

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Thursday, July 27, 2023 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion

Meeting ID: 895 5887 8508

Passcode: 062178

<https://us02web.zoom.us/j/89558878508?pwd=L2MySDFXWEtMa1JsdGUxUDFDOVNyZz09>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 900 6833 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo's Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

1. SCV-269797, Johnson v. Israni

APPEARANCES REQUIRED.

Motion to Compel Responses to Plaintiff's Request for Production Set Three and Request for Monetary Sanctions Against Defendant Pacifica SL Grove Street d/b/a/ Healdsburg Senior Living Community in the Amount of \$2,060.00.

Motion to Compel Responses to Plaintiff's Supplemental Request for Production and Request for Monetary Sanctions Against Defendant Pacifica SL Grove Street d/b/a/ Healdsburg Senior Living Community in the Amount of \$1,060.00.

Motion to Compel Responses to Plaintiff's Supplemental Special Interrogatories and Request for Monetary Sanctions Against Defendant Pacifica SL Grove Street d/b/a/ Healdsburg Senior Living Community in the Amount of \$1,060.00.

Facts and History

Plaintiffs complain that Phyllis Johnson ("Decedent"), an elder, died as a result of the negligence and neglect when she was in the care of Defendants. They allege that after leg surgery, she was admitted to Defendant Summerfield Healthcare Center ("SHC") for recovery but Defendants' conduct resulted in her developing a Stage III pressure ulcer. Decedent was then transferred to Defendant Healdsburg Senior Living Community ("HSLC") where Defendants allowed the wound to worsen, resulting ultimately in her death.

Plaintiffs originally named as Defendants Ensign Santa Rosa, LLC dba Summerfield Healthcare Center ("Ensign LLC"), The Ensign Group, Inc. ("Ensign Inc."); collectively, Ensign LLC and Ensign Inc. are referred to as "Ensign"), and Flagstone Healthcare North, Inc. ("Flagstone") but never served them and subsequently dismissed them on January 10, 2022.

Plaintiffs had originally named Defendant Pacifica SL Grove Street LP dba Healdsburg Senior Living Community ("Pacifica SL") but later named Pacifica Senior Living Management, LLC ("Pacifica LLC"; collectively, Pacifica SL and Pacifica LLC are referred to as "Pacifica") as a Doe Defendant upon an ex parte application on March 14, 2023.

The parties filed a total of six motions to be heard together on June 7, 2023. Pursuant to an ex parte application, the court continued all six motions to June 15, 2023.

Discovery at Issue

On January 17, 2023, Plaintiffs served Pacifica SL with a Request for Production, Set Three ("RFPs") and then on February 1, 2023, they served Pacifica SL with Supplemental Request for Production ("Supplemental RFPs"), and Supplemental Special Interrogatories ("Supplemental Interrogatories"). Declaration of Lukas I. Pick in Support of Motion to Compel Responses to Plaintiff's Request for Production Set Three ("Pick RFP Dec."); Declaration of Lukas I. Pick in Support of Motion to Compel Responses to Plaintiff's Supplemental Request for Production ("Pick Supp RFP Dec."); Declaration of Lukas I. Pick in Support of Motion to Compel Responses to Plaintiff's Supplemental Special Interrogatories ("Pick Supp SROG Dec.").

Pacific SL failed to provide any responses for any of the three sets of discovery by the due date so Plaintiffs contacted Pacifica SL in an effort to meet and confer. Ibid. Regarding Set 3 of RFPs, Pacifica SL eventually replied that it was working on responses to the RFPs and would provide them, but it never provided any responses to the RFPs. Pick RFP Dec. Pacifica SL never replied to the meet-and-confer communications regarding the two sets of supplemental discovery and has still provided no responses to these discovery requests. Pick Supp RFP Dec.; Pick Supp SROG Dec.

Motions

In the three separate motions identified above, one for each set of written discovery, Plaintiffs move the court to compel Pacifica SL to respond to the RFPs, the Supplemental RFPs, and the Supplemental Interrogatories.

There is no opposition to these motions.

Service and Notice

There is no proof of service for any of the three motions and, since there is also no opposition or other indication that Pacifica SL has notice of the motions or been served with any of the papers, the court CONTINUES the motions.

Substantive Discussion

Interrogatories and requests for production may be served on a “party” to an action. Code of Civil Procedure (“CCP”) sections 2017.010, 2030.010, 2031.010.

A party also may serve “supplemental” interrogatories or RFPs to obtain information acquired after the responses to the original discovery and may do so twice before the initial setting of the trial date and once after the initial setting. CCP sections 2030.070, 2031.050.

