

1. SINGH v. TOWNSEND, SC20210071**Motion to Compel Compliance with Demand for Physical Examination**

This action arises from a bicycle colliding with the front-end of a motor vehicle that was entering Emerald Bay Road from the driveway of a bicycle rental shop. Pending is defendant's motion to compel plaintiff's compliance with a demand for a physical examination and request for monetary sanctions against plaintiff and plaintiff's counsel in the amount of \$2,935.

"In any case in which a plaintiff is seeking recovery for personal injuries, any defendant may demand one physical examination of the plaintiff, if both of the following conditions are satisfied: [¶] (1) The examination does not include any diagnostic test or procedure that is painful, protracted, or intrusive. [¶] (2) The examination is conducted at a location within 75 miles of the residence of the examinee." (Code Civ. Proc., § 2032.220, subd. (a).) "If a defendant who has demanded a physical examination ... deems that ... any refusal to submit to the physical examination is unwarranted, that defendant may move for an order compelling compliance with the demand." (Code Civ. Proc., § 2032.250, subd. (a).)

For the following reasons, the motion for an order compelling compliance is granted. The court finds that each element of defendant's demand complies with Code of Civil Procedure section 2032.220, subdivision (a). Further, counsel for plaintiff does not dispute either the propriety of a physical examination in this action or that plaintiff failed to attend the scheduled examination on November 15, 2022. Accordingly, the court will issue an order compelling plaintiff's attendance at a defense demanded physical examination.

Plaintiff's counsel argues, however, that the request for sanctions should be denied for two reasons. First, because the requested amount—\$2,935—is unreasonable and improper because it includes a request for \$1,625 for the physician's no-show fee and travel, and defense counsel should have conferred with plaintiff's counsel about a

new examination date rather than filing this motion. Second, plaintiff confirmed his availability for the examination, but plaintiff's counsel also notified defense counsel prior to the examination that they were unable to reconfirm plaintiff's availability on November 15. (Opp., Decl. of Adina A. Ostoia, ¶ 5 & Ex. B.) Plaintiff's counsel did not learn about plaintiff's failure to attend the examination until after the fact. (Id., ¶ 6.)

A party who fails to submit to an examination required by a demand made under Code of Civil Procedure sections 2032.010–2032.260 is subject to sanctions on the examining party's motion. (Code Civ. Proc., § 2032.410.) These sanctions may include an issue sanction, evidence sanction, or terminating sanction, and, in lieu of or in addition to those sanctions, a monetary sanction. (Ibid.) Further, a judge must impose a monetary sanction against any party or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand for a physical examination, unless the judge finds that the party or attorney acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (Code Civ. Proc., § 2032.250, subd. (b).)

The court does not find that plaintiff acted with substantial justification or that the imposition of sanctions is unjust. Having reviewed and considered defense counsel's declaration concerning fees and costs incurred, the court finds that \$2,935 (\$1,625 physician's fee + \$1,250 attorney fees + \$60 court fees) is a reasonable sanction for plaintiff's failure to submit to a physical examination and for unsuccessfully opposing the motion. The court finds that assessing monetary sanctions against plaintiff's counsel is unwarranted. As such, the sanction is assessed against plaintiff only.

TENTATIVE RULING # 1: DEFENDANT'S MOTION TO COMPEL PLAINTIFF'S COMPLIANCE IS GRANTED. PLAINTIFF MUST PAY DEFENSE COUNSEL \$2,935 NO LATER THAN 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

2. PEREZ v. HERNANDEZ, ET AL., SC20180192

Motion to be Relieved as Counsel

TENTATIVE RULING # 2: MOTION TO BE RELIEVED AS COUNSEL OF RECORD IS GRANTED. WITHDRAWAL WILL BE EFFECTIVE AS OF THE DATE OF FILING PROOF OF SERVICE OF THE FORMAL, SIGNED ORDER UPON THE CLIENT. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

3. DUBEY, ET AL. v. LAKEFRONT PROF. BLDG., SC20180201**Motion for Supplemental Attorney Fees Incurred to Enforce Judgment**

This matter was continued from January 20, 2023.

