

1. ALL ABOUT EQUINE ANIMAL RESCUE v. BYRD, ET AL. PC-20200294**Wilson Defendants' Demurrer to All About Equine Animal Rescue's Complaint**

This action involves access to multiple parcels of land via two easements. Plaintiff All About Equine Animal Rescue's ("AAE") complaint (filed June 22, 2020) asserts causes of action for trespass to real property (1st C/A), trespass to chattel (2nd C/A), nuisance (3rd C/A), quiet title to real property (4th and 5th C/A), and declaratory relief (6th C/A).¹

By way of background, on May 19, 2021, defendant Doe 1 to the complaint was identified as Terry Wilson, and on June 4, 2021, defendant Doe 2 was identified as Dawn Wilson. Default was entered against the Wilsons on October 12, 2021. Subsequently, the Wilsons moved for an order setting aside entry of default based on attorney mistake. The motion to set aside entry of default was granted March 11, 2022.

On March 21, 2022, the Wilsons filed a demurrer to AAE's complaint. The Wilsons demur on the grounds that the 1st through 3rd C/A are uncertain and ambiguous; the court does not have jurisdiction of the subject of AAE's 1st and 2nd C/A; the 5th and 6th C/A cannot be maintained because AAE failed to join a necessary party, the County of El Dorado; AAE's 5th and 6th C/A are premature; and AAE has not sufficiently pled facts that support a request for punitive damages.

There is no opposition to the demurrer from AAE in the court's file. The demurrer was served on AAE by email/electronic transmission on March 21, 2022. With the exception of the demurrer to AAE's request for punitive damages, the court deems AAE's non-opposition as an admission that the demurrer is meritorious. (Local Rules of the El Dorado County Superior Court, rule 7.10.02(C).) Accordingly, the Wilsons' demurrer to the 1st, 2nd, 3rd, 5th, and 6th C/A is sustained.

"The burden is on the plaintiff to demonstrate how [it] can amend the complaint. It is not up to the judge to figure that out." (Roman v. County of Los Angeles (2000) 85 Cal.App.4th 316, 322.) Because AAE did not oppose or otherwise respond to the Wilsons' demurrer, AAE has not established that the complaint can be cured by amendment. Unless AAE requests oral argument

¹ AAE dismissed its 4th C/A for quiet title on August 26, 2021.

and appears at the May 27 hearing to make an adequate showing that the complaint can be cured by amendment, the court will not grant leave to amend the complaint as to AAE's claims against the Wilsons.

The Wilsons' demurrer to AAE's request for punitive damages is overruled. A motion to strike, not a demurrer, is the procedure to attack an improper claim for punitive damages. "[A] demurrer tests the sufficiency of the factual allegations of the complaint rather than the relief suggested in the prayer of the complaint." (Venice Town Council v. City of Los Angeles (1996) 47 Cal.App.4th 1547, 1561–1562.)

TENTATIVE RULING # 1: WILSON DEFENDANTS' DEMURRER TO PLAINTIFF ALL ABOUT EQUINE ANIMAL RESCUE'S COMPLAINT IS SUSTAINED AS TO THE 1ST, 2ND, 3RD, 5TH, AND 6TH CAUSES OF ACTION, AND IS OVERRULED AS TO PLAINTIFF'S REQUEST FOR PUNITIVE DAMAGES. LEAVE TO AMEND THE COMPLAINT AS TO PLAINTIFF'S CLAIMS AGAINST THE WILSONS WILL BE DENIED UNLESS PLAINTIFF REQUESTS ORAL ARGUMENT AND APPEARS AT THE HEARING TO EXPLAIN HOW THE COMPLAINT CAN BE CURED BY AMENDMENT. 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) 621-6551 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. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED, AND THE PARTIES ARE TO CONTACT THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. A LONG CAUSE HEARING WILL BE SET ON ONE OF THE THREE MUTUALLY AGREEABLE DATES. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME

BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF ANY PARTY WISHES TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT,” WHICH MUST BE SCHEDULED AND PAID FOR THROUGH THE COURT’S WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES’ TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MAY 27, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

2. WASHBURN v. WASHBURN PFL-20200659

(1) Review Hearing Re: Private CCRC, Child Support and Sanctions

(2) Petitioner’s Motion to Compel Further Responses to Requests for Production; Sanctions