Where a party seeks to compel responses under CCP sections 2030.290 and 2031.300, the moving party need only demonstrate that the discovery was served, the time has expired, and the responding party failed to provide a timely response. See *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906. Failure to provide a timely response waives objections, “including one based on privilege or on the protection for work product....” CCP sections 2030.290, 2031.300. There is no meet-and-confer requirement or a deadline for a motion to compel response where none has been made. CCP §2030.290, 2031.300. Where a party has failed to respond on time to a request for production, the first step is not to compel production but, as with interrogatories, to compel a response. CCP section 2031.300.

The responding party must verify substantive responses. CCP sections 2030.250, 2031.250. Where a response is unverified, the substantive response is ineffective and is the equivalent of no response at all. See *Appleton v Sup.Ct.* (1988) 206 Cal.App.3d 632, 636.

Plaintiffs have met their burden on all three motions. They show that Pacifica SL failed to serve any responses to any of the sets of discovery at issue. Pacifica SL did produce a chain of e-mails which it claimed to be responsive to the RFPs, but it did not provide any actual responses to the RFPs.

Should the court find the defect in service and notice to be resolved, the court will GRANS all three of the motions set forth above.

Sanctions

For compelling responses to interrogatories and production requests, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. CCP §§2023.010, 2023.030, 2030.290, 2031.300.

In order to obtain sanctions, the moving party must request sanctions in the notice of motion, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP § 2023.040. The sanctions are limited to the “reasonable expenses” related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

Plaintiffs seek monetary sanctions against the party but not the attorney. They seek sanctions of \$2,060 regarding the RFPs, based on four hours spent, at \$500 an hour, plus the \$60 filing fee. Pick RFP Dec., ¶¶9-10. They seek \$1,060 for each of the other two motions regarding supplemental discovery, for two hours spent on each motion, at \$500 an hour, plus the \$60 filing fee for each motion. Pick Supp RFP Dec., ¶¶5-6; Pick Supp SROG Dec., ¶¶5-6. The time spent on the two motions for supplemental discovery is reasonable and consistent but the double time spent on the other motion is not unreasonable and inconsistent. The motion is simple and straightforward, while it is equivalent to the other two motions for which Plaintiffs seek half the fees.

Should the court reach the merits of the motions and grant them, the court will award to Plaintiffs, against Pacifica SL, monetary sanctions of \$1,060 for each of the three motions addressed herein.

Conclusion

The court CONTINUES the motions due to lack of proof of service as explained above.

**Motion for Evidentiary, Issue and/or Terminating Sanctions Against Defendants
Pacifica SL Grove Street dba Healdsburg Senior Living and/or Deepak Israni
CONTINUED to July 27, at 3:30 p.m., in Department 17. The continuance is to allow
additional time for conducting the deposition in order for the court to determine the propriety of
the requested sanctions.**

Facts and History

Plaintiffs complain that Phyllis Johnson (“Decedent”), an elder, died as a result of the negligence and neglect when she was in the care of Defendants. They allege that after leg surgery, she was admitted to Defendant Summerfield Healthcare Center (“SHC”) for recovery, but Defendants’ conduct resulted in her developing a Stage III pressure ulcer. Decedent was then transferred to Defendant Healdsburg Senior Living Community (“HSLC”) where Defendants allowed the wound to worsen, resulting ultimately in her death.

Plaintiffs originally named as Defendants Ensign Santa Rosa, LLC dba Summerfield Healthcare Center (“Ensign LLC”), The Ensign Group, Inc. (“Ensign Inc.”; collectively, Ensign LLC and Ensign Inc. are referred to as “Ensign”), and Flagstone Healthcare North, Inc. (“Flagstone”) but never served them and subsequently dismissed them on January 10, 2022.

Plaintiffs had originally named Defendant Pacifica SL Grove Street LP dba Healdsburg Senior Living Community (“Pacifica SL”) but later named Pacifica Senior Living Management, LLC (“Pacifica LLC”; collectively, Pacifica SL and Pacifica LLC are referred to as “Pacifica”) as a Doe Defendant upon an ex parte application on March 14, 2023.

The parties filed a total of six motions to be heard together on June 7, 2023. Pursuant to an ex parte application, the court continued all six motions to June 15, 2023.

