TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, May 3, 2023 at 3:00 p.m.
Courtroom 18 – Hon. Christopher M. Honigsberg
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

CourtCall is not permitted for this calendar.

If the tentative ruling does not require appearances, and is accepted, no appearance is necessary.

Any party who wishes to be heard in response or opposition to the Court's tentative ruling **MUST NOTIFY** the Court's Judicial Assistant by telephone at **(707) 521-6602** and **MUST NOTIFY all other parties of their intent to appear, the issue(s) to be addressed or argued and whether the appearance will be in person or by Zoom**. Notifications must be completed no later than 4:00 p.m. on the court (business) day immediately before the day of the hearing.

To Join Department 18 "Zoom" Online
Navigate to website:
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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. SCV-263456, Abel v McCutchan, Jr.

Defendants' motion to compel Plaintiff to pay the sanctions ordered by the Court is CONTINUED to June 7, 2023 at 3:00pm in Department 18 to be heard in conjunction with Plaintiff's motion for relief from the sanctions ordered.

2. SCV- 264994, Quan v Mackenzie

Plaintiff's motion to strike Defendants' cost memorandum is GRANTED in part and DENIED in

part. The motion is granted in the amount of $2,062.59. Plaintiff shall pay Defendant costs in the amount of $3,133.75. The costs shall be stayed pending Plaintiff's appeal of this matter. No undertaking shall be required. Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

On August 16, 2022, the Court issued an order granting Defendants Acrisure of California, LLC, Michael Holzman, and Lynne Wallace's motion for summary judgment. Plaintiff had alleged the following causes of action against these defendants:

1) Age Discrimination in Violation of FEHA (Acrisure only)
2) Race Discrimination in Violation of FEHA (Acrisure only)
3) Failure to Prevent Discrimination (Acrisure only)
4) Unjust Enrichment Resulting from Unlawful Discriminatory Conduct (Acrisure only)
5) Invasion of Privacy (each defendant)
6) Defamation (each defendant)
7) Intentional Interference with Contract (each defendant)
8) Negligent Infliction of Emotional Distress (each defendant)

The Court found that there existed no triable issue of material fact as to any of the causes of action alleged against these defendants, thus they were entitled to judgment in their favor. On September 13, 2022, the Court entered judgment in favor of these defendants. In pertinent part, the judgment stated,

> Plaintiff take nothing by his Complaint and that Defendants recover their costs herein incurred for Plaintiff's claims not arising under the California Fair Employment and Housing Act ("FEHA") after filing a Memorandum of Costs.

(See Judgment, p. 2.)

Defendants timely filed a memorandum of costs seeking costs purportedly related only to the non-FEHA causes of action—in other words, just the costs related to defending against the invasion of privacy, defamation, intentional interference with contract, and negligent infliction of emotional distress. Plaintiff has filed this motion to strike the memorandum of costs on the basis that Defendants should not recover any costs because all of the causes of action alleged here inextricably intertwined with the FEHA causes of action.

It is true, as Plaintiff asserts, that Defendants may not recover costs associated with defending against FEHA causes of action, unless the Court makes a finding that Plaintiff's action was frivolous, unreasonable, or groundless, or that Plaintiff continued to litigate after it clearly became so. (Gov. Code, § 12965(c)(6).) The Court has not made such a finding in this action. It is also true that "Unless the FEHA claim was frivolous, only those costs properly allocated to non-FEHA claims may be recovered by the prevailing defendant." (*Roman v. BRE Properties, Inc.* (2015) 237 Cal.App.4th 1040, 1062.) Apportionment between FEHA causes of action and non-FEHA causes of action is not necessary when all of the causes of action involve a common core of facts or are based on related legal theories. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1251.)

Here, the invasion of privacy, defamation, intentional interference with contract, and negligent infliction of emotional distress causes of action allege facts outside the core of the discrimination

causes of action. Plaintiff alleged in support of the discrimination causes of action that Plaintiff was discriminated against when Acrisure decided to close the Petaluma branch and laid off Plaintiff rather than offering alternative working options. The remaining causes of action stem from the opinion letter drafted by Defendant Hines' attorney which allegedly falsely stated the reasons for Plaintiff's termination as being problems with Plaintiff's performance. Plaintiff does not allege that this opinion letter played a part in causing his termination. Rather, Plaintiff alleges that during the process of drafting the letter, his privacy rights were violated because the reasons for his termination were discussed. Plaintiff alleges that the letter itself contained defamatory statements. Plaintiff also alleges that the drafting of the letter was an intentional interference with his contract with Defendants MacKenzie, Hines, and Harper because these defendants agreed to pay him $300,000 if he were terminated without cause. The letter was allegedly intended to support the defendants' position that Plaintiff was terminated with cause. Finally, Plaintiff alleges that the defendants negligently caused Plaintiff "to suffer severe emotional distress when they violated his right to privacy and conspired together to come up with false allegations about his performance which in turn, defamed [Plaintiff's] professional reputation." (See SAC, ¶ 145.)

