

# BILLMAN, et al v HARMON

23CV47101

## PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

This action arises out of a dispute between Jamie Billman and Myrna Ray Reynolds, LLC ("Plaintiffs") and Krystal Harmon ("Defendant"), regarding the title and ownership of the real property located at 3968 S. Burson Road, Valley Springs, CA 95252 ("Property").

Plaintiffs filed their complaint on December 6, 2023, and are now before the Court seeking leave to file a First Amended Complaint ("FAC") to allege new acts and omissions on the part of Defendant. Defendant has not filed an opposition.

"The court may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading ..." (Code Civ. Proc., § 473, subd. (a)(1).) The court's discretion will usually be exercised liberally to permit amendment of the pleadings. (*Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.) The policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified:

If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend; and, where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." (*Morgan v. Sup.Ct.* (1959) 172 Cal.App.2d 527, 530.)

At this stage, the Defendants would not be prejudiced by allowing the amendment sought since a trial has not yet been set and the FAC adds new facts and theories arising out of the same circumstances as the original complaint.

Based on the foregoing, the Court **GRANTS** the Motion. Plaintiff shall have 10 days' leave to file a first amended complaint.

The Clerk shall provide notice of the Ruling forthwith. No further formal Order is required.

# **RIGUERO v MENDEZ, et al**

**23CV46995**

## **PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES AND DEEM MATTERS ADMITTED**

This civil action stems from a dispute over the estate of Rachel Gloria Menedez ("Decedent). Before the Court is Plaintiff's motion seeking to have the Court: 1) deem admitted the truth of facts in the Request for Admissions ("RFA"), 2) compel responses to form interrogatories, 3) compel answers to Requests for Production of Documents ("RPDs") 4) production of documents (collectively "Discovery Requests") and 5) impose sanctions on Defendants.

For the reasons set forth below, Plaintiff's motions are GRANTED IN PART AND DENIED IN PART.

### **I. Factual and Procedural Background**

#### **A. Background Facts**

The Decedent passed away on or around April 12, 2023. At the time of her death, Decedent was married to Richard Mendez ("Defendant"). As part of Decedent's estate plan, she executed a Last Will and Testament and Advanced Care Directive which referenced Defendant as the executor of her will, as well as details on how she wanted her remains disposed of, her obituary, the services in her memory, and her desire to be buried. (See, Complaint, Ex. 1, hereinafter referred to as "End of Life Plan").

Plaintiff is apparently one of the Decedent's children. On or about April 10, 2023, Plaintiff contacted Defendant to discuss the services and Decedent's wishes. According to Plaintiff, Defendant informed her that "he did not wish to discuss funeral services" and that he was "aware of her will." (Complaint ¶ 8.) After again unsuccessfully attempting to contact Defendant about funeral plans and body disposal, Plaintiff and her siblings moved forward on their own to plan the funeral services, incurring costs of approximately \$36,726.40.

Defendant failed to attend the memorial service and to provide reimbursement for the costs. Plaintiffs allege that Defendant also failed to lodge the Decedent's Will with Calaveras County Clerk as required by Cal Probate Code section 8200. The Complaint alleges causes of action for: 1) breach of fiduciary duty, 2) Violation of Probate code § 8200, and 3) seeks removal of executor for fraud under Probate Code §8502.

## **B. Discovery and Responses**

On May 16, 2024, counsel for Plaintiff served the Discovery Requests by electronic service to Defendant's counsel. (Declaration of Seth A. Nunley ("Nunley Decl.") ¶ 3.) The time for responses to be served was end of day June 17, 2024. (*Id.* ¶ 8.) At the time of the filing of Plaintiff's motion on June 25, 2024, no responses had been filed.

According to Defendant's counsel, on June 14, 2024, he emailed Plaintiff's counsel seeking a good-faith extension of 40-days to provide the requested responses. (Declaration of Saveel Khan ("Khan Decl.") ¶ 3.) Defendant's counsel avers that Plaintiff's counsel failed to respond to that email and to engage in any meet and confer efforts. Plaintiff's counsel avers that he never received the June 14, 2024, email. On August 2, 2024, Defendant served verified responses to the Discovery Requests.

Plaintiff takes issue with Defendant's response to Form Interrogatory 15.1 as inadequate.