Discovery at Issue

Plaintiffs moved the court to compel Defendant Deepak Israni (“Deepak”) to appear for deposition. The hearing on the motion was set for January 20, 2023, but continued to February 1, 2023, upon an ex parte application. At the hearing on February 1, 2023, this court granted the motion with respect to compelling Deepak to appear as an employee of the entity Defendant but not as a party, noting that Plaintiffs, although naming Deepak as a Defendant, had not yet served him as such with the summons and complaint and he had not yet appeared in the action. The court entered a final written order on March 13, 2023.

On April 17, 2023, Plaintiffs brought an ex parte application to compel Deepak to appear for a deposition on a certain date or to set an earlier hearing date for Plaintiffs’ pending Motion for Evidentiary, Issue and/or Terminating Sanctions Against Defendants Pacifica SL Grove Street dba Healdsburg Senior Living and/or Deepak Israni. Plaintiffs based the application on the assertion that Pacifica SL has still not produced Deepak although the court had ordered Deepak to attend deposition and Pacifica had agreed to produce him for deposition on March 7, 2023, before then refusing to produce him then. Pacifica SL opposed the application. The court granted the application as to compelling Deepak to appear for deposition, ordering Pacifica SL to

produce Deepak for deposition no later than April 28, 2023. It denied the application as to advancing the hearing date on the sanctions motion.

The court notes that there is still no proof of service for serving the summons and complaint on Deepak and that Deepak has not appeared as a party in this action.

Motion

Plaintiffs move the court to impose evidentiary, issue, and/or terminating sanctions against Pacific SL and/or Deepak. They contend that Pacifica has failed to produce Deepak for deposition, despite twice agreeing to do so on specific dates.

Pacifica opposes the motion, arguing that it has made “efforts” to produce Deepak for deposition and that the court has hitherto not imposed any sanctions.

Plaintiffs reply, contending that Pacifica only informed them on the eve of the deposition that it would not produce Deepak on the two agreed dates, and the delay has lasted months. They acknowledge that Pacific offered newer dates for the deposition but contend that these were not possible because they were at the last moment and conflicted with schedules.

The Sanctions Requested

Plaintiffs seek terminating sanctions or sanctions 1.) precluding defendants from offering evidence at trial that the nursing home was properly staffed; 2.) precluding defendants from offering testimony at trial that the nursing home was properly funded; 3.) precluding defendants from offering any evidence that they were not engaged in an alter ego, joint venture, or agency relationship; 4.) precluding any managing agents from producing evidence that they did not ratify and/or authorize the wrongful conduct committed against plaintiff; and/or 5.) shifting the burden of proof to defendants’ to prove they did not recklessly neglect Ms. Johnson. In addition to, or alternatively to those discovery/issue sanctions described above, plaintiff also requests the Court order any sanctions it determines appropriate.

Parties to be Sanctioned

Plaintiffs ask the court to impose the sanctions on Pacifica SL, or Deepak, or both. However, only Pacifica SL may be subject to the requested sanctions. Plaintiffs have never shown that they have served Deepak as a party with the summons and complaint and Deepak has not appeared as a party in this action. Deepak has only appeared as an agent of Pacifica, while this court granted the motion to compel his deposition only as an agent of Pacifica SL, not as a party.

Authority Governing Motions for Terminating, Issue, and Evidentiary Sanctions

Where a party “fails to obey” a court order compelling discovery responses, the party commits a misuse of the discovery process and the moving party may seek a number of sanctions. CCP §§2025.450(h), 2023.010, 2023.030. The sanctions include issue sanctions establishing certain facts, terminating (or “doomsday”) sanctions striking pleadings, staying or dismissing actions, or entering defaults, and monetary sanctions for the expenses incurred in the motion and as a result of the failure to obey. CCP §§2025.450(h), 2023.010, 2023.030. Monetary sanctions are limited to the reasonable expenses of the motion. CCP section 2023.020; *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

The court has discretion to impose any sanctions as may be just and may impose none or any combination of sanctions that seems warranted. CCP §§2025.450(h), 2023.010, 2023.030. This decision is subject to review only for abuse of discretion. *Sauer v. Sup.Ct.* (1987) 195 Cal.App.3d 213, 228.

The court should consider a variety of factors as set forth in *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796. These include the time elapsed since the discovery was served; whether

there were any extensions; the number propounded; the importance of the information; whether the responding party was aware of the duty to respond and had the ability to do so; the amount unanswered, whether the information was difficult to obtain, whether there were prior court orders that the party was unable to obey, whether more time would enable the responding party to reply, and whether less drastic sanctions are sufficient in the circumstances.