On May 10, 2022, Judgment After Court Trial was entered in favor of defendants/cross-complainants (collectively, “Lakefront”) in the amount of \$47,074.91. Subsequently, Lakefront was awarded attorney fees in the amount of \$90,517.56. Thus, the total amount of damages and fees awarded to Lakefront is \$137,592.47.

Pending is Lakefront’s motion for supplemental attorney fees in the amount of \$6,175.00, which fees Lakefront asserts were reasonably and necessarily incurred to enforce the judgment. (See Code Civ. Proc., § 685.080 [providing that judgment creditor may claim costs to enforce judgment by noticed motion].) Plaintiffs/cross-defendants (collectively, “Genius”) are opposed to the request for supplemental attorney fees. Lakefront filed a reply on February 3, 2023, after the initial tentative ruling was issued.

The Enforcement of Judgments Law, Code of Civil Procedure sections 680.10–724.260, provides that “[t]he judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment.... Attorney’s fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney’s fees to the judgment creditor” pursuant to a contract authorizing attorney fees, such as in this case. (Code Civ. Proc., §§ 685.040, 1033.5(a)(10)(A).)

A court assessing attorney fees begins with a lodestar figure, based on the “careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case.” (Serrano v. Priest (Serrano III) (1977) 20 Cal.3d 25, 48; PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084, 1095; Ketchum v. Moses (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the calculation of attorney fees to the lodestar adjustment method “ ‘is the only way of

approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.’ ”(Serrano III, supra, 20 Cal.3d at p. 48, fn. 23.)

The party seeking attorney fees has the burden of establishing entitlement to an award. To that end, competent evidence as to the nature and value of the attorney’s services must be presented. (City of Colton v. Singletary (2012) 206 Cal.App.4th 751, 784 [evidence furnished should allow the judge to consider whether the case was overstaffed, how much time the attorney spent on particular claims, and whether the hours were reasonably expended].)

Here, Lakefront moves for an order awarding attorney fees under the lodestar method in the amount of \$6,175.00. In support thereof, Lakefront submitted a declaration from its attorney, Michael K. Johnson, which includes his firm’s relevant billing invoices as Exhibits A and B. Mr. Johnson’s current hourly rate is \$325.00. All entries were billed at a minimum increment of 0.25 hour. Mr. Johnson declares that his firm has devoted at least 19 attorney hours in connection with judgment enforcement activities.

Genius is opposed to the requested attorney fees on the grounds that “the entire judgment has been received by Lakefront through a simple levy on Genius’ bank account” and, at most, efforts related to enforce of the judgment that might be compensated amount to no more than about \$1,000.

Lakefront’s motion is granted in part. Having reviewed and considered Lakefront’s moving papers, including counsel’s declaration and the billing logs, Genius’s opposition, and Lakefront’s reply, the court finds that \$5,525 in attorney fees were reasonably and necessarily incurred to enforce the judgment.

TENTATIVE RULING # 3: LAKEFRONT’S MOTION FOR SUPPLEMENTAL ATTORNEY FEES TO ENFORCE JUDGMENT IS GRANTED IN PART. LAKEFRONT IS AWARDED \$5,525 IN SUPPLEMENTAL ATTORNEY FEES. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

4. PERFECT UNION SLT, LLC v. CITY OF SOUTH LAKE TAHOE, SC20210172**Motion to Compel Plaintiff's Further Responses to Discovery Requests**

On February 3, 2023, defendant filed a notice of plaintiff's nonopposition to defendant's motion. Plaintiff did, however, file an opposition on January 30, 2023. To date, there is no reply from defendant to the opposition in the court's file, or withdrawal of the notice of nonopposition.

In reviewing plaintiff's opposition, the court observed that proof of service of the opposition papers on defendant is insufficient. Specifically, the certificates of service to the opposition papers are incomplete and do not list the electronic service address of the person(s) served. (Code Civ. Proc., § 1013b, subd. (b); Cal. Rules of Ct., rule 2.251, subd. (j).) In addition, the certificates state there is an attached service list, but no such list is attached.

These defects, along with defendant filing the notice of nonopposition and not replying to the opposition, indicate that the opposition was not properly served. Accordingly, plaintiff is to re-serve its opposition in compliance with Code of Civil Procedure section 1013b and CRC, rule 2.251. Defendant's reply, if any, must be filed at least five (5) court days prior to the continued hearing date. (Code Civ. Proc., § 1005, subd. (b).)

