



Superior Court of California County of San Benito

Tentative Decisions for March 27, 2024

Courtroom #1: Judge Pro Tempore Page Galloway

CU-20-00002 Miguel A. Lua v. John Deere Construction/Forestry, et al.

3-27-24

On for Defendant's (City of Hollister) motions to a) Compel Further Response to Request for Production of Documents, set three; b) Compel Further Response to Special Interrogatories, set Three; c) sanctions against both Plaintiff and his attorney of Record.

Plaintiff: Gary A. Dordick

Defendant (John Deere Const.& Forestry Co- Dismissed)

Defendant: Dana Alden Fox, Alexander Green (City of Hollister)

Defendant: Dana Alden Fox, Alexander Green (Pedro Galvan)

Other: California Insurance Co (Christopher Capalbo)

This case arises from a motor vehicle collision occurring on or about April 30, 2018. While driving at night, in San Benito County, when the Defendant Galvan, driving a backhoe tractor truck, owned by Defendant City of Hollister, was involved in the collision with Plaintiff's vehicle. This case follows. Plaintiff seeks damages for "severe permanent physical, mental and emotional injuries" which he asserts did and will continue to require medical care and treatment into the future. (Plaintiff's Complaint for Damages was initially filed in the County of Los Angeles. See Defendant's motion, exhibit A, p 3, ll 18-20.) The Plaintiff asserts causes of action for 1) Liability for the Wrongful Act or Omissions by Public Entity Employees (Gov't Code d§815.2, et seq, (Galvan, City of Hollister); 2) Negligent Hiring, Retention, Supervision, and Training (City of Hollister); 3) Strict Liability (John Deere Construction and Forestry Co. (*Defendant Dismissed*); 4) Negligent Product Liability (John Deere Construction and Forestry Co. (*Defendant Dismissed*))

3-6-24 The court heard and granted Plaintiff's motion to compel the deposition of Defendant City of Hollister's person most knowledgeable. Matter calendared for the aforementioned motions to compel and for trial setting on 3-27-24.

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Argument

2-16-24 Defendant City of Hollister (“City”) moves to compel further responses from Plaintiff to their request for production of documents, specifically items 69 through 74, inclusive, and for monetary sanctions. The documents sought address recent information regarding the Plaintiff’s detention pursuant to Cal. Welfare and Institutions Code section 5150 (“5150”), occurring on or about 7-11-23, as notified by Plaintiff’s counsel on 7-12-23. The detention pursuant to 5150 is relevant to issues of whether there is contributory causation for Plaintiff’s alleged continuing and future injuries, noting the complaint alleges that the incident of 4-30-18 caused him to suffer “severe permanent physical, mental and emotional injuries.” The Plaintiff responded to the requests on 11-14-23, but has yet to produce documents, noting that he is requesting them from the Hospital, after which the response would be supplemented. Despite repeated meet and confer attempts no supplemental responses nor documents have been produced. The motion to compel is warranted to obtain this relevant information, further the objections posed in the current responses are without merit, including the objection based on privacy, which is outweighed by the needs for discovery and the plaintiff putting his mental state at issue.

2-16-24 Defendant City of Hollister moves to compel further answers to Specially Prepared Interrogatories, specifically items 63, 64, 66, 73-75, and 79-87. As noted in the motion to compel further responses to production of documents, the need for the information sought is based on the same set of facts and circumstances, and the objections posed to these inquiries are the same as indicated in the motion to compel production of documents and fail for the same reasons.

Responsive Declarations Due 3-15-24; Reply Declarations Due 3-22-24

Legal Authority: The standard of the law is that any matter that is relevant to the subject matter and not privileged is discoverable if it is itself admissible or appears reasonably calculated to lead to the discovery of admissible evidence. (CCP §2017.010.) The discovery statutes must therefore be construed liberally in favor of disclosure, unless the request is clearly improper by virtue of well-established causes for denial. (*Greyhound Corp. v. Sup. Ct.* (1961) 56 Cal. 2nd 355, 377.) Doubts “should generally be resolved in favor of permitting discovery.” (*Williams v. Sup. Ct.* (2017) 3 Cal. 5th 531, 542.)