The court should also not “stack” sanctions. This means that the court cannot justify a severe sanction for a relatively minor violation by pointing to the offending party’s prior “history of delay and avoidance.” *Motown Record Corp. v. Sup.Ct.* (1984) 155 Cal.App.3d 482, 491. This is especially true where the offending party has already been sanctioned for the earlier violation. *Id.*

Application of the Factors

The time since the deposition notice was first served on August 8, 2022, is about 10 months, it has also been almost 5 months since the order at issue, and it has been close to three months since the deposition date to which Pacifica agreed in accord with the order compelling the deposition. This is a significant passage of time. This factor weighs in favor of sanctions.

The information here is crucial. It is the deposition of one of the partners and “apex” officers of Pacifica, and yet one which this court has found, based on the prior evidence, who also has much daily direct involvement in, and knowledge of, even minimal affairs of business. This information thus potentially covers all aspects of the events at issue and the potential liability of Defendants. This factor strongly supports evidence sanctions.

It is certain that Pacifica knew of the order. Its attorney was present at the hearing where this court granted the motion and issued the order, and it subsequently met and conferred with Plaintiffs regarding how to comply with the order, even agreeing to a deposition date in accord with the order, before then refusing to produce Deepak on the eve of the deposition. This critical factor strongly supports sanctions.

Deepak has not appeared for deposition at all and Plaintiffs have thus obtained no information. This factor strongly supports sanctions at this point.

However, Pacifica asserts that it has made efforts to comply and produce Deepak for deposition. In addition to the abortive March date, it asserts that it agreed, following the April 2023 ex parte order for the deposition, to produce Deepak on April 26, 2023, but had to cancel because of “unexpected pregnancy complications” of the wife of Defendants’ attorney, then they aged to May 4, 2023, but had to cancel that also because Deepak had injured his back and was bedridden. Pacific then offered new dates on May 10-12, 2023, but Plaintiffs were unavailable at that time. Pacifica subsequently offered June 2, 2023, but Plaintiffs had not yet agreed.

Pacifica contends that the court has thus far only imposed monetary sanctions against it. This, however, is immaterial.

The history of this discovery dispute, and the evidence which this court has seen in the underlying motion to compel deposition and in this motion present a troubling picture raising concerns that Pacifica and Deepak are in fact engaging in a plan to avoid the deposition. Such conduct is a clear abuse of the Discovery Act and a willful refusal to comply with this court’s order, justifying sanctions.

However, given the history of possible effort to comply, set forth above, the court is not convinced at this point that the sanctions are in fact warranted. The court will therefore allow additional time for compliance. The court will continue this motion and if by the time of the new hearing the court finds that Pacifica and Deepak failed to comply and produce Deepak for deposition, the court will in some measure grant the motion and issue some sanctions as

appropriate at that time. Deepak must appear for deposition at a date and time acceptable to Plaintiffs prior to the new hearing. Prior to the new hearing, Pacifica may file one declaration up to 4 pages in length, with only evidence regarding the deposition history subsequent to this hearing, and without authority or argument. It must file that declaration at least 10 court days before the hearing. Prior to the new hearing, Plaintiffs also may file one declaration up to 4 pages in length, with only evidence regarding the deposition history subsequent to this hearing, and without authority or argument. Plaintiffs also must file that declaration at least 10 court days prior to the new hearing. No other pleadings or papers will be allowed.

Conclusion

The court CONTINUES the motion to July 27, 2023, at 3:30 p.m., in Department 17.

Motion to Compel Deposition Testimony and Documents from Carl Knepler and Monetary Sanctions in the Amount of \$2,600.00 Against Healdsburg Senior Living Community GRANTED as detailed below. Sanctions of \$2,060 awarded in favor of Plaintiffs.

Facts and History

Plaintiffs complain that Phyllis Johnson (“Decedent”), an elder, died as a result of the negligence and neglect when she was in the care of Defendants. They allege that after leg surgery, she was admitted to Defendant Summerfield Healthcare Center (“SHC”) for recovery but Defendants’ conduct resulted in her developing a Stage III pressure ulcer. Decedent was then transferred to Defendant Healdsburg Senior Living Community (“HSLC”) where Defendants allowed the wound to worsen, resulting ultimately in her death. Plaintiffs allege that the Defendants are alter egos of each other. Comp., ¶¶19, 33-34.

Plaintiffs originally named as Defendants Ensign Santa Rosa, LLC dba Summerfield Healthcare Center (“Ensign LLC”), The Ensign Group, Inc. (“Ensign Inc.”; collectively, Ensign LLC and Ensign Inc. are referred to as “Ensign”), and Flagstone Healthcare North, Inc. (“Flagstone”) but never served them and subsequently dismissed them on January 10, 2022.

