FORD v GREENHORN GOLF, LLC

23CV47102

PLAINTIFF'S MOTION FOR MANDATORY INJUNCTION ORDERING DEFENDANT TO ABATE NUISANCE

Plaintiff's motion for preliminary injunction is on calendar for June 28, 2004. However, the matter is continued to July 12, 2024 at 9:00am in Department 2 in the interests of justice to allow Defendant Greenhorn Golf, LLC an opportunity to respond to new evidence presented for the first time in plaintiff's reply pleading. Specifically, on reply Plaintiff produced new documentation purporting to show that Defendant is the owner of the land containing the nuisance.

If Greenhorn wishes to file a response, it must not exceed 10 pages in length, and must be filed on or before July 3, 2024. Plaintiff is not given leave to file any additional evidence or argument.

"The general rule of motion practice … is that new evidence is not permitted with reply papers … [and] should only be allowed in the exceptional case …." (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.) If the court exercises its discretion to allow new evidence in reply papers, the opposing party must be given an opportunity to respond. (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1307-1308.) The new declaration and evidence filed with the reply is relevant to the court's decision in determining the likelihood of Plaintiff' success on the merits and therefore her right to an injunction, so the Court will allow the late presented evidence, but Greenhorn will be given an opportunity to respond to the new evidence.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

TRYON v ANGELS GUN CLUB, INC.

17CV42160

CROSS-COMPLAINANT'S MOTION TO SPECIALLY SET CROSS-ACTION FOR TRIAL

This case involves a lengthy land dispute. Plaintiff /Cross-Defendant Thomas Tryon ("Tryon") owns property in Calaveras County, California, identified as Assessor's Parcel Number ("AFN") 064—005-007 ("Tryon Property"). Defendant/Cross-Complainant Angels Gun Club, Inc. ("Gun Club") is a California non-profit corporation that owns real property in Calaveras County identified as APN 064-006-008; 064-006-007; and 064-005-031 ("Gun Club Property') on which it operates a target and shooting range.

Tryon filed a complaint against Gun Club alleging that the operation of the facility was resulting in overshooting on his land and lead contamination on his property; Gun Club cross-complained. Tryon dismissed his causes of action against Gun Club and at that time the trial date was vacated.

On January 19, 2024, the Court granted Gun Club's request to file a Fourth Amended Cross Complaint in which it echoed much of the earlier Cross-Complaints but sought to add additional Cross-Defendants.

Now before the Court is Gun Club's motion to specially set the cross-action for trial before expiration of the 5-year statute under Code of Civil Procedure 583.310. Cross-Defendants oppose the motion.

I. Background

On or about, September 4, 1984, Tryon and Gun Club entered into an agreement that provided for Gun Club to purchase such real property known as the Tracy Quartz Mine, and identified as APN 064-006-007, portions of which were to be transferred to Tryon in exchange for land owned by the Gun Club ("Land Swap Agreement", Third Amended Complaint, Ex. C.) In exchange, the Agreement provided for Tyron to transfer to Gun Club a portion of real property, identified as Parcels A and C in the Land Swap Agreement. Tryon and his family would be allowed to have access to Parcel A for grazing purposes, range improvement purposes, construction of dam upon Indian Creek, and mineral mining without charge to Tyron.

Apparently deeds for the property swaps were never recorded. At some point in 2005, Tryon allegedly met with the Gun Club Board of Directors and agreed that he would sign any necessary deed documents but that said documents could not be recorded because they contemplated grazing rights. Gun Club alleges that to date the Tryon family has not transferred title to Parcels A and C. However, pursuant to the terms of the Land Swap Agreement, the Gun Club has "regularly and continuously engaged in the shooting of trap and skeet on its property." (FACC ¶ 16.)

Gun Club alleges that the Tryon unilaterally expanded the scope of the Land Swap Agreement by renting or assigning his family's grazing rights to unknown third parties. Gun Club further alleges that Tryon has impermissibly trespassed and interfered with the Gun Club's use of the property.

