
19 CVC 11019 BONNER, JAMESON, et al. vs. WAL-MART STORE #2054, et al.

On the court's own motion, Defendant Safe-Strap's Motion for Summary Judgment, Defendant Wal-Mart's Motion for Summary Judgment/Summary Adjudication, and Defendant's Safe-Strap's Motion to Compel Responses are continued to April 25, 2022 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

21 FC 7597 MARRIAGE OF SPENCE

On the court's own motion, Petitioner's Motion to Compel is continued to May 9, 2022 at 8:30 a.m. in Department 1.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

21 CVC 12114 JERGER, DANIEL, vs. KARAI, SHAWN, et al.

- 1) Defendant's Motion for Sanctions (filed December 8, 2021) is GRANTED, in part.
- 2) Plaintiff's Motion to Compel Production of Documents (filed January 10, 2022) is DENIED.
- 3) Defendant's Motion for Terminating Sanctions, etc. (filed January 13, 2022) is GRANTED, in part.
- 4) Plaintiff's Motion to Compel Responses to Plaintiff's Special Interrogatories and for Monetary Sanctions (filed January 28, 2022) is DENIED.

1. Defendant's Motion for Sanctions against Plaintiff (filed December 8, 2021)

Defendant seeks sanctions relating to the following court rulings made on December 6, 2021:

(a) Granting Defendants' Motion to Compel further responses to Interrogatories and Requests for Admissions

The court shall impose a monetary sanction against any party, person or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds

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that the one subject to sanction acted with substantial justification, or that other circumstances make the imposition of the sanction unjust. (CCP § 2030.290(c); 2031.320(b).)

The court granted Defendants' Motion to Compel further responses to Interrogatories and Requests for Admission on December 6, 2021, finding that Plaintiff provided evasive and incomplete responses and his objections were without merit. Supplemental responses were unverified and also without merit, and Plaintiff did not act with substantial justification. (Court Minutes, December 6, 2021.)

Counsel indicates he billed 2.0 hours researching, writing, and otherwise attending to this motion at \$375.00 per hour. (Burton Decl., ¶¶ 3 - 4.) Counsel indicates he spent an additional two hours (2) on the meet-and-confer process and court appearances for a total of 4.0 hours or **\$1,500.00**. (Burton Decl. ¶ 4.) Counsel was assisted by an associate attorney, Mr. Wiggen, in drafting the motion and communicating with the court for a total of 3.2 hours at an hourly rate of \$250 for a total of \$800.00. Counsel stated he paid the \$60 court filing fee. (Burton Decl. ¶ 4.) The total amount initially sought for attorneys fees expended directly on the motion to compel is \$2,360. (Burton Decl., ¶ 4.)

Plaintiff is ordered to pay Defendant \$2,360 in sanctions within thirty (30) days of the date of this ruling.

(b) Denying Plaintiff's Motion to Compel Documents

The court shall impose a monetary sanction against any party, person or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to sanction acted with substantial justification, or that other circumstances make the imposition of the sanction unjust. (CCP § 2030.290(c); 2031.320(b).)

On December 6, 2021, the court denied Plaintiff's Motion to Compel Production of Documents finding that:

Plaintiff's motion to compel production of documents and other things was filed on September 16, 2021. Whether or not it is timely filed is impossible to determine as Plaintiff's declaration indicates the request was personally served on Defendant on July 1, 2021 and the request was to "meet at Staples Copy Center in Martell" with the documents. Plaintiff alleges Defendant failed to appear at Staples on the designated date and time, with the documents requested. Plaintiff declaration fails to indicate the exact date of that appearance, and does not attach a copy of the production request or list what documents were requested, or what documents were provided and when. (Court Minutes, December 6, 2021.)

In opposition to Defendant's Motion for Sanctions, Plaintiff argues the Request for Production of Documents – Set One, was in fact served on Defendant and counsel for Defendant lied to the

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court in their statements indicating that they were not served. Plaintiff attaches an unsigned copy of the Request for Production of Documents – Set One (which was not attached to Plaintiff’s original motion) as well as a copy of the court’s docket indicating proof of personal service to Shawn Karai, dba New York Family Fitness on 7/1/2021.)

CRC 1.21(a) provides: “Whenever a document is required to be served on a party, the service must be made on the party's **attorney** if the party is represented.” (Emphasis added.)