In responding to interrogatories, the answer must be “complete and straightforward as the information reasonably available to the responding party permits.” (CCP §2030.220(a).) It is improper to cite to other documents rather than providing complete response. It is thus improper to answer by referring the propounding party to see the responding party’s deposition, pleading, or other documents. If the question does require reference to a document or pleading, then the responding party should identify the pleading or document and summarized to provide a fully responsive answer to the question. (*Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 784.) While *Deyo* was decided prior to the current iteration of the Civil Discovery Act, its analysis and logic remain sound, and the decision continues to be good law, citable for these purposes. The Discovery act authorizes motion to compel further responses for incomplete or inadequate

responses (CCP§2030.300), stating in relevant part “[o]n receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if...)(1) An answer to a particular interrogatory is evasive or incomplete...[or](3)An objection to an interrogatory is without merit or too general.” Answers are evasive if they deliberately misconstrue the questions or are worded deftly to provide conclusionary answers “designed to evade a series of explicit questions.” (*Deyo v. Kilbourne, supra*, 84 Cal. App. 3^d at 783.) Moreover, the duty to answer extends beyond the personal knowledge of the responding party. If the party lacks sufficient personal knowledge to fully respond, that party must make “a reasonable and good faith effort to obtain the information” from other sources. (CCP §2030.220 (c); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal. App. 4th 390, 406.) Similarly, under section 2031.320 of the code of Civil procedure, a party may pursue further responses to a request for production of documents, or to compel the production of the promised documents themselves.

Meet and Confer Requirements: Generally, discovery motions must be accompanied by declarations describing in detail each party’s meet and confer efforts and attempts to informally resolve disputed issues. (e.g. CCP§§2024.050(a), 2025.410(c), 2025.420(a), 2025.050(b), 2028.040(b), 2030.090(a)2031.060(a), 2033.080(a), 2034.250(a).) At a minimum, each party must confer in person, by telephone, or by letter with the opposing party or attorney and make a reasonable good faith attempt to reach informal resolution of any discovery dispute. The failure to do so is an abuse of the discovery process. (CCP §2023.010(i).)

Privacy: The California Constitution (Cal. Const. art I, §1) creates a “zone of privacy” protecting against unwarranted, compelled disclosure of private personal information and extends to a person’s confidential financial affairs as well as to details of a party’s personal life. (*Williams v. Sup Ct.* (2017) 3 Cal. 5th 531, 552.) While the filing of a lawsuit may be deemed a waiver of privacy as to matters embraced by the action, the scope of such waiver must be narrowly construed. (*Vinson v. Sup. Ct.* (1987) 43 Cal. 3d 833, 842.) In determining whether a discovery order would violate state constitutional privacy rights, the court must apply the framework established in *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal. 4th 1. Under *Hill*, a plaintiff alleging an invasion of privacy must establish 1) a legally protected privacy interest; 2) an objectively reasonable expectation of privacy in the circumstances; 3) conduct by the defendant that constitutes a serious invasion of privacy. (*Mathews v. Beccerra* (2019) 8 Cal. 5th 756, 769.) A defendant may prevail by negating any of these three elements *or* by pleading and proving that the invasion of privacy is justified because it substantially furthers one or more countervailing interests. The plaintiff may then rebut the assertion by showing there are feasible and effective alternatives to the defendant’s conduct having a lesser impact on the plaintiff’s privacy interests. The standard for evaluating the justification for invading a privacy interest depends upon the interest involved, the nature and seriousness of the invasion, and the countervailing interests. (*Id.*) This requires the party seeking discovery to satisfy more than the relevancy standard of CCP§2017.010 (*See also Williams v. Sup Ct, supra*, 3 Cal. 5th at 556.) Not all privacy interests must be overcome by a compelling interest: this is required to justify an obvious invasion of an interest fundamental to an individual’s personal autonomy.