II. Legal Standard and Analysis

Code of Civil Procedure ("CCP") section 583.310(a) provides that "an action shall be brought to trial within five years after the action is commenced against the defendant." Subsection (b) provides that the requirement of dismissal is mandatory and "not subject to extension, excuse, or exception except as expressly provided by statute."

The cross-complaint was originally filed on January 15, 2019, meaning that a trial date needed to commence within five years or by January 15, 2024. That statutory period was extended 6 months, however, pursuant to California Rules of Court, Appen. I, Emergency Rule 10(a), passed by the California Judicial Council during the COVID pandemic. As a result, the date by which this cross-action must be brought to trial is extended to July 15, 2024.

Recognizing that time is running on its claims, Gun Club brings this motion pursuant to CCP section 36(e) which states:

> Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference.

If the court grants a motion for trial preference under CCP § 36(e), then it must set trial "not more than 120 days from that date and there shall be no continuance beyond 120 days from the granting of the motion for preference except for physical disability of a party or a party's attorney, or upon a showing of good cause stated in the record." (CCP § 36(f).)

A motion for preferential trial setting raises the same issues for the trial court as a motion to dismiss for failure to prosecute. (*Wilson v. Sunshine Meat Liquor Co.* (1983) 34 Cal.3d 554, 561.) The *Wilson* court further stated:

> In passing upon a motion for an early and preferential setting, the court was not limited to a consideration of the single fact that the five-year period was about to expire but was required to view the total picture, including the dilatory action of the plaintiff, the condition of the court's calendar, the rights of other litigants, and the prejudice to the defendant resulting from the delay. (*Wilson, supra* 34 Cal.5d at 561.)

Gun Club argues that the motion should be granted because it has not been dilatory, the court's calendar will not be overburdened, and the other litigants will not be prejudiced by a trial commencing before July 15, 2024. Specifically, Gun Club argues that after Tryon dismissed the underlying action, he represented to Gun Club that the Tryon family would honor the Land Swap Agreement and sign the grant deeds. (Declaration of Clay D. Dillashaw ("Dillashaw Decl.") ¶ 2.) Gun Club argues that based on that representation, it did not believe it would need to continue prosecuting the cross-action to trial. (*Id*. ¶3.) According to Gun Club, it was not until November 2023 (fifteen months later) that Tryon informed Gun Club that he would not honor the Land Swap Agreement. (*Id.* ¶ 5.)

Gun Club further argues that the other litigants will not be prejudiced by the granting of this motion. Specifically, Gun Club asserts that the Tryon family has "no one but themselves for the fifteen months they 'lost' between August 2022 and November 2023, while they stalled, delayed, and ultimately refused to sign the grant deeds." (Mtn p. 2.) Further, Gun Club argues that in the six months since active litigation has resumed, the Tryon family has "spent their entire time throwing up procedural roadblocks and obstacles to Gun Club's efforts to refine their claims, and have made no effort whatsoever to take any additional discovery." (*Ibid.*) Finally, Gun Club asserts that the remaining issues do not require a trial by jury, are relatively simple, and could be completed in a one day bench trial.

In opposition, Tryon points out that after the underlying complaint was dismissed and the trial was vacated, Gun Club failed to make any objection or to set a new trial date for the issues in their cross-action. (Declaration of Donald B. Mooney ("Mooney Decl.") ¶ 6.) Cross-Defendants point out that there are only two remaining causes of action: 1) a declaration that Tryon has extinguished an alleged license associated with Parcels A, B and C, and 2) an injunction against Tryon regarding a dispute about access to Parcels A, B and C. However, neither of these causes of action had anything to do with Tryon's purported representations that he would comply with the Land Swap Agreement. Accordingly, Cross-Defendants argue that even if Tryon made any representations, those representations would only have gone to the breach of contract claim and Gun Club would still have needed to pursue its cross-action for the remaining causes of action.