Discovery requests must be served to the party’s attorney of record. The court does not find that Plaintiff acted with substantial justification.

Counsel indicates he billed 3.0 hours researching, writing, and correspondences and court appearances opposing Plaintiff’s Motion to Compel at \$375.00 per hour for a total of \$1,125.00. (Burton Decl. ¶ 5.)

Plaintiff is ordered to pay Defendant \$1,125.00 in sanctions within thirty (30) days of the date of this ruling.

(c) Denying Plaintiff’s Motion for Order for Forensic Documents Examination of Plaintiffs Signature

The court denied Plaintiff’s Motion for Order for Forensic Documents Examination of Plaintiffs Signature on December 6, 2021. In its motion for sanctions, Defendant argues Plaintiff’s motion was devoid of any supporting authority in the Civil Discovery Act and seeks sanctions in the amount of \$1,125.00.

Defendant fails to cite any authority as to why the motion, and its denial, falls within the realm of the Civil Discovery Act making sanctions mandatory. Defendant’s request for sanctions as to this motion is denied.

2) Plaintiff’s Motion to Compel Production of Documents (filed January 10, 2022)

The motion is opposed.

Plaintiff served a Request for Production of Documents, Set One on the Defendant Shawn Karai dba New York Family fitness via personal service on July 1, 2021. (Mtn. to Compel, Exh. 1.)

CRC 1.21(a) provides: “Whenever a document is required to be served on a party, the service must be made on the party's **attorney** if the party is represented.” (Emphasis added.)

Discovery requests must be served to the party’s attorney of record. The court does not find that Plaintiff acted with substantial justification.

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The court must hold self-represented litigants accountable to the same rules and procedures as an attorney. “When a litigant is appearing in propria persona, [he] is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney”. (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262 at 1267, citing *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.)

Plaintiff’s Motion to Compel Production of Documents is DENIED.

Defendant filed an opposition on January 31, 2022, indicating that counsel was not served with the request for production of documents, or the instant motion. Defendant requests sanctions pursuant to CCP 2020.30, for Plaintiff’s misuse of the discovery process.

The court shall impose a monetary sanction against any party, person or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to sanction acted with substantial justification, or that other circumstances make the imposition of the sanction unjust. (CCP § 2030.290(c); 2031.320(b).)

Plaintiff sets forth no facts in his motion that he acted with substantial justification when he failed to serve counsel for Defendant with the Request for Production of Documents or the instant motion in compliance with CRC 1.21(a).

Counsel submits a declaration in support of the request for sanctions. Counsel indicates an hourly billable rate of \$425 per hour and billable time of two point five (2.5) hours in preparing the motion, plus \$60 for the filing fee. The amount sought is fair and reasonable, and the hourly rate of the attorney fees is reasonable. There is no filing fee for filing an opposition, however.

Plaintiff is ordered to pay Defendant \$1,062.50 in sanctions within thirty (30) days of the date of this ruling.

3) Defendant’s Motion for Terminating Sanctions, etc. (filed January 13, 2022).

The motion is opposed.

On December 6, 2021, the court found that Plaintiff’s responses to Form Interrogatories, 1.1, 2.6(a)-(b), 2.8 (a)-(c), 2.12 (a)-(d), 2.12 (a)-(c), 8.1, 8.2 (a)-(c), 8.3, 8.4, 8.5, 8.6, 8.7, 8.8 (a)-(d), 9.1 (a)-(d), 9.2, 17.1 (a)-(f), 50.1 (a)-(f), 50.4, 50.6 and Request for Admission No. 4 were evasive and incomplete and Plaintiff’s objections were without merit. Plaintiff was ordered to provide verified, further responses without objection within ten (10) calendar days.

Defendant attaches “Plaintiff Daniel Jerger’s Verified Response to Defendant Shawn Karai dba New York Family Fitness’s form Interrogatories and Request for Admissions (Mtn. Exh. A) in support of Defendant’s motion. The response is dated December 6, 2021 and is unsigned.

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Further, in his responses Plaintiff left blank the following 1.0, 2.6(a)-(b), 2.12.a-d, 2.13.a-c and 50.1 (a)-(f) and did not verify his response to Request for Admission No. 4.

