatories

Each answer in the response must be "as complete and straightforward as the information reasonably available to the responding party permits. [¶] . . . If an interrogatory cannot be answered completely, it shall be answered to the extent possible." (Code Civ. Proc., § 2030.220, subd. (a), (b).) Where the question is specific and explicit, an answer that supplies only a portion of the information sought is improper. It is also improper to provide "deftly worded conclusionary answers designed to evade a series of explicit questions." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783.) Furthermore, where an interrogatory asks for the names of all witnesses to a particular event then known to the responding party, a response omitting the name of a known witness could subject the adversary to unfair surprise at trial and therefore may result in an order excluding that witness' testimony. (*R & B Auto Ctr., Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327, 356.)

In addition, "[i]f the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (Code Civ. Proc., § 2030.220, subd. (c); *Regency Health Services, Inc. v. Superior Court* (1998) 64 Cal.App.4th 1496, 1504.) If the interrogatory seeks information contained in files and records, the responding party is under a duty to provide "complete and straightforward" answers. (Code Civ. Proc., § 2030.220, subd. (a).)

When the responding party answers with objections, and a motion to compel is filed, the burden is on the objecting party to establish whatever facts are necessary to justify the objection. (*Coy v. Superior Court of Contra Costa County* (1962) 58 Cal.2d 210, 220-221; *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.)

- *Form Interrogatory 15.1*

This is a Judicial Council approved interrogatory. Defendant's separate statement argues that discovery continues and it is unaware of responsive information outside of the decedent's medical records. Nevertheless, to the extent investigation and discovery are ongoing, the responding party must respond with what information it has to date, and this interrogatory cannot be answered by simply referencing all documents (i.e., the decedent's medical record) already produced.

Therefore, the motion is granted as it relates to Form Interrogatory 15.1.

- *Special Interrogatories Nos. 5, 6, 28, 29, and 32*

Plaintiffs' request to compel a further response to Special Interrogatory No. 5 is denied because defendant's response identified specific individuals responsible for its "day to day operations." Furthermore, to the extent that plaintiffs seek the "organizational structure," such a request was not stated in this interrogatory.

Plaintiffs' request to compel a further response to Special Interrogatory No. 6 is granted. This interrogatory specifically sought the identity of "Governing Board" members. Defendant, however, only provided the names of managing members, without specifying whether those same individuals comprised the governing board.

The request for further responses to Special Interrogatory Nos. 28, 29, and 32 is granted. Although defendant's responses to these interrogatories identified specific names and the dates the assessments were signed, there is no precise information as to <u>when</u> the assessments were actually performed, i.e., plaintiffs are left to speculate how the signature dates relate to the assessment.

<u>Motion to Compel Further Responses to Requests for Production of Documents</u>

A response stating inability to comply with the demand shall include "[a] representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." (Code Civ. Proc., § 2031.230.)

In addition, Code of Civil Procedure section 2031.310, subdivision (a) provides:

> On receipt of a response to a demand for inspection . . . , the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:
>
> (1) A statement of compliance with the demand is incomplete.
>
> (2) A representation of inability to comply is inadequate, incomplete, or evasive.
>
> (3) An objection in the response is without merit or too general.

- *Request for Production Nos. 12 and 31*

These requests seek documents identifying defendant's governing body and information concerning staff allocations based upon patient acuity during the time of plaintiff Lola Nutt's residency. Defendant responded that, after a diligent and reasonable inquiry, no such documents could be found. However, such a statement "shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party." (Code Civ. Proc., § 2031.230.) Accordingly, because this specification is absent in defendant's response, a further response is required to Request for Production Nos. 12 and 31.

- *Request for Production of Documents No. 16*

Plaintiffs seek "[a]ll documents reflecting any agreement(s)" related to defendant's managing members, purportedly because such information would identify defendant's organizational structure. (See Reply, p. 2:24-25.) However, Request for Production No. 16 is not limited in the time, scope, or nature of the agreements sought. Therefore, plaintiffs' motion to compel a further response to Request for Production No. 16 is denied.

- *Request for Production of Documents No. 34*

Plaintiffs' request to compel a further response to Request for Production No. 34 is granted. Although defendant asserts the privacy of its residents, there is no assertion that the privacy concerns cannot be mitigated as proposed by plaintiffs through redaction and by limiting the time period to the 10 days prior to the decedent's admission. (See *Snibble v. Superior Court* (2014) 224 Cal.App.4th 184, 196 ["Because the production of portions of redacted orders would not invade patient privacy, real parties in interest need not show a compelling need for discovery."].)

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: KAG on 3/29/2022 .
(Judge's initials) (Date)