Perhaps more importantly, Cross-Defendants argue that they will suffer significant prejudice if the Court allows a trial to commence on or before July 14, 2024. They point out that as of the date of the motion, there are only 17 days (and only 10 court days) until July 15, 2024. Cross-Defendants argue that in this short time frame there may not be adequate time to prepare for trial, ensure that witnesses will be available, and to provide notice and/or subpoena witnesses. They further point out while courts have held that periods ranging from 28 days to 46 days before the expiration of the five year period provided sufficient time within which to at least begin trial, here there is less than half of that time remaining. (*See e.g.*, *Dick v. Superior Court* (1986) 185 Cal.App.3d 1159, 1166 [citation omitted] [28 days sufficient time]; *Vogelsang v. Owl Trucking Co*. (1974) 40 Cal.App.3d 1068, 1072 [46 days sufficient time].) Finally, counsel for Cross-Defendants asserts that he has other impending hearings in Sacramento and Shasta County and an extensive appellate brief due by July 15, 2024 under the CEQA Streamlining provisions.

The Court notes that the traditional reasons for setting trial preference -- a party's health, age or other condition -- are not present here (see CCP sections 36(a) to (d).) Rather, the Court may only grant the Gun Club's motion if it is "supported by a showing that satisfies the court that the interests of justice will be served by granting this preference." (*Id.,* section (e).) Dismissal-for-delay statutes serve to "discourage stale claims" and "compel reasonable diligence in the prosecution of actions, thereby expediting the administration of justice. [citations omitted]" (*Schumpert v. Tishman Co*., (1988), 198 Cal.App.3d 598, 602.) However, "balanced against these considerations is, of course, the strong public policy which seeks to dispose of litigation on the merits rather than on procedural grounds." (*Ibid*.) While the latter policy is often viewed as more compelling, "it will not prevail unless the plaintiff meets his burden of establishing excusable delay. [citations omitted]." (*Ibid*.)

Gun Club has had nearly five years to bring their cross-action to trial. At the time that the underlying complaint was dismissed, it did not object to the trial date being vacated and did not seek to obtain a new trial date. Even assuming that Tryon's misrepresentations were a reasonable source of Gun Club's delays, by its own admission Gun Club was aware that Cross-Defendants were not going to sign the deeds by November of 2023. Nonetheless, Gun Club waited approximately six months, and only one month before the five year deadline, to bring its motion. The Court finds such delay unreasonable. Further, the Court agrees with Cross-Defendants that the extremely short time period to prepare for trial is prejudicial, particularly given that the FACC filed in January 2024 added new defendants. Additionally, the Court notes that cross-defendant has no idea of the burden that setting even a one day bench trial would impose on a two-judge Court, which the Court notes would be significant.

Accordingly, Gun Club's motion is **DENIED**.

The Clerk shall provide notice of this Ruling to the parties forthwith. Cross-Defendants to submit a formal Order pursuant to Rule of Court 3.1312 in compliance with this Ruling.

IN RE: THIRTY TWO THOUSAND DOLLARS ($32,000.00) CURRENCY OF THE UNITED STATES

22CV45789

PETITIONER'S MOTION FOR FORFEITURE JUDGMENT

On March 2, 2021, the Calaveras County Sheriff's Department served a search warrant at 5691 McCauley Road, Valley Springs, Calaveras County, California. A man named Yen-Hsiang Yang was inside the house. During the search, officers found several plastic baggies of US Currency (totaling $30,800.00) bundled together with colored rubber bands hidden between a mattress and bed frame. On top of the mattress was Yen-Hsiang Yang's wallet along with his Taiwanese passport and international driving permit There was an additional $1,200.00 U.S. Currency in Yang's wallet bringing the total amount of U.S. Currency found to $32,000.00.