Plaintiff states that despite an email from Defendant's counsel indicating that the documents requested in the RFP would be produced, no documents were actually provided. (Reply Declaration of Seth Nunley ("Reply Nunley Decl.") ¶ 4, Ex.1.)

Plaintiff concurs with Defendant that he provided substantial compliant responses to the Requests for Admission.

## **II. Legal Standard**

Pursuant to Code Civ. Proc. section 2033.280:

(a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

- 1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
- 2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Further, the Court shall deem the facts admitted as truth, unless it finds that the party to whom the RFAs were directed, "has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc. § 2033.280(c).)

Pursuant to Cal. Code Civ. Proc. § 2030.290, if a party to whom interrogatories are directed fails to serve a timely response then:

(a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Pursuant to Code Civ. Proc. section 2031.300, if a party to whom requests for production of documents fails to serve a timely response then:

(a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240 and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

A party moving to compel initial responses under these sections is not required to meet and confer. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411.)

Where a party to whom a motion to compel is directed has served untimely responses before a hearing on the motions is made, the trial court has discretion to decide to hear the pending motions or not. (*Id.* at 390.)

### III. Analysis

#### A. Form Interrogatories

Prior to the hearing in this matter, Defendant served Plaintiff with responses to the form interrogatories. Plaintiff now takes issue with Defendant's response to Form Interrogatory 15.1 which sought all the facts upon which Defendant's denials are based, as well as for any special or affirmative defense.

Defendant's response to Form Interrogatory 15.1 was to state that "[t]his interrogatory calls for information for which Responding Party has already supplied in the Verified Response to the Complaint" and "is therefore oppressive, burdensome and is meant only to harass the Responding Party." (Reply Nunley Decl., Ex. 1.) However, the response also stated that Defendant is unaware of any will, that he is not the executor or personal representative of the estate, and that the value of the estate is not sufficient to require probate.

Plaintiff's complaint alleges that Defendant breached his duty as the executor of the will and failed to open the estate in probate. Defendant's interrogatory response provides the factual basis for his defense to the Complaint – namely that he does not possess the will, is not the executor, and is not required to open probate because the estate value is too small.

Defendant has provided a substantially compliant response to Plaintiff's Form Interrogatories. As such, the Motion to Compel responses is **DENIED as moot** and the request to compel further response to Form Interrogatory 15.1 is not well taken. The Court further finds that Defendant is relieved from any waiver of objections because a substantially compliant response was provided prior to the hearing in this matter. (Cal. Code Civ. Proc. § 2030.290(a)(1).)

#### B. Requests for Production

Defendant asserts that verified responses were served on August 2, 2024. However, according to Plaintiff's counsel, no documents were ever actually provided. (Reply Nunley Decl. ¶ 4.)

Accordingly, Plaintiff's motion to compel responses to the RFP is **GRANTED**. Defendant is to provide all responsive documents in his possession, custody, or control, without objections, within fifteen (15) days.

#### C. Requests for Admission

Plaintiff concedes that Defendant has served substantially compliant responses to the RFAs. Accordingly, the Court **DENIES as moot** Plaintiff's motion to deem the facts as admitted as truth. (Code Civ. Proc. § 2033.280(c).)

#### D. Sanctions

Because the Court denies the portions of Plaintiff's motion to compel responses to interrogatories and deem requests admitted, sanctions are not mandated as to those discovery sets.

Despite defendant having providing a written response to the RFPD, sanctions for failure to timely provide responsive documents are mandatory. (Code Civ. Proc. § 2033.280(c).)

Plaintiff requests sanctions in the amount of \$3,252.50 (8.5 hours x \$350 per hour for Mr. Nunley plus 1.5 hour x \$145.00 for his paralegal, plus \$60 in filing fees.) However, it is unclear from Mr. Nunley's declaration how much time was spent on each of the specific motions. Additionally, the court notes the discovery statutes require separate motions as to any discovery set in contention, not one motion combining three sets of discovery. Taking into account plaintiff's use of an improper simplified motion, the Court awards 2.5 hours of attorney time at a rate of \$300 per hour (the going rate in this market) for awarded attorney's fees sanctions of \$750 plus \$20 representing one-third of the filing fee for a **total sanction award of \$770** to be paid to plaintiff's counsel by 5:00 p.m. on August 30, 2024.

The Clerk shall provide notice of the Ruling forthwith. Plaintiff to prepare a formal Order conforming to this Ruling pursuant to Rule 3.1312..