The facts alleged in the Eighth through Eleventh causes of action are not intertwined with the discrimination causes of action. They involve allegedly tortious conduct occurring after Plaintiff's termination which affected his contractual rights. Defendants are entitled to recover their costs on these non-FEHA causes of action.

This motion was previously heard by the Court on March 22, 2023. Prior to that hearing, the Court issued a tentative ruling granting Plaintiff's motion to strike in its entirety on the basis that Defendants did not provide documentation supporting their costs and Defendants did not provide foundation for their 25% allocation of the overall costs to the non-FEHA causes of action. (See March 22, 2023 Minute Order.) Defendants requested oral argument during which they requested further time to submit documentary support. The Court granted a continuance for this purpose.

Defendants have since filed the supplemental declaration of Derek Sachs which provides the Court with approximately 80 pages of invoices, but which makes no attempt at allocating individual costs to the FEHA versus non-FEHA claims. Defendants still assert a 25% allocation, but do not provide an explanation as to how this figure was reached. Based on the Court's knowledge of the case and based on the documentation provided by Defendants, only the costs for the depositions of Paul Harper, Michael Hines, and James MacKenzie can be properly allocated to the non-FEHA claims. Other than these items, it is impossible for the Court to determine which additional costs can be properly allocated to the non-FEHA claims, if any, merely based on the invoices provided. The invoices for the depositions do not explain the scope of the individual depositions, and neither does the declaration of Derek Sachs. The invoices for the filing fees do not explain what was filed, and neither does the declaration. Defendants have had two opportunities to properly allocate the costs for the non-FEHA claims and have failed to do so.

Therefore, only the costs for the depositions of Paul Harper ($973.50 transcript, $337.50 video), Michael Hines ($622.50), and James MacKenzie ($1,200.25) will be granted, pursuant to CCP § 1033.5(a)(3)(A) [allowable costs include "Taking, video recording, and transcribing necessary depositions, including an original and one copy of those taken by the claimant and one copy of depositions taken by the party against whom costs are allowed."]. The total for these costs is $3,133.75.

In opposition, Plaintiff has filed the supplemental declaration of Beth Huber in which Counsel

Huber provides a matrix with a purported line-by-line allocation of "discussions MHH and Acrisure" [sic] within each deposition. The Court finds no compelling reason to do a line-by-line allocation of each deposition to calculate the percentage of time only the facts regarding the tort claims were discussed. The depositions of Paul Harper, Michael Hines and James MacKenzie were undoubtedly necessary for proving Plaintiff's tort claims. Even if the Court could see a reason to do a line-by-line allocation, Counsel Huber's matrix is insufficient to support it, as it is based on Counsel's own personal analysis of what constituted discussions regarding the discrimination versus the tort claims.

The Court finds that the entire cost for each of the depositions listed above is properly allocated to the non-FEHA claims. Accordingly, $2,062.59 shall be stricken/taxed from the memorandum of costs. Plaintiff shall pay Defendants $3,133.75 in costs.

3. SCV-270789, Jimerson v FCA USA LLC

Plaintiff's unopposed motion to compel further responses to Plaintiff's Request for Production of Documents, Set One, from Defendant is GRANTED. Plaintiff has not requested any type of sanction to be imposed, therefore sanctions will not be imposed. (See CCP § 2023.040.) The Court will sign the proposed order lodged with the moving papers.

A motion to compel further responses to a request for production of documents must "set forth specific facts showing 'good cause' justifying the discovery sought by the demand." (CCP §2031.310(b)(1).) Absent a claim of privilege or attorney work product, the party who seeks to compel production has met his burden of showing 'good cause' simply by showing that the requested documents are relevant to the case, *i.e.*, that it is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence under CCP § 2017.010. (See also *Kirkland v. Sup. Ct.* (2002) 95 Cal.App.4th 92, 98.) Once good cause is shown, the burden shifts to the responding party to justify its objections. (See *Coy v. Superior Court of Contra Costa County* (1962) 58 Cal.2d 210, 220-221.)

Unverified responses are tantamount to no responses at all. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636; CCP § 2031.250.)

Here, Defendant served an *unverified* response to Plaintiff's Request for Production of Documents, Set One. An unverified response is tantamount to no response at all. The motion is therefore granted on this basis. Failure to timely respond to discovery requests waives all objections thereto. (CCP § 2031.300.) Accordingly, Defendant has waived all objections.

Even if Defendant were to provide verifications prior to the hearing on this motion, they would be untimely, and the objections would still be waived.

Even if Defendant had timely provided verifications, the Court would still grant the motion on the basis that Plaintiff has shown good cause for production of the documents requested and Defendant has failed to justify its objections by failing to oppose this motion.

Defendant shall provide verified responses without objections to Plaintiff's Request for Production of Documents, Set One, within 10 days of notice of entry of an order on this motion.

4. SCV- 270829, Lindsey v Sonoma County Sheriff's Office

Defendants' unopposed motion to quash service of summons is GRANTED. Defendants' counsel shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

I. Service on both Defendants was Insufficient to Confer Personal Jurisdiction Upon Them.

"A party cannot be properly joined unless served with the summons and complaint; notice does not substitute for proper service. Until statutory requirements are satisfied, the court lacks jurisdiction over a defendant." (*Ruttenberg v. Ruttenberg* (1997) 53 Cal.App.4th 801, 808.)