On March 2, 2021, Yen-Hsiang Yang was personally served with a Receipt for Seizure of Property, Notice of Seizure and blank Judicial Council Form MC200 "Claim Opposing Forfeiture." The same three documents were also sent to Yen-Hsiang Yang via certified USPS mail on May 30, 2023, along with the Petition for Forfeiture of Property. USPS tracking shows the letter was delivered on June 14, 2023. The same documents were also served on the listed property owner, Sean Hin-Yu Lee, and according to USPS tracking, the documents were delivered on November 9, 2023.

During review of PGE records for 5691 McCauley Road, a PGE account in the name of Jie Long Yu, with listed address of 877 Devonshire Ave., San Leandro, CA 94579, was located. Thereafter, the People mailed the documents to Jie Long Yu and on January 23, 2024, filed proof of service.

The Notice of Forfeiture was published in the Valley Springs News pursuant to Health and Safety Code section 11488.4(e) beginning April 9, 2021 once per week for three (3) consecutive weeks. To date no claims have been filed in this case.

A companion criminal case was filed against Yen-Hsiang Yang in case number 21F8122. (Exhibit K.) On August 17, 2021, Yen-Hsiang Yang's criminal defense attorney informed the Court that Yang had voluntarily deported himself out of the country. A bench warrant was ordered and remains to this day. (Exhibit L.)

Legal Standard and Analysis

Health and Safety Code section 11488.4 sets forth the procedures for forfeiture: subsection (a) provides that the District Attorney shall file petition for forfeiture with the Superior Court of the county in which the defendant has been charged with the underlying offense or in which the property has been seized. Thereafter, the District

Attorney shall make service of process of the notice of the seizure and of the intended forfeiture proceeding, upon any person designated in receipt or who has an interest in the seized property. Subsection (e) provides that when forfeiture action is filed, notice to the general public shall be published once per week for three successive weeks in a newspaper of general circulation in the county where the seizure was made or where the property subject of seizure is located.

The service of the notice starts a thirty (30) day period during which the interested party must file a verified claim for the seized property in the superior court. (Health and Safety Code § 11488.5(a)(1).) If the interested party is not served personally or by mail, the claim must be filed within thirty (30) days of the date of the last publication of notice. (*Ibid*.) If the interested party neglects to file a claim within the statutory period, the court may upon motion declare the property seized or subject to forfeiture. (Health & Safety Code section 11488.5(b)(1).)

The petition must be served on every person designated in a receipt issued for the property seized and every person who has an interest in the property. (Health and Safety Code § 11488.4(c), (j).) The notice must be accompanied by a claim form, with directions for filing and serving the claim. (Health and Safety Code § 11488.4(c).) The Judicial Council has approved a form of claim for opposing forfeiture. (See Judicial Council form MC-200.) In addition to personal service, the notice must be published once a week for three successive weeks in a newspaper of general circulation in the county where the seizure was made or the property located. (Health and Safety Code § 11488.4(e).)

In moving for a default judgment pursuant to this subdivision, the state or local governmental entity must establish a prima facie case in support of its petition for forfeiture. However, there is no requirement for forfeiture that a criminal conviction be obtained in an underlying or related criminal offense. (Health & Safety Code §11488.5(b)(1).)

The People have met their notice requirements by personally serving Mr. Yang, sending notice via U.S. mail to Mr. Yang, Mr. Lee, and Mr. Yu and by publishing the Notice once a week for three successive weeks in a newspaper of general circulation in the county where the seizure was made or the property located. (Health and Safety Code § 11488.4(e).) Neither Defendant, nor any other interested person, has filed a claim for the property.

If no claim is filed in a timely manner, the property may be forfeited by default, on noticed motion, and the prosecution's establishment of a prima facie case in support of the petition for forfeiture. (Health and Safety Code § 11488.5(b)(1).) In order to pursue default, the government must establish some nexus between the seized funds and a narcotics transaction. (*People v. $47,050* (1993) 17 Cal. App. 4th 1319, 1323.)