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Otherwise, when lesser interests are at stake, the balancing test noted applies. In doing so the court must consider the purpose of the information sought, the effect of disclosure, the nature of the objections urged by the resisting party, and the availability of alternative, less intrusive means of obtaining the information sought. Further, matters otherwise protected by a constitutional right to privacy are discoverable only if they are directly relevant to the plaintiff's claim and essential to the fair resolution of the action. (*Vinson v. Sup. Ct.*, *supra*, 43 Cal. 3d at 842.)

The burden of justifying an objection and failure to respond rests with the party resisting the interrogatory. (*Williams v. Sup. Ct.* (2017) 3 Cal 5th 531,541.) An objection for vagueness or ambiguity requires that a term or an inquiry be wholly unintelligible. If the nature of the information sought is apparent, it must be answered. (*Deyo v. Klibourne*, *supra*, 84 Cal. App. 3^d at 783.) An objection for overbreadth is valid only to the extent that it imposes an undue burden upon the responding party or is irrelevant to the subject matter. (CCP§2017.020(a).) The objecting party must show the amount of work required to respond to support this objection. (*Williams v. Sup. Ct.* (2017), *supra*, 3 Cal. 5th at 549-550.) This is the analysis whether the form of discovery is interrogatory, or a request for the production of documents. Additionally, the objection that an interrogatory "calls for a legal conclusion" is invalid, pursuant to *Greyhound Corp. v. Sup. Ct.* (1961) 56 Cal. 2d 355, 392, see also CCP§2017.010.)

Analysis: The request for further responses to the request for production of documents and for the production of the documents promised in the Plaintiff's responses should be granted. The objections on the basis of ambiguity and vagueness as well as over-breadth are without merit. The scope of the request is sharply limited in time and defined clearly within the context of the request. However, the issue of privacy requires further scrutiny. By framing the complaint to include claims of mental and emotional harm, which is significant and ongoing, requiring care, the Plaintiff has placed in issue the status of his mental health. It is relevant to determine whether the mental and emotional harm herein is attributable to the events that gave rise to this action, thus exploration of alternative causes of his distress is relevant to the determination of this controversy. (*Vinson v. Sup. Ct.* (1987) 43 Cal, 3^d 833,839.) However, this is not the end of the analysis. As noted, the scope of the waiver of privacy created by the filing of an action must be narrowly construed. (*Id.* at 842.) Thus, the court must review whether the Defendant has presented a sufficient countervailing interest, dependent upon the interests involved.

In this instance there is no less intrusive means of obtaining this information which is highly relevant to the determination of the plaintiff's claims and is essential to the fair resolution of this controversy. (*Ibid.*) Here the plaintiff has alleged he has suffered severe emotional and mental repercussions from the collision which caused him immediate and long-lasting harm requiring ongoing care. However, it is also noted that the Plaintiff was detained pursuant to 5150 in July of 2023. It is unclear whether this detention resulted from harm allegedly suffered in the motor vehicle collision, or if it is of other, possibly prior origin. This is an issue of causation and is central to the conflict before the court. That stated, the information sought is sensitive and within the zone of interests which the Plaintiff would reasonably expect privacy. Therefore, while the court will order the production of the documents responsive to items 69-74 and further response in

accord with these orders, the court will also make a protective order that these documents will be restricted in their use and dissemination. Counsel will meet and confer to formulate a proper protective order with regard to these documents.

For the same reasons as stated above, the court also grants the Defendant City's request to compel further responses to specially prepared interrogatories in full, with the order that the parties meet and confer to formulate a proper protective order regarding the use and dissemination of the further responses to the subject interrogatories.

The court notes that with regard to the request for fees as sanctions, the court notes that pursuant to Code of Civil Procedure section 2023.030 sub (a) "the court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both to pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." The statute further states that in exercising the discretion to impose monetary sanctions, if authorized by any provision of the Civil Discovery Act, that the court may decline to impose sanctions if it finds that a party acted with reasonable justification. To some extent here, there is reasonable justification to assert an objection founded in privacy. However, the Plaintiff also stated that they would provide answers and documents to these interrogatories and requests for production. Therefore, the court declines to order monetary sanctions at this time.

