

PROPOSED TENTATIVE

On August 8, 2022, plaintiff Christino Garcia Sanchez (hereafter, plaintiff) filed a complaint on standard Judicial Council forms against defendants Lompoc Valley Medical Center (hereafter, Lompoc), Kimberly Ann Slaughter (hereafter, Slaughter) (collectively, defendants), and Does 1 to 20, for motor vehicle negligence and general negligence. Plaintiff was a taxi driver, with passengers in the cab. While driving to Pence Winery, his vehicle was struck by a vehicle driven by Slaughter, who was acting in the scope of her employment with Lompoc, causing physical injuries to plaintiff. Defendants have filed a joint answer. On March 27, 2023, Lompoc filed a cross-complaint against cross-defendant Pence Ranch, LLC (hereafter, Pence), for apportionment, declaratory relief, and indemnity. On April 24, 2023, plaintiff amended the complaint to substitute Pence for Doe 1. On July 27, 2023, the parties stipulated to setting the aside the entry of default against Pence, and on August 3, 2023, Pence answered the complaint, answered the cross-complaint, and filed its own cross-complaint against Lompoc and Slaughter (for equitable indemnity, contribution, apportionment of fault, and declaratory relief). Lompoc and Slaughter answered Pence's cross-complaint on September 29, 2023.

There are two motions before the court filed by Pence. The first is a motion to compel further responses to form interrogatories, propounded by Pence against plaintiff. The second is a motion to compel further responses to special interrogatories, also propounded by Pence against plaintiff. At issue in the first motion are plaintiff's responses to Form Interrogatories Nos. 2.6, 2.11, 6.7, 10.1, 14.1, and 14.2. At issue in the second motion are plaintiff's response to Special Interrogatories Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. *Plaintiff has not filed opposition*, and as of this writing, the opposition would be late in any event (as plaintiff had 9 court days before the June 5, 2024 hearing, or May 22, 2024, to file opposition).

As relevant factual background, both sets of discovery were propounded on August 21, 2023, and the initial responses were both due on September 22, 2023. Plaintiff failed to respond in a timely manner (and failed to ask for an extension within the initial 30 days following discovery propounded), although on September 27, 2023, Pence granted plaintiff a two-week extension.¹ The parties agreed, and the new response date was October 13, 2023. No responses were served, culminating in a meet and confer letter dated November 17, 2023; on December 12, 2023, plaintiff's counsel indicated that he was finalizing the responses. Plaintiff attempted a settlement, and during the interval, the parties agreed that responses were not required. On February 22, 2024, when Pence rejected plaintiff's settlement offer, Pence indicated that it expected responses to the form and special interrogatories in 10 days. "or a motion to compel would be filed," with Pence providing a final reminder on March 4, 2024. Plaintiff served their

¹ Pence in its briefing indicates that it only granted a two-week extension "on the condition that the responses be served without objections." This is reflected in Exhibit 2 attached to Pence's motion. It appears plaintiff at least impliedly agreed to this, as reflected in its response in Exhibit 3, setting the new date for responses as October 13, 2023.

responses to both discovery requests on March 6, 2024, which contained “objections,” along with “evasive” and “deficient” responses. The motions to compel further had to be filed 45 days after this date (i.e., meaning April 20, 2024, which is Saturday, meaning the motions had to be filed by April 22); after a March 20, 2024 meet and confer effort by Pence, the parties agreed to a two-week extension in order to provide further responses by April 4, 2024, with an agreement that Pence would have an “additional two weeks to compel further responses” (extending the date at least to May 6, 2024), with plaintiff filing the motion on April 26, 2024.

The court will summarize the relevant legal principles at issue; address the merits of each motion; determine the propriety of Pence’s monetary sanction requests; and then summarize its conclusions.

A) Legal Background

A number of legal principles frame the issues before the court.

First, pursuant to Code of Civil Procedure, section 2030.290, subdivision (a), if responding party fails to serve a timely response, responding party “waives any right to exercise the option to produce writings under section 2030.230, as well as any objection to the interrogatories” (See *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.) The court may relieve that party from this waiver if the party has subsequently served a response, and the party’s failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect. No such request has been made.

Second, a motion to compel further responses lies where the party to whom the interrogatories were directed gave responses deemed improper by the propounding party; e.g., objections, or evasive or incomplete answers. (Code Civ. Proc., § 2030.300; see *Best Products, Inc. v. Superior Court* (2004) 119 Cal.App.4th 1181, 1189-1190 [motion to compel is proper to challenge “boilerplate” responses].) In this situation, a notice of motion to compel must be served, if at all, *within 45 days* after verified responses, or any verified supplemental responses, were served (extended under Code of Civil Procedure, sections 1010.6(a)(3)/1013, if served by mail, overnight delivery, fax or electronically, unless the parties agree in writing to extend the time.(Code Civ. Civ. Proc., § 2030.300, subd. (c).)