Forfeiture is ordered if the prosecution meets its burden of proving that the property is subject to forfeiture. (Health & Saf. Code 11488.5(d)(2).) Here, the People have met their burden to show a prima facie case. The People provided the court with the testimony of Deputy Tyler Seawell who works for the the Calaveras County Sheriff's Department in the Calaveras County Marijuana Enforcement Team (MET). (Declaration of Tyler Seawell ("Seawell Decl.") ¶ 1.) Deputy Seawell is trained and experienced in marijuana investigations. (*Id*. ¶¶ 2-8.) Deputy Seawell avers that in February of 2021, he obtained a search warrant for PGE records at the Property, which records showed that the Property was using an average of 1,205.04 kWh per day. (*Id.* ¶ 9.) This is the same amount used by the average California home in two months. (*Ibid*.) Upon the search of the Property, the police discovered 2,511 marijuana plants with an estimated street value of $4,143,500.00. (*Id*. ¶ 13.) Deputy Seawell avers that "[b]ased upon the large amount of marijuana being cultivated, the sophisticated cultivation operation, and its high dollar value, it is my Opinion that the marijuana was being grown and possessed for sale, not personal use." (*Id*. ¶ 16.)

Based on the foregoing, the court **GRANTS** the Motion and orders that Respondent's money at issue in this Petition is forfeited.

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court will sign the submitted proposed formal Order.

PAUL v DHALIWAL

23CV46672

PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS; PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES – SET ONE; REQUEST FOR SANCTIONS

Plaintiff, Heather S. Paul ("Paul") on her own behalf and behalf of all other Subway employees, filed the Class Action Complaint for failure to pay minimum wages, provide rest and lunch periods, maintain accurate wage statements, pay wages upon termination, reimburse expenses, theft, conversion, unfair employment competition, and Private Attorney General Action ("PAGA") against Defendant Jagiwan S. Dhaliwal dba Subway Sandwiches and Wraps and Subway Dhaliwal Arnold ("Defendant"). Plaintiff served discovery and has now filed motions to compel responses to requests for production of documents and further responses to special interrogatories. The motions are similar in form and substance and accordingly, the court addresses the motions in tandem. Plaintiff

I. Facts and Procedural Background

Plaintiff worked as a sandwich artist/crew member for Defendant's Subway restaurant located at 51 N. Main Street, Angels Camp, California 95222. Plaintiff alleges that Defendant additionally owns Subway restaurants in Arnold and Jackson. Plaintiff brings this action on behalf of herself and others similarly situated in a potential class action, with the class defined as:

> All current and former hourly, non-exempt employees of Defendant in California at any time during the period commencing on the date that is four (4) years prior to the filing of this Complaint and continuing through the present date (the "Class Period")."
>
> (b) "All hourly, non-exempt employees of Defendant in California who left the employ of Defendant at any time during the period commencing on the date that is within one (1) year prior to the filing of this Complaint and continuing through the present date (the "Class Period")

On October 18, 2024, Plaintiff served a Request for Production of Documents, Set One, ("RPD") and Special Interrogatories, Set One ("SROGS") via electronic service. Defendant's responses were originally due on November 21, 2023. Plaintiff granted a thirty day and then a sixty day extension. The responses to Plaintiff's Request for Production of Documents, Set One, were originally due on November 21, 2023; plaintiff granted thirty day and then sixty day extensions. Thereafter, Plaintiff granted two more extensions of fourteen days and ultimately a seven day extension on February 29, 2024. Upon the due date, March 7, 2024, Defendant served responses. However, the production of documents was conditioned on Plaintiff's agreement to a protective order. Plaintiff asserts that despite promptly agreeing to that protective order, she never received any responsive documents. Plaintiff further asserts that the responses to the SROGS were incomplete or evasive.

On March 8, 2024 Plaintiff's counsel emailed Defendant's counsel and reiterated the agreement to the protective order and urging Defendant to serve the outstanding documents. Plaintiff asserts that Defendant's counsel did not respond to her counsel's attempts to meet and confer and as of the date of this motion, Defendant has failed to serve any documents in response to the RPD and has failed to respond adequately to the SROGS.