(3) Petitioner’s Motion to Compel Responses to Form and Special Interrogatories, and for Order to Deem Matters Admitted; Sanctions

Review Hearing Re: Private CCRC, Child Support, Sanctions

On June 29, 2021, the court approved the parties’ stipulation to continue Petitioner’s Temporary Restraining Order to June 24, 2022. The parties also stipulated that the parties would participate in private CCRC, with costs to be shared equally. The court set a hearing for review of the CCRC report on October 28, 2021, with the issues of child support modification, if there were to be a change in timeshare, and Petitioner’s request for discovery sanctions also on calendar.

At the hearing on October 28, 2021, the court adopted its tentative ruling in part. The court did not adopt the portion of the tentative ruling regarding Petitioner’s request for sanctions in the amount of \$15,934.50. The court adopted the recommendations contained within the Interim Report from the private CCRC counselor, which recommended that the current supervised visitation order remain in place, that the minor continue to participate in individual therapy, and that the parties continue to participate in the CCRC process to determine an ongoing parenting plan. The court set a review hearing on February 17, 2022, regarding the private CCRC, child support, and Petitioner’s sanctions request.

The review hearing set for February 17, 2022, took place. The court’s findings and orders from that hearing are summarized below. The court set the next review hearing for April 21, 2022. But, on April 19, 2022, this action was reassigned to Judge Sullivan, and the review hearing set for April 21, 2022, was vacated.

The following is a summary of the status of each matter or issue as of the last review hearing that occurred, which was on February 17, 2022.

Status Re: Discovery Sanctions and Order for Further Sanctions

In short, Petitioner's previous filings on the sanctions issues contended that Respondent intentionally concealed data from the forensic inspection of his phone, thereby hiding vital evidence from the restraining order proceeding. At a hearing on February 9, 2021, the court granted in part Petitioner's Motion to Compel, finding that sanctions were appropriate in this matter but reserving over the type of sanction.

As noted earlier, at the hearing on October 28, 2021, the court did not adopt the portion of the tentative ruling regarding Petitioner's request for sanctions in the amount of \$15,934.50. Rather, the court continued the matter to February 17, 2022, for further consideration.

On February 3, 2022, Petitioner filed a Supplemental Brief Regarding Forensic Inspection Results and Discovery Sanctions, served on Respondent electronically that same day. Petitioner requested additional sanctions in the amount of \$1,400 for Petitioner's attorney fees in having to defend against Respondent's untimely objection at the October 28 hearing, preparing, and filing the supplemental brief, and preparing for the February 17, 2022, hearing. Petitioner also requested an order that the court reserve the issue of evidentiary sanctions until such issue becomes ripe on or about June 24, 2022.

At the hearing on February 17, 2022, because Respondent had not filed any additional pleadings regarding the sanctions issue for the court's consideration, the court found that its analysis contained within the October 28, 2021, tentative ruling remained unchanged (i.e., that monetary sanctions were appropriate).

Specifically, upon its review of the filings submitted by Petitioner, particularly the findings of the forensic examiner, the court found that monetary sanctions were appropriate and granted Petitioner's request for her attorney fees and the fees of the forensic examiner. Respondent was ordered to pay Petitioner \$15,934.50 in sanctions under Code of Civil Procedure §§ 2021.040, 2023.010, 2023.050, and 2031.300(c) for Respondent's misuse of the discovery process, disobeying of a court order to preserve discovery, and unsuccessfully opposing the motion to compel. The court

ordered the sanctions to pay out of Respondent's share of the community property at the time of division.

Summary Re: Private CCRC Report

At the hearing on February 17, 2022, because the private CCRC had not filed a comprehensive report with the court for its consideration, the court continued the CCRC review hearing as well as the issue of child support modification to April 21, 2022, to receive a more comprehensive report and to assess whether a modification of child support is appropriate.

Summary Re: Child Support, Reimbursement for School Payments; Sanctions

On January 12, 2022, Petitioner filed an RFO requesting reimbursement for payments to the minor's private school and for an order under Family Code § 4062(b)(1) for a discretionary child support add-on for school expenses for the minor. Petitioner requested \$10,585 as reimbursement for 50 percent of the private school expenses paid by Petitioner.