Plaintiffs had originally named Defendant Pacifica SL Grove Street LP dba Healdsburg Senior Living Community (“Pacifica SL”) but later named Pacifica Senior Living Management, LLC (“Pacifica LLC”; collectively, Pacifica SL and Pacifica LLC are referred to as “Pacifica”) as a Doe Defendant upon an ex parte application on March 14, 2023.

The parties filed a total of six motions to be heard together on June 7, 2023. Pursuant to an ex parte application, the court continued all six motions to June 15, 2023.

Discovery at Issue

Plaintiffs noticed and, on March 7, 2023, eventually conducted the deposition of Pacifica Senior Vice President of Operations Carl Knepler (“Knepler”). However, Knepler failed to produce documents responsive to the document request in the notice, testified that he did not look for communications with anyone at HSLC other than with two employees, and refused to respond to questions about HSLC’s budget.

Motion

Plaintiffs move the court to compel production of the requested documents and to compel Knepler to submit to a second deposition regarding the documents and information not provided at the first deposition. They seek monetary sanctions of \$2,060.

Pacifica opposes the motion, arguing that Plaintiffs improperly seek an overly broad range of communications and budget information. It contends that the discovery sought intrudes

on privacy rights of third parties and improperly seeks premature disclosure of its financial condition under authority applicable to punitive damages under Civil Code (“CC) section 3294, which also intrudes on its right of privacy regarding its finances.

Applicable Authority

When a deponent fails to answer questions or produce items requested, the examiner may complete or adjourn the deposition. Code of Civil Procedure (“CCP”) section 2025.480(a). The examiner may then file a motion to compel the deponent to respond and may set the hearing by citing the witness, obtaining an order to show cause (“OSC”), or filing a regular noticed motion. CCP section 2025.480.

The privacy protection is rooted in Cal. Const., Art.1, section 1, which states, in full, “[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” See *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 790. The right to privacy, including that regarding financial matters, belongs only to natural persons, not business entities. *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 791.

As the court in Roberts explained, “[t]he constitutional provision [in Cal. Const., Art.1, section 1] simply does not apply to corporations. The provision protects the privacy rights of people.” Emphasis original.

At the same time, although the issue is not fully settled, business entities themselves may have some limited privacy some privacy and confidentiality protections protection, depending on the circumstances, but not the same constitutional right which natural persons possess. See *Ameri-Medical Corp. v. WCAB* (1996) 42 Cal.App.4th 1260, 1286-1289 (professional medical corporation retained privacy interest in financial and employment information unrelated to preparation of medical reports sought by workers’ compensation insurers); Roberts, *supra*, 796-797. As the court in Roberts stated, “Two critical factors are the strength of the nexus between the artificial entity and human beings and the context in which the controversy arises.”

When the right of privacy protects information being sought in discovery, the burden rests on the party seeking discovery to show that it is “directly” relevant, or essential, to the lawsuit. *Britt, supra*, 20 Cal.3d 859-862. If the information can be obtained in less intrusive means, the court should not allow discovery of the private matters. *Allen v. Sup.Ct.* (1984) 151 Cal.App.3d 447, 449. “[G]iven the private nature of a confidential settlement of a lawsuit, the burden rests on the proponents of discovery of this information... to justify compelling production of this material. They must do more than show the possibility it may lead to relevant information. Instead, they must show a compelling and opposing state interest.” *Hinshaw, Winkler, Draa, Marsh & Still v. Superior Court* (1996) 51 Cal.App.4th 233, 239 [disapproved on other grounds by *Williams v. Sup. Ct.* (Marshalls of CA, LLC) (2017) 3 Cal. 5th 531, 557 & fn. 8].

The court must balance the interests, weighing the privacy right at issue against the public interest in obtaining just results. *Valley Bank of Nevada v. Sup.Ct.* (1975) 15 Cal.3d 652, 657. The court should consider 1) the purpose of the information sought; 2) the effect that disclosure will have on the parties and the trial; 3) the nature of the objections to disclosure; 4) whether the court may make an alternative order granting partial disclosure, disclosure in another form, or disclosure only if the party seeking the information undertakes certain appropriate burdens. *Valley Bank of Nevada, supra*, 15 Cal.3d 658.