Finally, pursuant Code of Civil Procedure section 2030.300, subdivision (d), “the court shall impose a monetary sanction . . . against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

B) Merits

i) General Comments on Timing of Motions and Plaintiff's Waiver

The court agrees with Pence that 1) the present motion is timely, as the parties agreed to extend the 45-day deadline in writing two weeks beyond April 22, 2024, and the present motion was filed on April 26, 2024; and 2) plaintiff has waived his right to object to any interrogatory propounded, as his responses were clearly untimely, as agreed by plaintiff.² Further, the court concludes that plaintiff has waived the option of producing writings pursuant to Code of Civil Procedure section 2030.230, in lieu of responding to the interrogatories directly. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 403.) That is, plaintiff has waived the ability to answer by directing the interrogating party to inspect and copy the records in question if the answer would necessitate making a compilation or summary of information contained in such records.

ii) Disputed Responses to Form Interrogatories

The court grants the motion to compel further responses as follows:

- As to Form Interrogatory 2.6, plaintiff is directed to provide the dates of employment with Liberty Cab, including all other employers five years from the date of accident.
- As to Form Interrogatory 2.11, plaintiff's response as given is inadequate. Plaintiff must respond specifically to subparts (a) and (b), with specific facts.
- As to Form Interrogatory 6.7, plaintiff has waived the option to incorporate/reference any medical records as response, per Code of Civil Procedure section 2030.230, subdivision (a). Plaintiff is directed to discuss *in detail* the "complaints for which treatment was recommended," and the future nature, duration, and estimated cost of the future treatment.
- As to Form Interrogatory 10.1, plaintiff has waived the objections made. Plaintiff is directed to specifically answer parts (a), (b), and (c), including the specific complaints and injuries at issue; further, as noted, plaintiff has waived the option to provide documents in reference to a specific response, pursuant to Code of Civil Procedure section 2030.230.
- As to Form Interrogatory 14.1, plaintiff is directed to respond in full.
- As to Form Interrogatory 14.2, plaintiff is directed to respond in full.

² This point is underscored by the fact the responding party has the burden to justify any objection advanced. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal 4th 245, 255.) Plaintiff as the responding party has not filed opposition.

Ii) Disputed Responses to Special Interrogatories

The court grants the motion compel to compel further responses as follows:

As for Special Interrogatory Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, plaintiff provided the same response, jot-for-jot, to each. Plaintiff has waived any objections made to these interrogatories (with two exceptions, as discussed below), and thus, must respond in full. Further, each one of these interrogatories asks plaintiff to answer based on information obtained or legal theories developed in anticipation or in preparation for trial; an interrogatory is not objectionable on this ground. (Code of Civ. Proc., § 2030.010(b)³; see *Burke v. Superior Court* (1969) 71 Cal.2d 276, 281) These are called contention interrogatories, and are permissible, asking plaintiff to explain the theory of negligence, the basis for causation (including the accident), all facts upon which that is based, identify all writings (documents) in support, and all people who have personal knowledge in this regard. (Weil & Brown, Civ. Proc. Before Trial (The Rutter Group 2023 Supp), § 8:933.5 [“Contention” interrogatories are one of the most formidable discovery tools because they can force disclosure of your adversary's case]; see, e.g., *Catanese v. Superior Court* (1996) 46 Cal.App.4th 1159, 1163, disapproved on other grounds in *Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1244 [while contention interrogatories may “test the proper dividing line between protected work product and compelled contention responses,” they are permissible].) Put another way, it is entirely permissible for an interrogatory to ask a party to state the party’s contentions as to any matter of fact in the case, and the facts, witnesses or writing on which the contentions are based, either factual or legal. In the end, defendants are presumptively entitled to an answer to these interrogatories, and plaintiff has the burden of establishing cause to refuse an answer. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 542.) As there is no opposition, that burden has not been met.

With this being said, the court places two limitations on plaintiff’s responses with regard to the 10 special interrogatories at issue. First, plaintiff need not reveal counsel’s impressions, conclusions, opinions, or legal research, which are absolutely protected under Code of Civil Procedure section 2018.030, subdivision (a). Second, plaintiff need not reveal the contents of an expert's report or the opinions of an expert communicated to counsel, although (as explained above) plaintiff must reveal “asserted facts constituting the general positions” of plaintiff. (See, e.g., *Tehachapi–Cummings County Water Dist. v. Superior Court* (1968) 267 Cal.App.2d 42, 46 [clearly explaining the distinction].)