Hearing on defendant's motion is continued to March 17, 2023. Prior to the next hearing, counsel are to meet and confer in order to narrow or resolve the disputed discovery issues, and defense counsel must file an updated meet and confer declaration.

TENTATIVE RULING # 4: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MARCH 17, 2023, IN DEPARTMENT FOUR. COUNSEL ARE DIRECTED TO MEET AND CONFER ABOUT THE DISPUTED ISSUES AND DEFENSE COUNSEL MUST FILE AN UPDATED MEET AND CONFER DECLARATION PRIOR TO THE NEXT HEARING. NO HEARING ON THIS MATTER WILL BE HELD (LEWIS v. SUPERIOR COURT (1999) 19 CAL.4TH 1232, 1247), UNLESS A

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5. SEMPER SOLARIS CONSTRUCTION v. TURNEY, 22CV0160**Plaintiff's Motions to Compel Defendant's Responses to Post-Judgment Discovery Requests**

On May 27, 2022, Judgment was entered in favor of plaintiff/judgment creditor Semper Solaris Construction in the total amount of \$3,065.00 against defendant/judgment debtor Robert Turney. Notice of Entry of Judgment was filed on June 21, 2022. Defendant did not file an appeal. The Abstract of Judgment was issued on September 13, 2022. Pending is plaintiff's motions to compel defendant to respond to post-judgment Special Interrogatories and Requests for Production of Documents.

On September 13, 2022, plaintiff served defendant by mail with Special Interrogatories (Set One) and Requests for Production of Documents (Set One). (Mot., Joint Notice of Lodgment ("NOL"), Exs. 1, 2.) Defendant did not serve any verified responses by the deadline. (Mot., Rios Decl., ¶ 5.) On October 19, 2022, plaintiff's counsel sent defendant a meet and confer letter by certified mail, which stated that defendant's responses were overdue and requested that defendant serve verified responses by November 1, 2022, or plaintiff would file a motion to compel. (*Id.*, ¶ 5; NOL, Ex. 3.) Defendant did not serve any verified responses.

The court notes that defendant did not file an opposition to the instant motion. The proof of service declares that defendant was served by mail with the moving papers on December 15, 2022. Defendant's opposition was due no later than 9 court days prior to the hearing. (Code Civ. Proc., § 1005(b).)

The Civil Discovery Act "applies to discovery in aid of enforcement of a money judgment only to the extent provided" by the Enforcement of Judgments Law ("EJL"), Code of Civil Procedure sections 680.010–724.260. (Code Civ. Proc., § 2016.070.) The EJL permits a judgment creditor to serve written interrogatories and inspection demands upon a judgment debtor if the information requested or documents demanded would aid in the enforcement of a money judgment. (Code Civ. Proc., §§ 708.020, 708.030.)

Interrogatories and inspection demands served pursuant to the EJI “may be enforced, to the extent practicable, in the same manner as” interrogatories and inspection demands “in a civil action.” (Code Civ. Proc., §§ 708.020(c), 708.030(c).)

Having reviewed the propounded discovery, the court finds that the interrogatories and inspection demands seek information and documents that would aid in the enforcement of plaintiff’s money judgment. Defendant did not serve any verified responses by the original or extended deadline. Good cause appearing, plaintiff’s motions to compel responses are granted. The court reviewed plaintiff’s counsel’s declaration concerning the fees and costs incurred in bringing the motions. The court finds that \$1,120 (4 hours x \$250/hour + \$120 filing fees) is a reasonable sanction under the Discovery Act.

TENTATIVE RULING # 5: PLAINTIFF’S MOTIONS TO COMPEL DEFENDANT’S RESPONSES TO DISCOVERY REQUESTS ARE GRANTED. DEFENDANT MUST SERVE VERIFIED RESPONSES, WITHOUT OBJECTIONS, TO PLAINTIFF’S (1) SPECIAL INTERROGATORIES (SET ONE) AND (2) REQUESTS FOR PRODUCTION OF DOCUMENTS (SET ONE) AND PAY PLAINTIFF’S COUNSEL \$1,120.00 NO LATER THAN 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.