As Plaintiffs argue, despite some restrictions on discovery of financial information, such as that related to financial discovery in claims of punitive damages under CC sections 3294 and 3295, parties may conduct discovery of financial information when it is relevant not merely to punitive damages but to the bases for their causes of action. *Flora Crane Serv. v. Superior Court* (1965) 234 Cal.App.2d 767, 778; *Rawnsley v. Superior Court* (1986) 183 Cal.App.3d 86, 91. The court in *Rawnsley* rejected the argument that CC section 3295 limitation on discovery of financial information applies to any discovery into financial information, including that necessary to prove the bases for a cause of action. It distinguished financial discovery relevant only for determining punitive damages or intended to gain a tactical edge based on a claim for punitive damages, to which the protections of CC section 3295 apply, from the financial discovery necessary to prove the underlying claim, where those protections do not apply.

Authority supports the logical conclusion that discovery of financial information is relevant and proper in cases involving an alter-ego theory of liability. *Doak v. Superior Court* (1968) 257 Cal.App.2d 825, 835, n.8 (“information as to the financial condition of a corporate defendant is admissible and discoverable before trial in an action involving an alter ego issue.”); see also *Flora Crane Service, Inc. v. Superior Court* (1965) 234 Cal.App.2d 767, 778- 779.

Substantive Analysis of the Discovery at Issue

The Information at Issue

Plaintiffs seek primarily information and documents regarding a range of communications between Knepler and others or about certain topics, but a few items seek simply all documents on a certain issue and are not limited to communications. Items 1-4 and 9 request all written and electronic communications between Knepler and other individuals, or which Knepler was “cc’d on” related to “the FACILITY,” defined as HSLC, between January 1, 2021, and December 31, 2021 (the “Period at Issue”). Item 5 seeks all communications regarding employee wages at HSLC during the Period at Issue. Item 6 seeks all documents regarding the budget of HSLC in the previous 2 years. Item 7 seeks all communications related to state investigation into HSLC from January 1, 2022, to the present. Item 8 seeks all communications related to any newspaper articles about HSLC. Item 10 seeks all documents related to the purchase of HSLC. Item 12 seeks all documents related to the HSLC budget for clinical care in the prior 3 years.

Pacific, in brief, objected to all of these as being overbroad, burdensome, and oppressive; intruding upon third-party privacy rights, including those of patients and residents of an adjacent residential care facility or, for item 5, employees; intruding upon attorney-client privilege and work product; and intruding upon Pacifica’s privacy rights regarding its finances, or violating the restrictions on financial discovery set forth in CC section 3295.

Financial Information of Pacifica/HSLC

Plaintiffs correctly argue that the financial information of Pacifica and HSLC is, aside from other possible issues regarding privilege or third-party privacy, discoverable. The discovery here does not violate the restrictions in CC section 3295 because, despite Plaintiffs’ claims for punitive damages, the information is directly relevant to the substantive bases for Plaintiffs’ causes of action and alter-ego theory. They allege that Pacifica’s owners and managers siphon funds for their own uses and have knowingly kept HSLC underfunded, and thus unprepared and inadequately staffed to care for the residents. The weaker right of privacy for business entities does not shield the information here from discovery. This is particularly true given that the information is clearly directly relevant to the bases for the causes of action and

necessary for litigation, so that the need for the discovery outweighs any possible privacy interest which the business entity may have in the information.

Third Party Privacy Rights

Pacifica is correct that some of the requests may potentially implicate the privacy rights of third parties, specifically residents or patients and employees, but these objections do not justify refusing to produce any responsive documents. The one request which on its face seeks information related to employees is item 5, which seeks documents regarding wages. This information is relevant to Plaintiffs' claims. Pacifica must provide it, but at this point may redact the private information of the names, other personal identifying information, and contact information of the employees. Similarly, the other requests which seek documents which could include information about patients, seek information which is directly relevant to this litigation. The court notes that nothing about the requests indicates that the records sought will contain information about residents of the "adjacent" but separate facility. As this court noted in its ruling of February 24, 2023, regarding Plaintiffs' Motion to Compel Further Responses to Plaintiff's Special Interrogatories, Set 2, there is no indication that Plaintiffs are seeking the information of the "adjacent" facility, or any other facility. Instead, they seek only the information regarding the facility where Decedent had been, HSLC. Should any records contain private information of patients at HSLC, or any other facility, Pacifica may redact that private information but must otherwise produce the documents.

The court notes that the determination that the third-party information at this point is to be redacted is not a final determination on the discovery of such information and in no way prevents, or address the propriety of, future efforts to obtain such information should it be necessary.

