
PARTIES/ATTORNEYS

Plaintiff	Teresa Acosta	Anne Andrews Sean Thomas Higgins Kimberly DeGonia Ryan McIntosh Andrews & Thornton
Defendant	Doe 1	Rick Richmond Andrew E. Calderón Tyler J. Franklin Larson LLP
Defendant	Doe 2	Kevin Monson

TENTATIVE RULING

The initial discovery responses have been served, thus mooted the request for an order compelling response. The court will not rule on the adequacy of the responses filed before the hearing, because those issues have not been briefed, there is no separate statement as to those issues, and the parties have not met and conferred in an effort to reduce issues to be decided. The court nevertheless observes that plaintiff's responses to the requests for production of documents are deficient (as noted below), as are plaintiff's response to form and special interrogatories. Plaintiff is directed to review its responses and supplement them, where necessary, to ensure they are code-compliant to avoid further motion work and related sanctions. If supplements are not offered or the responses remain deficient, the court directs defendant to file a motion to compel further response.

The court denies defendant's request for monetary sanctions for enforcing this request as well as the invitation to issue an order to show cause to plaintiff and/or her counsel for the reasons discussed below.

The facts of this case are recounted in the court's ruling dated April 2, 2025. They will not be recounted here.

As is relevant to this proceeding, on January 8, 2025, defendant Doe 1 served its written discovery requests on plaintiff, including a request for special interrogatories, a request for production of documents, and one set of form interrogatories. (Calderón Decl., ¶ 2, Ex. A.) Responses were due on February 10,

2025. On February 9, 2025, plaintiff's counsel requested a 30-day extension. Doe 1 refused to grant the extension, but offered a one-week extension, to February 18, 2025.¹ The court subsequently denied plaintiff's ex parte request to extend the deadline. (See February 18, 2025 MO.)

As no responses were forthcoming, Doe 1 filed its motion to compel initial responses on March 2, 2025. On March 10, 2025, plaintiff served verified discovery responses on defendants. On March 13, 2025, plaintiff served amended responses to form interrogatories and special interrogatories to correct a spelling error. (McIntosh Decl., ¶ 9.) Opposition to the motion was filed on March 26, 2025 and reply was filed on April 2, 2025.

The court retains the authority to compel responses even if untimely responses are provided before the hearing. "If a party provides an untimely interrogatory response that does not contain objections and that sets forth legally valid responses to each interrogatory, the untimely response might completely or substantially resolve the issues raised by a motion to compel responses under section 2030.290 [governing failure to serve timely responses]." (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 408-409.) The court continued:

"Whether a particular response does resolve satisfactorily the issues raised by a motion is a matter best determined by the trial court in the exercise of its discretion, based on the circumstances of the case. In many cases involving untimely responses, the propounding party will take the motion off calendar or narrow its scope to the issue of sanctions. If the propounding party proceeds with the motion, however, the trial court has the discretion to rule on the motion."

(*Id.* at 409.)

The trial court may:

- compel responses without objection if it finds no legally valid responses have been provided to one or more interrogatories;
- it might deny the motion to compel responses as essentially unnecessary, in whole or in part, and just impose sanctions;
- it might treat the motion as one under section 2030.300 and either determine that further answers are required or order the propounding party to "meet and confer" (§ 2030.300, subd. (b)) and file a separate statement (Cal. Rules of Court, rule 3.1020(a)(2), (c));
- or it might take the motion off calendar, thereby requiring the propounding party to file a motion under section 2030.300.

¹ February 17, 2025 was a court holiday.

(*Id.*)

This court will follow its usual practice, as described here: “Many courts will not rule on the adequacy of the responses filed before the hearing, because those issues have not been briefed, there is no separate statement as to those issues, and usually the parties have not met and conferred in an effort to reduce issues to be decided. Those courts still will decide the sanctions issues.” (Weil & Brown (The Rutter Group 2025) Calif. Prac. Guide: Civil Procedure Before Trial, ¶ 8:1136.)

That being said, the court observes that plaintiff’s responses to the requests for production of documents are deficient. A code-compliant response requires not only a statement of inability to comply, but also the reason the party is unable to comply: e.g., the document never existed, has been lost or stolen, has been destroyed, or is not in the possession, custody or control of the responding party, in which case, the response must state the name and address of anyone believed to have the document. (Code Civ. Proc., § 2031.230.) Deficiencies in plaintiff’s response to interrogatories have also been identified in defendant’s reply. Plaintiff is directed to review its responses and supplement them, where necessary, to ensure they are code-compliant to avoid further motion work and related sanctions. If supplements are not offered or the responses remain deficient, the court directs defendant to file a motion to compel further response.

The court denies defendant’s request for monetary sanctions for enforcing this request. A request for sanctions may be included as part of a motion to compel or may be filed separately. (*London v. Dri-Honing Corp.* (2004) 117 Cal.App.4th 999, 1008.) Here, neither has occurred. Instead, defendant asked this court to issue an order to show cause why plaintiff should not be sanctioned (among other things). The court declines to do so because an adequate procedure exists to obtain sanctions against plaintiff and/or her attorney without the need for an OSC. (See Code Civ. Proc., § 2023.040—“A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought.”)

In addition to a request to issue an OSC re monetary sanctions to plaintiff, defendant asks the court to issue an order to show cause why plaintiff’s counsel have not withdrawn their representation of plaintiff pursuant to Rule of Professional Conduct 1.16(b)(4); and why plaintiff’s complaint should not be dismissed with prejudice pursuant to Code of Civil Procedure section 583.410. The court also declines to issue an OSC on either matter. While the record suggests there may have been some gap in communication with the plaintiff, the discovery responses have been obtained and served. These actions thus appear to be

premature, and improperly raised through the prism of discovery. The issues each require their own separate motion if each is to be pursued.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)