Defendants Sonoma County Sheriff's Office and Sgt. Cortez represent that service was never properly made upon them by Plaintiff and they never received copies of the summons and complaint from Plaintiff. Defendants submit that the Sheriff's Office did not learn about this pending case until after performing a docket search upon receiving notice of a federal case filed by Plaintiff in October of 2022. Defendant Sgt. Cortez did not learn about this case until December of 2022. Theresa Loberg has filed a declaration in support of this motion stating that she has no recollection or record of receiving a summons and complaint in this case and that Sgt. Cortez did not authorize her to receive service of process on his behalf.

A. Service on Sonoma County Sheriff's Office

Pursuant to CCP § 416.50, "A summons may be served on a public entity by delivering a copy of the summons and the complaint to the clerk, secretary, president, presiding officer or other head of its governing body." In lieu of the personal delivery to a person outlined in CCP § 416.50, CCP § 415.20(a) provides that the summons and complaint may be served by leaving a copy during usual office hours in that person's office or, if no physical address is known, at his or her usual mailing address with a person who is apparently in charge thereof, and by thereafter mailing a copy of the summons and complaint to the place where the summons and complaint were left.

Here, Plaintiff did not serve the summons and complaint on the Clerk of Board as required to effectuate proper service on Defendant Sonoma County Sheriff's Office. The proof of service states that the summons and complaint were left with Teresa Loberg – Civilian Staff at 2796 Ventura Avenue Santa Rosa, CA 95403 (Sonoma County Sheriff's Office). Accordingly, Plaintiff did not comply with CCP § 416.50 or CCP § 415.20. Service of the summons and complaint on Defendant Sonoma County Sheriff's Office is therefore quashed.

B. Service on Defendant Sgt. Cortez

In the case of a defendant sued in his or her individual capacity, service may only be made on a person other than the individual defendant if that person has been authorized by the defendant to received service of process on his or her behalf. (CCP § 416.90.) Here, the proof of service states that summons and complaint for Defendant Sgt. Cortez was left with Teresa Loberg – Civilian Staff at the Sonoma County Sheriff's Office. Defendant Sgt. Cortez has not authorized anyone other than himself to receive service of process on his behalf. Accordingly, Plaintiff did not comply with CCP § 416.90. Furthermore, there is no indication that a copy of the summons and complaint was thereafter mailed to Sgt. Cortez after it was left at his office as required by CCP § 415.20(a). Therefore, service of the summons and complaint on Defendant Sgt. Cortez is quashed.

5. SCV- 271761, Lewis v Tyler Construction

Petitioner's unopposed petition for decree to release property from lien pursuant to Civil Code §§8480 et seq. is GRANTED. The request for attorney's fees is GRANTED in the amount of $2,622.75. The Court will sign the proposed order lodged with the Court on March 2, 2023 as it complies with the requirements of Civil Code § 8490.

Analysis:

Petitioner timely served the petition on Claimant, Tyler Construction, by personal service in compliance with Civil Code §§ 8486(b). Claimant failed to oppose the petition.

Claimant recorded a mechanic's lien against Petitioners' property on April 19, 2022. Pursuant to Civil Code § 8460(a), Claimant had 90 days within which to file a lawsuit foreclosing on this lien. Failure to do so within this time makes the lien unenforceable. Pursuant to Civil Code § 8480, the owner of the property on which the lien is recorded may petition the Court for an order to release the property from the claim of lien if the claimant has not commenced an action to enforce the lien within this 90 day deadline. More than 90 days has passed since the lien was recorded and Claimant has not commenced an action to enforce it. Petitioners have met all of the requirements of Civil Code § 8480, et seq. Accordingly, Petitioner's real property described in the motion is ordered released from the lien imposed by Claimant.

Pursuant to Civil Code § 8488(c), Petitioner is entitled to reasonable attorney's fees. Petitioner's counsel has represented that the total amount of fees billed by him on this matter are $1,645 (at a rate of $350 per hour). Counsel also incurred filings fees and process server fees totaling $977.75. The Court finds the amount requested to be reasonable. Therefore, Claimant is ordered to pay Petitioner a total of $2,622.75.

6. SCV- 272154, Doe v Mendocino County Department of Social Services

Plaintiff's motion to consolidate this case with case number SCV-267554 is DENIED as procedurally defective. Counsel for Defendant Mendocino County Department of Social Services shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

California Rules of Court, Rule 3.350(a)(1)(C) provides that a notice of motion to consolidate cases must be filed in each case sought to be consolidated. Plaintiff did not do so here. The motion has only been filed in SCV-272154 and not in SCV-267554. Accordingly, SCV-267554, which is assigned to Department 23, has not been placed on the Department 18 calendar to be considered in conjunction with this case. Furthermore, according to Rule 3.350(b), if the motion to consolidate were ultimately granted, SCV-267554 would be the leading case. Therefore, this motion would properly be heard in Department 23, where the potential leading case is currently assigned. Thus, the motion is denied as being procedurally defective.