Petitioner declared that the parties had agreed to enroll the minor in private school. When a dispute arose, the court ordered at a hearing on April 13, 2021, that there would be no change in the minor's child schooling (thereby maintaining his private school enrollment), and the court reserved over the issue of who would pay for private schooling.

Respondent was served with the RFO electronically on January 14, 2022, and by mail on January 17, 2022.

On February 8, 2022, Petitioner filed a Notice of Unopposed Request for Tuition Reimbursement and for Family Code § 4062(b)(1) Support, served on Respondent electronically that same day. Petitioner contended that Respondent failed to file a Responsive Declaration by the filing deadline and therefore any Responsive Declaration filed thereafter should be stricken.

On February 9, 2022, Respondent filed a Responsive Declaration, served on Petitioner electronically the day prior. Respondent argued that the parties agreed to enroll the child in public school, but kept the child in private school longer than originally anticipated due to COVID. Respondent further asserted that at the April 13, 2021, hearing the court ordered the child to remain

in public school for the coming year (maintaining the status quo), and that Respondent should not be held responsible for Petitioner's decision to enroll the child in private school.

On February 10, 2022, Petitioner filed Petitioner's Evidentiary Objections to the Responsive Declaration and Petitioner's Reply to Respondent's Untimely Responsive Declaration, served on Respondent electronically that same day. In addition to objecting to the content of the Responsive Declaration on several grounds, Petitioner renewed her argument that the filing should be stricken for being untimely. Petitioner further contended that Respondent failed to adequately respond to the content of the RFO itself and that the filing was frivolous, which should subject Respondent to sanctions of \$1,400 for Petitioner's attorney's fees incurred in responding to the filing.

Having reviewed the filings, the court found no support for Respondent's contention that the minor was to attend public school or that Respondent was not to be financially responsible for the private school tuition costs. The court ordered the parties to share the costs of the minor's private school education under Family Code § 4062(b)(1). The court further ordered Respondent to reimburse Petitioner for 50 percent of the tuition she had already paid, totaling \$10,585. The parties were ordered to meet and confer to determine payment terms. If the parties could not reach an agreement regarding terms, they were to file and serve on the other party a declaration specifying their proposed terms at least 10 days prior to the April 21, 2022, hearing.

The court reserved the matter of Petitioner's request for sanctions totaling \$2,800 (\$1,400 for each request) under Family Code § 271 to the time of trial regarding the division of the community property.

Petitioner's Motion to Compel Respondent's Further Responses to Requests for Production

On March 18, 2022, Petitioner filed a motion to compel Respondent's further responses to her Requests for Production and Inspection of Documents (Set Two) ("RFP"). She also requests an award of sanctions.

Petitioner served her RFP on Respondent electronically on December 31, 2021. (Mot., Decl. of Wazhma Mojadiddi, ¶ 17 & Ex. A.) Petitioner agreed to extend Respondent's deadline to respond to February 16, 2022. (Id., ¶ 18.)

On February 3, 2022, Respondent served verified responses to the RFP along with a binder containing documentation. (Id., ¶ 19 & Ex. B.)

On February 17, 2022, Petitioner’s counsel sent a detailed meet and confer memorandum to Respondent’s counsel outlining the deficiencies in Respondent’s responses. (Id., ¶ 21 & Ex. C.) Petitioner states that Respondent’s counsel refused to meet and confer about the disputed responses, and then Respondent gave alleged falsified and fabricated evidence to a private mediator in support of his custody request. And Respondent did not provide any further responses to the RFP.

The instant motion to compel was filed March 18, 2022. Respondent’s initial deadline to file an opposition was April 29, 2022. The hearing was originally set for May 12, 2022, and was later continued to May 27, 2022, because the action was reassigned to Judge Sullivan. As such, Respondent then had until May 16, 2022, to file an opposition. Respondent did not file an opposition by that deadline.

On May 24, 2022, Respondent filed a Responsive Declaration. Respondent requests an extension of time to respond to the discovery, that the court either reappoint the special master or appoint a discovery referee, that discovery should be limited, and that the ongoing litigation and requests for sanctions are punitive and excessive.

