

**1. WAGNER v. FIRSTPV, INC., ET AL., 23CV0893****(A) Plaintiff's Motion to Compel Further Response to Special Interrogatories****(B) Plaintiff's Motion to Compel Further Response to Request for Production****(C) Plaintiff's Motion to Deem Matters Admitted**

On February 14, 2025, plaintiff filed motions to: (1) compel defendant FirstPV, Inc.'s ("defendant") further response to Special Interrogatories (Set Two); (2) compel defendant's further response to Request for Production (Set Two); and (3) deem as admitted the matters stated in Request for Admissions (Set Two) propounded upon defendant. Plaintiff seeks monetary sanctions against defendant in the total amount of \$11,100, comprised of the following: (1) \$3,300 for the special interrogatories; (2) \$4,220 for the request for production; and (3) \$3,300 for the request for admission.

Plaintiff's counsel declares he met and conferred with defendant prior to filing these motions.

**1. Background**

This case arises from the installation of a rooftop photovoltaic system ("PVS") with a battery backup system at plaintiff's home. Defendant allegedly represented the battery would provide enough energy to power plaintiff's entire home for two to three days. However, plaintiff claims the battery does not provide such backup energy and has repeatedly failed during blackouts.

**2. Discussion****2.1. Verification Form**

Plaintiff's first contention is that defendant failed to serve properly verified responses to each of the three discovery requests where defendant's verifications: (1) do not include the title of the documents for which the verifications are provided (instead, the title is in the footer of the verification forms and, according to plaintiff, arguably outside the scope of the verifications); (2) certify "the foregoing answers," rather than "the foregoing" contents of the declaration; (3) do not certify the signer's

position with defendant FirstPV or his authority to sign the verifications on behalf of defendant; and (4) do not state that the signer knows the responses are true of his own knowledge or otherwise describe reasonable efforts to review the accuracy of the responses.

Code of Civil Procedure section 2015.5 provides in relevant part: “Whenever, under any law of this state or under any rule, regulation, order or requirement made pursuant to the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn statement, declaration, verification, certificate, oath, or affidavit, in writing of the person making the same ..., such matter may with like force and effect be supported, evidenced, established or proved by the unsworn statement, declaration, verification, or certificate, in writing of such person which recites that it is certified or declared by him or her to be true under penalty of perjury, is subscribed by him or her, and (1), if executed within this state, states the date and place of execution, or (2), if executed at any place, within or without this state, states the date of execution and that it is so certified or declared under the laws of the State of California.” (*Ibid.*)

“[T]he language of Code of Civil Procedure section 2015.5 indicates that unsworn declarations used in lieu of affidavits or other sworn statements may follow the format appearing in exemplars (a) and (b). Exemplar (a), which is limited to declarations executed ‘within’ California, shows that the document is signed, dated, and made under penalty of perjury at a particular place. Exemplar (b) more broadly covers declarations signed ‘within or without’ this state, including those not showing a place of execution in California and those showing they were signed in other states. As to each sample declaration, section 2015.5 allows the prescribed contents to appear in ‘substantially’ the same ‘form’ on the printed page.” (*Kulshrestha v. First Union Commercial Corp.* (2004) 33 Cal.4th 601, 611.)

In this case, each of defendant's verification forms state, "I, Ivan La Frinere-Sandoval, am the Chief Executive Officer of FirstPV Inc., a Defendant in this matter, and I am authorized to sign this verification on its behalf. I have reviewed the foregoing responses and I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct." The title of each document the verification forms refer to is noted in the footer section. Additionally, the responses and respective verifications exist as a single document with continuous numbering.

The court finds that defendant's verifications satisfy Code of Civil Procedure section 2015.5. Therefore, each of plaintiff's motions is denied on this ground.

## **2.2. Special Interrogatories**

Plaintiff claims defendant's responses to Special Interrogatory Numbers 11 through 20 are evasive, incomplete and/or the objections lack merit.

Special Interrogatory Numbers 11 through 13 call for information defendant provided to plaintiff regarding "how to optimize use of the PVS backup battery." Defendant objects on the ground that the phrase, "how to optimize use" is vague and ambiguous, explaining that "[t]he battery is not a generator, it is a device that has 16kWh of storage capacity and once that it used, it needs to be recharged. Depending on the load, the battery will last a predictable period of time." The court overrules defendant's objection. It is clear what the interrogatories are asking. The motion to compel is granted as to these interrogatories.