II. Legal Standard

CCP Section 2031.300 provides that when a party fails to respond to a demand for production of documents, the party to whom the demand is directed waives all objections. Here, plaintiff contends no responsive documents have ever been produced.

Where responses to interrogatories have been served but the requesting party believes that they are deficient because the answers are evasive or incomplete, or, because an objection is without merit, that party may move for an order compelling a further response. (Code Civ. Proc. § 2030.300(a).)

Both motions must be accompanied by a meet and confer declaration in compliance with Code Civil Procedure section 2016.040. (Code Civ. Proc. § 2030.300(b); 2031.310(b)(2).) Counsel for the Plaintiff did attempt to meet and confer but the parties were unable to informally resolve the dispute. (Declaration of Thomas Schelly ("Schelly Decl.") ¶ ¶ 5-9.) Thus, the Court finds that Plaintiff's meet and confer efforts were sufficient and this requirement is satisfied.

III. Discussion

A. Discovery Dispute

The primary issue in this discovery dispute is Plaintiff's request for information related to the Potential Class Members. According to the Defendant's Responses to the SROGS, there were thirty two (32) employees who were employed on an hourly wage basis during the Class Period and there are eleven (11) current employees. Thus, the number of individuals whose information is at issue is relatively small. Defendant nonetheless has objected, in part, to the RPDs and SROGS as unduly burdensome or overly broad. The primary objection, however, to both the SROGS and RPDS is the Defendant's concern that disclosing the names, contact information, and personnel records of Potential Class Members implicates serious privacy concerns.

In response to RPDs and SROGs that seek the identity, contact information, personnel records and communications with or complaints made by Potential Class Members, Defendant gave nearly identical responses. To each such discovery request, Defendant objected on the grounds that the request was vague, ambiguous, or implicated privacy rights and then stated:

> Notwithstanding said objections, consistent with them, and without waiving them, Defendant provides the following response: Subject to the implementation of an appropriate protective order and/or implementation of a Belaire-West procedure, Defendant will supplement its response and provide the requested information.

In response to this, Plaintiff offered Defendant an opportunity to provide its own version of an acceptable protective order by April 1, 2024, and offered an extension of time in which to complete the protective order if needed. (Schelly Decl. Ex. 4, Email dated 3/25/24.) On April 1, 2024, Plaintiff's counsel sent a follow up email. (*Ibid*.) On April 3, 2024, Defendant's counsel sent a proposed protective order with a request for Plaintiff to make any suggested changes and return it for review. On April 4, 2024, Plaintiff's counsel made suggested changes and returned it for review. On April 18, 2024, Plaintiff's counsel followed up on to see if the protective order was approved and apparently no response was provided.

In response to RPD Nos. 19-21, 24, 39-41, 43-47, and 49-50 which seek documentation related to Defendant's various policies with regards to compensation or meal and rest breaks, training materials provided to Plaintiff, and any statements made by former employees related to wages, meal/rest breaks or policies of Defendant, Defendant gave nearly identical responses, objecting on the grounds the request was overbroad or unduly burdensome, sought attorney work product, or called for a legal conclusion and then stated:

> Notwithstanding and without waiver of objections, the responding party responds as follows: Defendant is unable to comply with this request, as to its knowledge, documents responsive to this request never existed.

Plaintiff argues that all of Defendant's responses are deficient, if not completely absent. Plaintiff asserts that these requests seek discoverable information that is necessary to understand the nature and extent of the violations that would support the class claims. Defendant opposes the motion on the grounds that the discovery sought implicates important privacy concerns and asserts that if the Court finds the information discoverable, then it should be pursuant to an Opt-In procedure.