Defendant seeks monetary sanctions in the amount of \$1,845 for costs and attorneys' fees in connection with this motion and enforcing discovery, terminating sanctions

In opposition, Plaintiff claims that he did provide verified responses and attaches a signed copy. (Opp. Exh. 1.) Further, Plaintiff indicates that he left blank questions to which he did not have anything to list.

The court finds that Plaintiff provided unverified responses, which are tantamount to no responses at all. There is no reasonable explanation as to how Defendant came to be in possession of the same responses, with the same date, but with an empty signature line.

Further, even if the responses were verified, Plaintiff was ordered to provide complete responses without objection. Instead, Plaintiff left numerous responses blank, without explanation. Plaintiff continues on to explain why they were left blank, i.e. why Plaintiff did not possess the information, in his Opposition.

The court finds that Defendant's request that Set One – Request for Admission Question #4 is deemed admitted for the truth of the matter therein.

Plaintiff is ordered to pay Defendant \$1,845 for costs and attorneys' fees in connection with this motion within thirty (30) days of the date of this ruling.

4) Plaintiff's Motion to Compel Responses to Plaintiff's Special Interrogatories and for Monetary Sanctions (filed January 28, 2022)

The motion is unopposed.

Untimely Motion to Compel

Plaintiff propounded Special Interrogatories, Set One to Defendant on date unknown. Defendant provided verified responses by mail on September 9, 2021. (Mtn. to Compel, Exh. 2.) Plaintiff caused a Meet and Confer letter to be personally served on Defendant on December 9, 2021 and filed this motion on January 28, 2022.

A notice of motion to compel further responses to discovery requests must be served within 45 days after service of the response in question, which time is extended if served by mail, overnight delivery, or fax (see CCP § 1013(a)). Parties can stipulate in writing to extend the deadline to file the motion to compel. (CCP § 2030.300(c).) Otherwise, the demanding party

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waives the right to compel any further response. (CCP § 2030.300(c); see *Sperber v. Robinson* (1994) 26 Cal. App.4th 736, 745.)

Code of Civil Procedure section 2030.300 specifically states at subdivision (c):

Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response to the interrogatories.

The record before the court shows that Defendant provided verified responses by mail on September 9, 2021. (Mtn. to Compel, Exh. 2.)

The 45-day time limit is mandatory and jurisdictional. (*Sexton v. Sup.Ct. (Mullikin Med. Ctr.)* (1997) 58 Cal.App.4th 1403, 1410.) Case law has made it clear that if the motion is untimely, the motion must be denied. (*Vidal Sassoon v. Superior Court* (1983) 147 Cal.App.3d 681, 683; *Professional Career College Magna Institute Inc. v. Superior Court* (1989) 207 Cal.App.3d

490, 494. Indeed, the *Sexton* court ruled: “We do not believe the 45-day limitation is ‘jurisdictional’ in the fundamental sense, but is only “jurisdictional” in the sense that it renders the court without authority to rule on [untimely] motions to compel other than to deny them.” (*Id.* at p. 1409.)

Adding on five (5) calendar days to Defendant’s responses, which were mailed on September, 9, 2021, Plaintiff’s forty-five days to file a motion to compel ran out on October 29, 2021. Plaintiff filed this motion on January 28, 2022. Plaintiff’s motion to compel discovery responses is untimely. The court no longer has jurisdiction and must deny Plaintiff’s request.

Failure to Properly Serve Motion

Even if Plaintiff’s motion was timely filed, it would be denied for failure to properly serve Defendant’s attorney.

CRC 1.21(a) provides: “Whenever a document is required to be served on a party, the service must be made on the party’s **attorney** if the party is represented.” (Emphasis added.)

Plaintiff filed a proof of service on January 28, 2022 indicating Defendant Shawn Karai, dba New York Fitness, was served by mail at 615 New York Ranch Rd. #1, Jackson, CA on January 28, 2022. Defendant is represented by an attorney and the attorney must be served.

The court must hold self-represented litigants accountable to the same rules and procedures as an attorney. “When a litigant is appearing in propria persona, [he] is entitled to the same, but no

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greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney”. (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262 at 1267, citing *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.)

Plaintiff’s Motion to Compel Responses to Plaintiff’s Special Interrogatories, Set One and for Monetary Sanctions is DENIED.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.