Special Interrogatory Numbers 14 and 15 ask defendant to identify all documents provided to plaintiff pertaining to certain subjects. Defendant responds that plaintiff was provided documentation, but defendant fails to identify said documents. Therefore, the responses are incomplete and the motion to compel is granted as to these interrogatories.

Special Interrogatory Number 16 is a contention interrogatory. It asks defendant to state all evidence that supports its claim plaintiff overloaded the PVS backup battery at

any time. Defendant's response states, "The battery chart from 12/12/22 and the in-person inspection." As plaintiff points out, "in-person inspection" is not evidence; it is the means of obtaining evidence, such as reports, pictures, diagrams, and testimony of the inspector. Therefore, the response is evasive and incomplete. As to this interrogatory, the motion to compel is granted.

Special Interrogatory Numbers 17 through 20 ask various questions regarding the current state of the PVS backup battery. Defendant's responses each state defendant lacks personal knowledge of the current state of the PVS backup battery. Plaintiff claims defendant's responses are evasive because defendant's responses imply that the current state of the backup battery is somehow different than it was when defendant installed it. However, the interrogatories are phrased in the current tense and defendant indicates it lacks personal knowledge as to the current state of the PVS backup battery. Therefore, the responses are not evasive. As to these interrogatories, the motion to compel is denied.

### **2.3. Request for Production**

Plaintiff claims defendant's responses to Request for Production Numbers 11 through 16 are insufficient.

In response to Request for Production Numbers 11 through 13, and 16, defendant states, "Responding Party has already produced all documents provided to Plaintiff." This is not a code-compliant response for several reasons. It does not state that the requested production will be allowed either in whole or in part, or that all documents or things in the demanded category that are in defendant's possession, custody, or control will be included in the production. (Code Civ. Proc., § 2031.220.) It also does not identify which documents were produced in response to the demand. (Code Civ. Proc., § 2031.280, subd. (a).) Therefore, the motion to compel is granted as to these requests.

Similar to Special Interrogatory Numbers 17 through 20, Request for Production Numbers 14 and 15 call for the production of documents pertaining to the current state

of the PVS backup battery. Defendant's responses state, "Responding party is not in possession, custody, or control of any documents responsive to this request and does not believe that it ever has been in possession, custody, or control of any documents [responsive to this request]-Responding Party has not had access to the PVS backup battery since prior to this litigation." The court finds that defendant has provided a substantially code-compliant response. Therefore, the motion to compel is denied as to these requests.

#### **2.4. Request for Admission**

Plaintiff's motion to deem matters admitted is based on the ground that defendant's verification form is insufficient. As previously discussed, the court finds that defendant's verification form complies with Code of Civil Procedure section 2015.5. Therefore, plaintiff's motion to deem matters admitted is denied.

#### **2.5. Monetary Sanctions**

As outlined above, the court has granted the motions to compel a further response to Special Interrogatories and Request for Production in part and denied the motions in part. The court has denied the motion to deem matters admitted.

As it relates to the Special Interrogatories, plaintiff requests a monetary sanction of \$3,300; and the Request for Production, \$4,220. Plaintiff's counsel's declarations state the attorney hourly rate is \$640; and the paralegal hourly rate is \$200. Having read and considered the submitted papers, and in light of the court's tentative ruling granting the motions in part and denying the motions in part, the court finds that a total amount of \$1,520 is a reasonable sanction under the Civil Discovery Act to cover the following: (1) as it relates to the Special Interrogatories, 2.0 hours of attorney work at \$350 per hour (\$700 total); (2) as it relates to the Request for Production, 2.0 hours of attorney work at \$350 per hour (\$700 total); and (3) filing fee of \$60 for each motion (\$120 total).

TENTATIVE RULING # 1: THE MOTIONS TO COMPEL A FURTHER RESPONSE TO SPECIAL INTERROGATORIES (SET TWO) AND REQUEST FOR PRODUCTION (SET TWO) ARE GRANTED IN PART AND DENIED IN PART. REFER TO FULL TEXT. THE MOTION TO DEEM MATTERS ADMITTED IS DENIED. DEFENDANT FIRSTPV, INC. SHALL SERVE FURTHER VERIFIED RESPONSES AND PAY PLAINTIFF A TOTAL MONETARY SANCTION OF \$1,520 WITHIN 30 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.