Proposed Ruling.

- 1) The court grants the request to compel further responses and production of documents, set three, items 69-74. The Plaintiff will provide further responses and will produce the documents requested within 20 calendar days, subject to a protective order defining the scope of use and limits on dissemination of the documents. Counsel will meet and confer to prepare the protective order.
- 2) The court grants the request to compel further responses to Specially Prepared Interrogatories, 63,64,66, 73-75, 79-87 within 20 calendar days, subject to a protective order defining the scope of use and limits on dissemination of the documents. Counsel will meet and confer to prepare the protective order.
- 3) The court declines to order monetary sanctions at this time.

CU-23-00165 Lisa Biakanja v. State of California Department of Transportation

On calendar for Motion to Consolidate related actions, Motion to be relieved as counsel.

(Only Motion to Consolidate is addressed in this memorandum)

Plaintiff: Jennifer Burkes (Lisa Biakanka)

Defendant: David Austin

1-16-24- Plaintiffs/Cross Complainants motion to consolidate actions and MPA filed.

1-18-24 Plaintiff's/Cross Complainants notice of motion to consolidate related actions

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Related case: CU-23-00170 (*Araceli Murillo Zarate v. Estate of Lisa C. Biakanja* (“Zarate Case”))

Plaintiffs in CU-23-00170 move the court pursuant to Code of Civil Procedure section 1048 to consolidate this case, CU-23-00165 *Estate of Lisa Biakanja v. State of California Department of Transportation* (“Biakanja Case”) with CU-23-00170, *Araceli Murillo Zarate v. Estate of Lisa C. Biakanja* (“Zarate Case”). In the Zarate Case, the plaintiff is represented by Owili K. Eison and the Defendants/Cross Complainants are represented by Erin o. Hallissy. The Cross Defendants Zarate and Altman Specialty Plants are represented by Monica M. Vesga Alfaro. The Cross Defendants have not appeared in this case yet. The Notice of Motion has also been filed in the Zarate Case pursuant to California Rule of Court 3.350(a)(1)(C).

In CU-23-00170 The attorneys for the Plaintiff/ Cross Complainant (Ms. Butler) took the motion to consolidate related cross actions off calendar on or about 1-18-24.

1-16-24 Plaintiff argues the following: Underlying this case is a motor vehicle collision that took place August 14, 2022, at approximately 8:04 p.m. in San Benito County. The vehicles were driven by the decedent, Ms. Biakanja, and Ms. Zarate, respectively. Ms. Zarate at the time of the accident was engaged in the scope and course of her employment when the parties collided while Decedent traveled eastbound on Highway 156 and Ms. Zarate was travelling westbound. Ms. Biakanja and her three children died as a result of the accident. These suits were the result. Given that two separate actions arise from the same motor vehicle collision, and decedent’s estate is a party to both actions, Plaintiff is requesting consolidation for all purposes including trial.

3-19-24 Real Parties in Interest have filed their opposition to the consolidation. (Kenneth McIntire; Joan McIntire) . The parties note that their counsel is seeking to withdraw, and ask that this matter be continued until 7-1-24 to allow them the time to find substitute counsel. They argue the issues are factually and legally complex. A delay of this length will not result in any prejudice because trial has not been set, discovery has not been completed, and there are no looming deadlines.