More specifically, Respondent explains that he has a new attorney, John Montero. On a date that Respondent does not provide, he states that Mr. Montero’s assistant went to the Main Street courthouse to access the court file. The assistant was told that the file was transferred to Cameron Park because of the judicial reassignment. The assistant then went to Cameron Park. She was told that because Isaac Fisher was still the attorney of record that she was not allowed to access the file.

Respondent further contends that Mr. Montero substituted in as counsel on April 5, 2022. But, for some unknown reason, Mr. Fisher substituted in on April 8, 2022. Because of the mix-up, Respondent states that Mr. Montero could not review the file in time to respond to the motion.

Respondent’s contentions are not persuasive. Respondent has had several attorneys over the course of this litigation. He was first represented by Brian McGinity, who was then replaced by Patricia Campi. On November 1, 2021, Ms. Campi substituted out and Respondent was self-

represented. On December 30, 2021, Christie Mitchell and Isaac Fisher substituted in as counsel for Respondent. On February 15, 2022, Ms. Mitchell substituted out and Isaac Fisher remained as Respondent's sole attorney. Respondent signed the Substitution of Attorney on February 16, 2022. Although the Substitution of Attorney was signed in February 2022, it was not filed until April 8, 2022.

Further, the court has reviewed its records, and, to date, there is no Substitution of Attorney in the court's file establishing that Mr. Montero substituted in as counsel on April 5, 2022. Even if he had substituted in that day, that does not explain why nothing was filed on behalf of Respondent until May 24, 2022, indicating that counsel has not been able to review the case file and needs an extension of time. That is seven weeks after Mr. Montero purportedly substituted in and more than a week after Respondent's deadline to oppose the motion.

It is also peculiar that Mr. Montero did not submit his own declaration in support of Respondent's response. The result is that Respondent made statements about facts which he could not have personal knowledge about, e.g., regarding Mr. Montero having his assistant make trips to two courthouses to review the file, and the inability to review the file and needing more time to respond.

Given Respondent's failure to meet and confer about the disputed responses and good cause appearing, Petitioner's motion to compel further responses is granted. Respondent must serve further verified responses on Petitioner's counsel, without objection, to Petitioner's Requests for Production and Inspection of Documents (Set Two), Numbers 1, 5–20, 22, 25, 26, 28, 30–32, 36–40, 44, 46, 49, and 50–57, no later than 10 days from the date of service of the notice of entry of order.

Having reviewed and considered the declaration of Petitioner's counsel concerning fees and costs incurred, the court finds that \$2,200 is a reasonable sanction. Respondent must pay this sanction to Petitioner's counsel no later than 10 days from the date of service of the notice of entry of order.

Petitioner’s Motion to Compel Responses to Interrogatories and to Deem Matters Admitted

On March 28, 2022, Petitioner filed a motion to (1) deem as admitted all matters in Petitioner’s Requests for Admission (Set One), and (2) compel responses to Petitioner’s Form Interrogatories (Set One) and Special Interrogatories (Set One). She also requests an award of sanctions.

Petitioner served her form and special interrogatories and requests for admission on Respondent electronically on December 31, 2021. (Mot., Decl. of Wazhma Mojadiddi, ¶¶ 13, 14 & Exs. A, B.) Petitioner agreed to extend Respondent’s deadline to respond to February 16, 2022. (Id., ¶ 15.)

On February 7, 2022, Petitioner’s counsel received a mail from an assistant for Respondent’s counsel that included a PDF entitled “Washburn Respondent’s Answer to Requests for Production of Docs.” (Id., ¶ 17.) The document attached to the February 7, 2022, email did not have a proof of service, it referenced a case in Sacramento County Superior Court, and the answers were incomplete, evasive, and not verified. (Ibid.) Although not required to do so when no discovery responses are served, Petitioner’s counsel attempted to meet and confer with Respondent’s counsel. (Id., ¶ 21.) No response from counsel was received. (Ibid.)

Unverified responses to discovery demands are tantamount to no responses at all. (Code of Civ. Proc. §§ 2030.250(a), 2031.250(a), 2033.240(a); Appleton v. Superior Court (1988) 206 Cal.App.3d 632, 636.)

Further, Respondent did not file a timely opposition to the instant motion. Instead, on May 24, 2022, he filed a Responsive Declaration, which the court discussed in the section above regarding Petitioner’s other discovery motion.