Privilege and Work Product

Pacifica is correct that the requests, as worded, may potentially encompass information and documents which are work product or within attorney-client privilege, but the objections as presented are unpersuasive. No request on its face seeks information or documents which would necessarily fall within either objection category and, on their face, the requests all seek documents and information which appear mostly not to be within either objection. Should Pacifica wish to preserve either objection, it must present a privilege log with its responses, allowing the court and parties to determine the applicability and validity of the objections.

Conclusion: Substantive Analysis of the Discovery

The court GRANTS the motion in full, as detailed above, subject to Pacifica being allowed to redact private information of third parties, specifically patients and employees, and to producing a privilege log to potentially preserve the objections of work product and attorney-client privilege. The court reiterates that the order allowing Pacifica to redact third-party information is not a final determination on the discovery of such information and does not necessarily prevent Plaintiffs in the future from obtaining discovery of such information. For example, should Plaintiffs find that information regarding the payroll records of certain employees are necessary and discoverable, Plaintiffs may be able to obtain such discovery.

Sanctions

For compelling further responses, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. CCP §§2023.010, 2023.030, 2030.300, 2031.310, 2033.290. In order to obtain sanctions, the moving party must state in the notice of motion that the party is seeking sanctions, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP

section 2023.040. The sanctions are limited to the “reasonable expenses” related to the motion. Ghanooni v. Super Shuttle of Los Angeles (1993) 20 Cal.App.4th 256, 262.

Plaintiffs seek monetary sanctions against only Pacifica, not its attorneys. They seek sanctions of \$2,060, for four hours spent, at \$500 an hour, plus the \$60 filing fee. Pick Dec., ¶¶15-16. Plaintiffs are entitled to sanctions because Pacifica’s position lacks substantial justification, and the amount sought is reasonable. The court AWARDS the requested sanctions to Plaintiffs, against Pacifica.

Conclusion

The court GRANTS the motion as set forth above and award the requested sanctions to Plaintiffs. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing counsel shall inform the preparing counsel of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

Motion for Leave to File Cross-Complaint GRANTED.

Facts and History

Plaintiffs complain that Phyllis Johnson (“Decedent”), an elder, died as a result of the negligence and neglect when she was in the care of Defendants. They allege that after leg surgery, she was admitted to Defendant Summerfield Healthcare Center (“SHC”) for recovery, but Defendants’ conduct resulted in her developing a Stage III pressure ulcer. Decedent was then transferred to Defendant Healdsburg Senior Living Community (“HSLC”) where Defendants allowed the wound to worsen, resulting ultimately in her death.

Plaintiffs originally named as Defendants Ensign Santa Rosa, LLC dba Summerfield Healthcare Center (“Ensign LLC”), The Ensign Group, Inc. (“Ensign Inc.”; collectively, Ensign LLC and Ensign Inc. are referred to as “Ensign”), and Flagstone Healthcare North, Inc. (“Flagstone”) but never served them and subsequently dismissed them on January 10, 2022.

Plaintiffs had originally named Defendant Pacifica SL Grove Street LP dba Healdsburg Senior Living Community (“Pacifica SL”) but later named Pacifica Senior Living Management, LLC (“Pacifica LLC”; collectively, Pacifica SL and Pacifica LLC are referred to as “Pacifica”) as a Doe Defendant upon an ex parte application on March 14, 2023.

The parties filed a total of six motions to be heard together on June 7, 2023. Pursuant to an ex parte application, the court continued all six motions to June 15, 2023.

Motion

Pacifica moves the court for leave to file a cross-complaint for indemnity and contribution against erstwhile Defendants Ensign and Flagstone. Pacifica argues that the cross-complaint is permissive and the interests of justice warrant consideration of these claims given that the proposed Cross-Defendants were involved in Decedent’s care and the events at issue in the complaint.

Plaintiffs oppose the motion, arguing that Pacifica has unreasonably delayed, noting that Pacifica had knowledge of the involvement of the proposed Cross-Defendants from at least the start of the lawsuit.