Legal Authority: California Code of Civil Procedure section 1048 subsection (a) reads “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay.” Consolidation serves to promote trial convenience and economy. It avoids the duplication of procedure, particularly regarding issues of proof common to both actions. (*Wouldridge v Burns* (1968) 265 Cal. App. 2nd 82,86; *Mueller v. J.C. Penny Co.* (1985) 173 Cal. App. 3rd 713, 722.) The court has sole discretion to determine whether consolidation would tend to avoid needless costs or delays. (*Estate of Baker* (1982) 131 Cal. App. 3rd 471, 485.) The court’s exercise of discretion to grant or deny consolidation will not be disturbed on appeal, barring a showing of an abuse of discretion. (*Id.* at 485.) In the exercise of its discretion the court must consider 1) the timeliness of the motion; 2) its complexity, and 3) whether consolidation will result in prejudice to the parties. Procedurally, where related cases are all filed in one superior court, the court may “on notice to all parties, . . . order that the cases, including probate and family law cases, be related and may assign them to a single judge or department.” (Cal. Rules of Ct. Rule 3.300(h)(1).) The notice of related cases must be served and filed “as soon

as possible, but no later than 15 days after the facts concerning the existence of related cases became known. (Cal. Rules of Ct. Rule 3.300(e).) Finally, the rules of the court require, among other things, that the moving party file its motion in the lower numbered case to permit the judge in that case to make a determination of whether to consolidate. (Cal. Rules of Ct., Rule 3.350.)

Analysis: A party must “file the notice of related case no later than 15 days after the facts concerning the existence of the related case became known.” (Cal. Rules of Ct. Rule 3.300(e).) Here, it appears that the Plaintiffs have met that requirement, filing their notice of related case on September 25, 2023, ten days after the Complaint in the Zarate case was served on the Plaintiffs. The cases are, in the grander scheme, not overly complex, both arise from the same set of operative facts- a vehicle collision that involved the decedent, her minor children, and Ms. Zarate, who was at that time engaged in her employment duties while both drove in opposite directions on Highway 156. The issues of both liability and damage arise from this single incident. Both actions are currently pending in this court, and consolidation would not inconvenience the parties or counsel to either case. Moreover, given these cases and circumstances, consolidation would avoid duplicative efforts, multiple trials, and a multiplicity of pretrial hearings. According to counsel for the parties and as referenced in their respective case management statements, written discovery has begun in both cases. Currently the Cross Defendant in the Zarate case have not filed responsive pleadings. It therefore does not appear that the parties would be prejudiced by consolidation of the cases. Finally, consolidation would avoid the risk of inconsistent results in these matters.

Proposed Ruling: The court grants the request to consolidate these cases. Case CU-23-00170 will be consolidated with CU-23-00165, with CU-23-00165 designated as the lead file. All future pleadings and correspondence will be filed in CU-23-00165, pursuant to California Rules of Court Rule 3.350(b). The cases are consolidated for all purposes, including for trial. All hearing dates in CU23-00170 are vacated.

CU-23-00282 In re Ingrid Sywak, et al.

3-27-24

Petition for Writ of Mandate (Administrative)

Petitioners: Christine Breen (NATMAR, L. P; Ingrid Sywak, Alexander Sywak both as individuals and as general partners in NATMAR.)

Respondent: City of Hollister, Hollister City Council , et al.

Next on Calendar 4-10-24 Defendant City of Hollister, Hollister City Council’s Demurrer to Complaint.

Petitioners on 12-20-23 filed a verified Petition for 1) Writ of Administrative Mandamus pursuant to CCP §1094.5; 2) Declaratory Relief; 3) Complaint for Regulatory Taking/Inverse Condemnation; and 4) Damages. They challenge the City of Hollister’s resolution No. 2023-235, which denied the appeal by Natmar, L.P., and upheld the city planning commission’s decision to deny approval of the vesting tentative map TM 2022-1 and a density bonus DM 2023-3 for a proposed development.

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They allege that this denial violates the Subdivision Map Act and State Housing Law. They seek administrative mandamus directing Respondents to approve their project, or alternatively find that the Respondents' acts and omissions render approval of the project by operation of law.

Procedurally, the Respondents demurrer will need to be addressed before the court takes up the question of whether to approve or deny the Petition for Administrative Mandamus.

The court therefore continues the hearing on the Petition for Writ of Administrative mandamus to April 10, 2024, at which time the court will set a briefing schedule and hearing date for the Petition after the court has issued its decision on the Respondents' demurrer.

END OF TENTATIVE RULING