Good cause appearing, Petitioner’s motion is granted. All the matters in Petitioner’s Requests for Admission (Set One) are deemed admitted. Respondent must serve verified responses on Petitioner’s counsel, without objection, to Petitioner’s Form Interrogatories (Set One) and Special Interrogatories (Set One) no later than 10 days from the date of service of the notice of entry of order.

Having reviewed and considered the declaration of Petitioner’s counsel concerning fees and costs incurred, the court finds that \$1,150 is a reasonable sanction. Respondent must pay this

sanction to Petitioner's counsel no later than 10 days from the date of service of the notice of entry of order.

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 27, 2022, IN DEPARTMENT NINE FOR THE REVIEW HEARING REGARDING PRIVATE CCRC, CHILD SUPPORT AND SANCTIONS.

PETITIONER'S MOTION TO COMPEL FURTHER RESPONSES TO DISCOVERY, MOTION TO COMPEL RESPONSES TO DISCOVERY AND TO DEEM MATTERS ADMITTED, AND REQUESTS FOR SANCTIONS ARE GRANTED AS SET FORTH IN THE TENTATIVE RULING. 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) 621-6551 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. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO CONTACT THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. A LONG CAUSE HEARING WILL BE SET ON ONE OF THE THREE MUTUALLY AGREEABLE DATES. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF ANY PARTY WISHES TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT," WHICH MUST BE SCHEDULED AND PAID FOR THROUGH THE COURT'S WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES' TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M.

ON FRIDAY, MAY 27, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

3. OGDEN v. JOHNSON 22CV0494

Preliminary Injunction

On April 11, 2022, plaintiffs Levi Ogden and Jacqueline Slight filed a complaint asserting causes of action for quiet title (1st and 6th C/A), declaratory relief – easement by necessity (2nd and 7th C/A), declaratory relief – implied easement (3rd and 8th C/A), declaratory relief – prescriptive easement (4th and 9th C/A), and declaratory relief – equitable easement (5th and 10th C/A) against defendant Phillip Johnson.

Also on April 11, 2022, plaintiffs filed an ex parte application for temporary restraining order and preliminary injunction. On April 13, 2022, the court granted the application for temporary restraining order, enjoining defendant from preventing plaintiffs and their guests and invitees from using Eagle Mine Road in any way, and defendant is required to (1) remove all barriers along Eagle Mine Road, (2) provide access to the electronic gate, and (3) unlock the back gate.

Pending is the hearing for preliminary injunction. Although plaintiffs filed a reply to defendant's opposition, defendant's opposition papers are not in the court's file. Accordingly, the court cannot proceed with the hearing until defendant's opposition is on file with the court. Hearing on the application for preliminary injunction is continued to June 10, 2022.

TENTATIVE RULING # 3: MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, JUNE 10, 2022, IN DEPARTMENT NINE.

4. BEAVER v. VRG PROPERTY MANAGEMENT PC-20210482**Defendant's Motion for Terminating Sanctions**

On September 1, 2021, plaintiff Mary Beaver filed a complaint against VRG Property Management (“VRG”) for (1) unlawful eviction, (2) tortious breach of the implied warranty of habitability, (3) breach of quiet enjoyment, (4) breach of the implied warranty of habitability, (5) violations of Civil Code § 1942.4, and (6) retaliation/retaliatory eviction. Pending is VRG’s motion for terminating sanctions for failing to comply with a court order and for refusing any methods of service of court documents. VRG also requests \$1,540 in sanctions, which is in addition to the \$1,490 in sanctions previously ordered against plaintiff.

Background

On February 18, 2022, VRG filed motions to compel plaintiff’s responses to the first set of VRG’s form and special interrogatories, requests for production of documents, and to deem matters admitted. Plaintiff did not file an opposition to any of the motions.

The court relieved the plaintiff’s attorney on March 4, 2022, contingent upon serving the order on plaintiff. However, plaintiff’s attorney did not file a proof of service. Plaintiff’s attorney is not relieved unless the attorney serves plaintiff.