Courts construe the discovery statutes broadly. (*Flagship Theatres of Palm Des., LLC v. Century Theatres, Inc.* (2011) 198 Cal.App.4th 1366, 1383.) "All doubts about discovery are resolved in favor of disclosure." (*Glenfed Dev. Corp. v. Superior Court (National Union Fire Ins. Co. of Pittsburgh, Penn.*) (1997) 53 Cal.App.4th 1113, 1119.) A party objecting to discovery bears the burden of justifying its objections. (*Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.) Similarly, the burden is on the defendant to demonstrate that disclosure is inappropriate. (*Babcock v. Superior Court* (1994) 29 Cal.App.4th 721, 727-728.)

There is generally good cause for the type of discovery that Plaintiff seeks. As to Plaintiff's own time sheets, wages, and other employment documents, Defendant's objections are meritless. The requests seek Plaintiff's own personnel documents for the limited time period of her employment.

Documents showing the contact information for Potential Class Members, the hours worked by and the wages paid to Potential Class Members are directly relevant to the claimed wage and hour violations. First, " 'contact information' regarding the identity of potential class members is generally discoverable, so that the lead plaintiff may learn the names of other persons who might assist in prosecuting the case.' [citation]" (*Belaire-W. Landscape, Inc. v. Superior Court,* 149 Cal.App.4th 554 (Cal. Ct. App. 2007) (*Belaire-West*). Such information would tend to prove or disprove Plaintiff's PAGA claim and will allow Plaintiff to evaluate the merit of her claims. (Cal. Code Civ. Proc. § 2017.010 ["discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter"].) The legitimate concerns about privacy can be addressed through the *Belaire-West* procedure, which Defendant already agreed would be appropriate in its discovery responses. Despite Plaintiff's attempts at obtaining a protective order or to employ the *Belaire-West* procedure, Defendant has failed to properly respond.

Defendant requests that if the Court grants the motions to compel, the Court should require an Opt-In procedure rather than an Opt-Out procedure. The Court in *Belaire West* examined this very issue and determined that the Opt-Out procedure adequately protected the privacy interests of employees, while also serving Potential Class Member's interests, stating:

> While it is unlikely that the employees anticipated broad dissemination of their contact information when they gave it to Belaire-West [the employer], that does not mean they would wish it to be withheld from a class action plaintiff who seeks relief for violation of employment laws. (*Belaire West*, *supra*, 149 Cal.App.4th at 561.)

An Opt-Out procedure that requires written notice of the proposed disclosure to all current and former employees, and offers them an opportunity to object to the release of their contact information, is sufficient to protect any privacy interests. (*Id.* at 562.) This procedure allows a targeted approach that offers inclusion to any Potential Class Member. In contrast, Defendant's Opt-In request would place the onus on individuals to take proactive steps to join the litigation, which may very well result in forfeiture of their individual rights as Potential Class Members.

Accordingly, Plaintiff's motion for further responses to the SROGS is **GRANTED**. The motion for further response to the RPDs is **GRANTED IN PART**. As regards RPD No. 50, which seeks all documents relied upon by the Defendant in making its Answer, the Court agrees that this may implicate attorney work product and that objection is sustained. Defendant is ordered to disclose those documents which do not implicate privilege or work product.

Within 10 days of this order, Defendant is to respond to Plaintiff's proposed changes to the protective order and Belaire-West notice and is ordered to follow an Opt-In procedure in said notice. Thereafter, Defendant is to provide code compliant further responses to all RPDs, with limitation on RPD 50 for any work-product or privileged material, within 30 days of the signed protective order. Defendant is to provide code-compliant further responses to all SROGs within 30 days of the signed protective order.

B. Sanctions

Pursuant to CCP. §§ 2030.300(d) and 2031.310(h), the court shall imposed a monetary sanction against any party, person, or attorney who unsuccessfully opposes a motion to

compel further responses to discovery, "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." In addition, a Court may impose monetary sanctions for misuse of the discovery process (Code Civ. Proc., § 2023.010.)

The Plaintiff's discovery requests are reasonable and limited in time and scope. Defendant represented that it would produce responsive documents and interrogatory answers pursuant to a protective order or Belaire-West procedure. Plaintiff attempted to procure a protective order but Defendant has been non-responsive to that request. Accordingly, sanctions are warranted.