C) Monetary Sanctions

³ This provision provides as follows: “(b) An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or application of the law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial.”

Defendants ask the court to impose monetary sanctions of \$2,707.50 for each motion, with a total sanction amount of \$5,415. While monetary sanctions are appropriate, for there is no showing that the offending party acted with substantial justification or the imposition of the sanction would be unjust, the amount requested by defendants seems inappropriate under the circumstances, for the following reasons.

First, the notice of motion does not identify plaintiff's counsel as the party against whom sanctions are sought, only plaintiff (i.e. Christino Garcia Sanchez). This omission is important, for the court cannot impose sanctions against plaintiff's attorney as a result. Code of Civil Procedure, section 2023.030 mandates that sanctions are only authorized under the Civil Discovery Act "after notice to any affected party, person or attorney, and after opportunity for hearing." Code of Civil Procedure section 2023.040, provides as follows: "A request for sanctions shall, **in the notice of motion, identify every person, party, and attorney against whom the 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."⁴ (Emphasis added.) The individual or party against whom the sanctions (a party and/or attorneys) are sought must be identified in the notice of motion. (*Corralejo v. Quiroga* (1984) 152 Cal.App.3d 871, 874 [order imposing sanctions on attorney reversed where notice of motion did not clearly provide that sanctions were being sought against attorney]; cf. *Sole Energy Co. v. Hodges* (2005) 128 Cal.App.4th 199, 207-210 [default judgment reversed because moving party failed to specify in notice of motion that it sought terminating sanction, although notice of motion sought monetary sanctions and memorandum of points and authorities advised court it could consider terminating sanction.]; *Blumenthal v. Superior Court* (1980) 103 Cal.App.3d 317, 320 [the notice of motion must identify the opposing counsel and state that sanctions are being sought against counsel *personally*].)

Second, as detailed in Mr. Mathew Banashek's declarations (one attached to each motion), it appears plaintiff's counsel, not plaintiff, was the person primarily responsible for the discovery misuses at play. For example, it was plaintiff's counsel, not plaintiff, that negotiated extensions, lodged objections despite the agreement not to, and missed discovery deadlines. And it was plaintiff's counsel who failed to submit an opposition. "Because discovery sanctions are not designed to punish, sanctions should be tailored to serve the remedial purpose, should not put the moving party in a better position than he would otherwise had been had he obtained the requested discovery, "and should be proportionate to the offending party's misconduct." (*Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 75.) It seems unjust to require plaintiff to bear the full brunt as the amount would cause a disproportionate hardship,

⁴ The language of Code of Civil Procedures section 2023.040 unambiguously reflects an intent that any person against whom sanctions are sought must be afforded notice specifically identifying the person as the intended target of the request.

seemingly removed from the cause or genesis of the discovery mishap in the first instance. (*Id.* at p. 77.)

After taking all of these factors into consideration, the court will award \$2,500 in monetary sanctions to defendants and against plaintiff personally.

D) Summary

The court determines that both motions to compel further responses are timely; and, following plaintiff's untimely responses, plaintiff has waived the objections advanced and the option to rely on Code of Civil Procedure section 2030.230 when responding. The court grants the motion to compel responses to Form Interrogatories, Nos. 2.6, 2.11, 6.7, 10.1, 14.1, and 14.2, and directs plaintiff to provide full and complete responses to each interrogatory, without objections and without referencing other documents, as detailed above. The court also grants the motion to compel further responses as to Special Interrogatories, Nos 1 to 10, directing plaintiff to respond fully and completely, without objections and without referencing other documents, as detailed above, although the court will place limits on plaintiff's responses in two ways: 1) plaintiff does not have to reveal counsel's impressions, conclusions, opinions, or legal research, which are absolutely protected under Code of Civil Procedure section 2018.030, subdivision (a); and 2) plaintiff does not have to reveal the contents of any expert's report or the opinions of an expert communicated to counsel, although (as explained above) plaintiff is directed to reveal "asserted facts constituting the general positions" as issue in each interrogatory. The court awards monetary sanctions of \$2,500 to defendants, to be paid by plaintiff personally.

The parties are directed to appear personally or by Zoom. If plaintiff does not appear at today's hearing, defendants are directed to send the court's order to plaintiff. Plaintiff has 30 days from today's hearing to comply with this order.