On March 11, 2022, the court granted VRG’s motions to compel plaintiff’s responses to discovery requests, to deem matters admitted, and the court ordered plaintiff to pay VRG \$1,490 as a sanction under the Discovery Act. Plaintiff’s responses and payment of sanctions were due within 10 days of the court’s order. Amended orders on the motions were entered on March 25, 2022. Plaintiff did not serve any responses on VRG and did not pay the sanction by the deadline.

The instant motion was filed April 27, 2022.

On May 2, 2022, plaintiff failed to appear at a Case Management Conference (“CMC”). An OSC hearing for her failure to appear at the CMC is set for June 6, 2022.

Request for Judicial Notice

VRG’s request for judicial notice of Exhibits A–H is granted. (Evid. Code § 452(d)(1).)

Legal Principles

Code of Civil Procedure § 2023.010 sets forth the type of conduct evidencing misuse of the discovery process, including, in relevant part: “(d) Failing to respond or to submit to an authorized method of discovery. ... [¶] ... (g) Disobeying a court order to provide discovery. ... [¶] ... (i) Failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made.” (Id., subds. (d), (g), (i).)

To the extent authorized by the rules governing a particular method of discovery, Code of Civil Procedure § 2023.030 provides for four kinds of terminating sanctions against any party engaging in conduct that is a misuse of the discovery process, after notice to any affected party and after opportunity for a hearing: “(1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process. [¶] (2) An order staying further proceedings by that party until an order for discovery is obeyed. [¶] (3) An order dismissing the action, or any part of the action, of that party. [¶] (4) An order rendering a judgment by default against that party.” (Id., subd. (d).)

“The penalty should be appropriate to the dereliction, and should not exceed that which is required to protect the interests of the party entitled to but denied discovery. ... [¶] The sanction of dismissal ... against the disobedient party is ordinarily a drastic measure which should be employed with caution. [Citation.] However, there is no question that a court is empowered to apply the ultimate sanction against a litigant who persists in the outright refusal to comply with [their] discovery obligations. [Citation.] [Fn.] The refusal to reveal material evidence is deemed to be an admission that the claim or defense is without merit.” (Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 793.)

Discussion

As noted above, plaintiff did not serve any answers to VRG’s first set of discovery requests. Subsequently, VRG successfully moved to compel plaintiff’s responses. Following entry of the court’s

order granting the motions and imposing a monetary sanction, plaintiff failed to serve any answers on VRG, and she failed to pay the sanction.

In addition to misusing the discovery process, plaintiff also is not prosecuting her complaint or otherwise engaging in the litigation process. Specifically, VRG's counsel states that mediation was set for December 3, 2021, but that plaintiff refused to mediate. (Mot., Decl. of Lorena Roel, ¶ 4.) A CMC was set for May 2, 2022, but plaintiff did not file the mandatory CMC Statement and she failed to appear at the CMC.

Further, plaintiff is also refusing to accept any method of service of legal documents. On February 11, 2022, plaintiff contacted VRG's counsel and stated that any communication with her must be via the USPS. (Id., Decl. of Lorena Roel, ¶ 10.) However, all documents VRG has served on plaintiff via the USPS are being returned to VRG with the words "Mail Fraud" written on the envelopes. (Id., ¶ 18 & Ex. 12.) The court notes that its correspondence sent to plaintiff is also being returned as rejected. The court takes judicial notice of an item of returned mail received by the court on April 18, 2022. (Evid. Code § 452(d)(1).) On the envelope, plaintiff did some sentence diagramming and wrote the words "Mail Fraud."

Although dismissal is drastic, plaintiff has not provided any answers to discovery, and she persists in the outright refusal to comply with her discovery obligations. She is not engaging with VRG in the litigation process, and she is not attending court proceedings. She is also refusing to accept legal documents sent to her either by the court or VRG. Under the totality of the circumstances, the court finds that plaintiff's behavior warrants a drastic sanction. (Code of Civ. Proc. § 2023.030.)

Additionally, plaintiff did not file an opposition to the instant motion. The proof of service to the motion declares that plaintiff was served by U.S. mail on April 27, 2022. Plaintiff's opposition was due no later than nine court days prior to the hearing. (Code of Civ. Proc. § 1005(b).) The court deems plaintiff's non-opposition as an admission that VRG's motion is meritorious. (Local Rules of the El Dorado County Superior Court, rule 7.10.02(C).)