Authority Governing Filing of Permissive Cross-Complaints

A defendant may cross-complain against a co-defendant or a third party but only if the cause of action asserted “(1) arises out of the same transaction, occurrence, or series of transactions or occurrences” set forth in the complaint or which “(2) asserts a claim, right or interest in the property or controversy which is the subject of the cause of action brought against him.” Code of Civil Procedure (“CCP”) section 428.10(b). This includes situations where a defendant claims another is at fault for the injuries alleged in the complaint and seeks equitable indemnity. See *American Motorcycle Ass’n v. Sup. Ct.* (1978) 20 Cal.3d 578, 607; *Platt v. Coldwell Banker Residential Real Estate Services* (1990) 217 Cal.App.3d 1439, 1445. The defendant need only allege that the injury alleged in the complaint is attributable to the intended cross-defendant. *American Motorcycle Ass’n, supra; Paragon Real Estate Group of San Francisco, Inc. v. Hansen* (2009) 178 Cal.App.4th 177, 182. Logically, cross-complaints for comparative or equitable indemnity “would appear virtually always transactionally related to the main action,” and thus permissive. *Time for Living, Inc. v. Guy Hatfield Homes/All American Develop. Co.* (1991) 230 Cal.App.3d 30, 38. However, cross-complaints against anyone other than a plaintiff are never mandatory and may only be permissive. CCP sections 426.30, 428.10.

A party may file a cross-complaint against other defendants or third parties, i.e., any party other than a plaintiff, without leave of the court at any time before the court sets the first trial date. CCP section 428.50(b).

Unless the cross-complaint is compulsory, courts may in their discretion deny a motion for leave to file a cross-complaint brought after trial is set. See *Crocker Nat'l Bank v. Emerald* (1990) 221 Cal.App.3d 852, 864 (no abuse of discretion for denying permissive cross-complaint 5 months before trial but several years after action started).

Request for Judicial Notice

The moving parties request judicial notice of Plaintiffs’ complaint and request for dismissal filed in this action. The court may judicially notice these documents, the contents, and the purported legal effect but it may not judicially notice the truth of factual assertions made therein. With this limitation, the court grants the request.

Discussion

The proposed cross-complaint is clearly permissive and of a type which is proper to allow. Pacific alleges that the proposed Cross-Defendants were involved in the treatment and care of Decedent which resulted in the injuries and death, and that they were the ones at fault. It also provides evidence from Plaintiffs demonstrating that the proposed Cross-Defendants were involved in the “continuum of care” for Decedent at the time, and that Plaintiffs themselves alleged as much in their complaint. Pacific as also correct that ideally, for a full consideration of the merits of the claims and conduct of the parties, the cross-complaint should be presented in this action.

However, Plaintiffs contend that Pacifica has delayed and that this delay is unreasonable and unexplained. This argument has validity but ultimately is not sufficiently persuasive in this instance.

Plaintiffs are correct that Pacifica had at least some notice of the involvement of the proposed Cross-Defendants and a potential basis for bringing this cross-complaint earlier. Pacifica clearly knew of the potential role of the proposed Cross-Defendants at the very least once Pacifica SL was served with the complaint in this action on January 3, 2022. The complaint named the proposed Cross-Defendants as Defendants, as noted above, and alleged that they were involved in the events and injuries. Even if Pacifica delayed cross-complaining

against them because they were already named as Defendants, Plaintiffs dismissed them on January 10, 2022.

Nonetheless, Pacifica relies on records obtained from Plaintiffs in discovery to support the claims against the proposed Cross-Defendants. Pacifica argues that it lacked evidence and information on the involvement of the proposed Cross-Defendants prior to obtaining this discovery. Plaintiffs contend that Pacifica relies on its own records, but this is not evident, the records cited in the motion being from Summerfield Health Center, the dba of Ensign.

It is also notable that Plaintiffs only named Pacifica LLC as a Doe Defendant on March 14, 2023, just over one month before Pacifica filed this motion. Therefore, while Pacifica SL was clearly involved and had knowledge of the litigation, as well as time to prepare for trial, from the commencement of the litigation, Pacifica LLC was involved as a party in this litigation for only a little more than one month before the parties brought this motion. This not only provides additional support for allowing the cross-complaint at this time, but also indicates that Pacifica LLC has a more limited time to prepare for trial or take part in this litigation, which alone may potentially warrant an additional continuance of the trial date.

Plaintiffs have also not demonstrated any actual prejudice resulting from a possible delay of trial. They have merely demonstrated a possible delay by the moving parties, and although this could give the court discretion to deny this motion, the lack of prejudice reduces this basis. The court notes that the parties are still in the midst of significant discovery, with several discovery motions currently pending. This continued, extensive discovery litigation further reduces concerns over possible prejudice from delaying trial. Plaintiffs, in fact, themselves sought a continuance in order to engage in further discovery. Moreover, Plaintiffs themselves initially named the proposed Cross-Defendants as Defendants in their own complaint and furnished Pacifica with the evidence which Pacifica now claims to warrant the cross-complaint. This further reduces the threat of surprise or prejudice to Plaintiffs.

Under the circumstances, the court GRANTS the motion. The prevailing party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing counsel shall inform the preparing counsel of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.