Plaintiff's counsel seeks $15,985.80 ($7,992.90 per motion) based on 21.4 hours of work at $747.00 per hour. The Court finds that while Defendant was arguably substantially justified in raising concerns about privacy issues, it was not substantially justified in asserting certain objections or in failing to work with Plaintiff to obtain a agreeable protective order. However, initially the Court finds the requested hourly rate for attorney's fees is excessive as the going rate in the local market is $300 per hour. Additionally the Court reduces the allowable hours as appropriate for sanctions to 2.8 hours for motion preparation, 2.0 hours for separate statement preparation, and .5 hours for declaration preparation, for a total sanction of award of 5.3 hours. Accordingly, the Court **grants Plaintiff's motion for sanctions in the amount of $1,590.00** (i.e., 5.3 hours at $300 per hour).

The Clerk shall provide notice of this Ruling to the parties forthwith. Plaintiff to submit a formal Order pursuant to Rule of Court 3.1312 in compliance with this Ruling.

ROUDEBUSH v ROUDEBUSH

23CV46676

PLAINTIFF'S MOTION FOR ORDER APPROVING SETTLEMENT AGREEMENT

This case involves a partition of several real properties owned by Linda Roudebush as Trustee of the Linda Roudebush Trust and as an individual ("Linda") and her sister, defendant Lisa A. Roudebush (hereinafter, "Lisa").[1] The Court entered default against Lisa on September 26, 2023, and an interlocutory judgment upon a prove-up hearing was ordered for April 19, 2024. Michael Wright was appointed referee.

Now before the Court is Linda's motion to approve a settlement agreement, including a request that the Court retain jurisdiction to enforce the settlement agreement pursuant to Code of Civil Procedure ("CCP") section 664.6. At the outset the Court brings Plaintiff's attention to fact that the Notice of Motion fails to include the following mandatory language:

> Pursuant to Local Rule 3.3.7, the Court will make a tentative ruling on the merits of this matter by 2:00 p m the court day before the hearing The complete text of the tentative ruling may be accessed on the Court's website or by calling 209-754-6285 and listening to the recorded tentative ruling If you do not call all other parties and the Court by 4:00 p m the court day preceding the hearing, no hearing will and the tentative ruling shall become the ruling of the court.
>
> Failure to include this language in the notice may be a basis for the Court to deny the motion.

The Court has grounds to deny the Motion based on the failure to include this language. However, in the interests of justice, the Court will rule on the motion; the parties are cautioned that the local rule has been in effect since 1/1/18 and they should not expect any such leniency for any future motions.

[1] Given the Plaintiffs and the Defendant share a common last name, the Court will refer to the parties by their first names. No disrespect is intended.

Linda and Lisa are sisters who each have a 50% interest in various parcels of real property in Calaveras County. Pursuant to Settlement Agreement ("Agreement"), Linda will assume full ownership of certain properties in Calaveras County and Lisa will gain full ownership of other properties. (Agreement ¶ 1 (a)-(e)). Linda and Lisa further agree to market and sell a remaining property and to share equally in the sale proceeds. Agreement is signed and dated by both parties.

Agreement also contains the following language:

> This Agreement shall be submitted to the Court for its approval. Subject to its approval, the Calaveras County Superior Court shall retain jurisdiction over this matter and this Agreement pursuant to C.C.P Section 664.6. If either party is required to ask the Court to enforce the terms of this Agreement or the terms of the injunction ordered by the Court, that party shall be entitled to reasonable attorneys' fees and expenses upon receiving a Court order to enforce the same.

Pursuant to CCP section 664.6 (a):

> If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

The Court finds that the parties have stipulated to settlement of the case and accordingly GRANTS Linda's Motion for Approval of Settlement Agreement. The Court will further retain jurisdiction pursuant to Code of Civil Procedure section 664.6.

The Clerk shall provide notice of this Ruling to the parties forthwith. The Court will sign the submitted proposed formal Order