Good cause appearing and given plaintiff's admission the motion is meritorious, VRG's motion for terminating sanctions is granted. Plaintiff's complaint, filed September 1, 2021, is stricken.

Having reviewed and considered the declaration of VRG's counsel concerning attorney fees and costs, the court finds that \$892.50 (4.5 hours x \$185/hour + \$60 filing fee) is a reasonable sanction under the Discovery Act. This amount is in addition to the sanction of \$1,490 previously ordered against plaintiff, which amounts to a total sum of \$2,382.50 in sanctions.

Plaintiff required to appear on June 6, 2022, at 8:30 a.m. for terminating sanctions to strike the complaint and an OSC re dismissal for the entire case.

TENTATIVE RULING # 4: DEFENDANT VRG PROPERTY MANAGEMENT'S MOTION FOR TERMINATING SANCTIONS IS CONTINUED TO JUNE 6, 2022. PLAINTIFF MUST PAY TO VRG'S COUNSEL A TOTAL OF \$2,382.50 IN SANCTIONS NO LATER THAN 10 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) 621-6551 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. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED, AND THE PARTIES ARE TO CONTACT THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. A LONG CAUSE HEARING WILL BE SET ON ONE OF THE THREE MUTUALLY AGREEABLE DATES. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF ANY PARTY WISHES TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY

“VCOURT,” WHICH MUST BE SCHEDULED AND PAID FOR THROUGH THE COURT’S WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES’ TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MAY 27, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.

5. PETITION OF J.G. WENTWORTH ORIGINATIONS, LLC 22CV0151

Petition to Approve Transfer of Payment Rights

This matter was continued from April 15, 2022, due to several deficiencies with the petition. At the last hearing, counsel for petitioner stated they would be filing an amended petition. At the time this tentative ruling was prepared, an amended petition is not in the court's file.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, MAY 27, 2022, IN DEPARTMENT NINE. IF ANY PARTY WISHES TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY "VCOURT," WHICH MUST BE SCHEDULED AND PAID FOR THROUGH THE COURT'S WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances.

6. BRANDON v. NORCAL WATER SYSTEMS, ET AL. PC-20190311

Defendants' Motion for Order Reopening Discovery

This action involves a two-vehicle collision on Pleasant Valley Road in Placerville in 2019. At a trial setting conference in December 2021, the court continued trial in this action to October 25, 2022, due to the unavailability of defense counsel. Other court deadlines and dates were not continued to track the new trial date. Pending is defendants Norcal Water Systems and Christopher Manning's motion for order reopening discovery to track the October 25, 2022, trial date.

A motion to reopen discovery must be accompanied by a meet and confer declaration under Code of Civil Procedure § 2016.040. (Code of Civ. Proc. § 2025.040(a).) Have reviewed defense counsel's declaration, there is nothing in the declaration establishing that any meet and confer took place with plaintiff's counsel prior to filing the instant motion. This needs to be remedied before the court will consider the motion. Accordingly, counsel is to meet and confer as set forth in Code of Civil Procedure § 2016.040. If, after meeting and conferring in good faith, the parties are not able to reach an informal resolution concerning the reopening of discovery, defendants are to re-notice the hearing on the motion pursuant to Code of Civil Procedure § 1005 and file and serve the mandatory declaration.

TENTATIVE RULING # 6: MATTER IS DROPPED FROM THE CALENDAR.

7. PETITION OF J.G. WENTWORTH ORIGINATIONS, LLC 22CV0279**Petition to Approve Transfer of Payment Rights**

This matter was continued from April 29, 2022.

The payee has agreed to sell a portion of payee's share of the monthly payments of his annuity in the total amount of \$50,242.68, which the petitioner states have a present value of \$37,582.87. In exchange, the payee will be paid \$10,000. The payee has had three prior sales of structured settlement payments approved in April 2021, September 2021, and February 2022. The payee declares that he is unemployed and currently experiencing a financial hardship. The funds are to be used to pay bills, cover the costs of daily living, and unexpected expenses. He is not married, he does not have children, and he is not subject to any court orders or child support obligations. The future periodic payments were not intended to pay for future medical care and treatment related to the incident that was the subject of the settlement, and the future payments that are the subject of the proposed transfer were solely monetary in nature and not intended to provide for necessary living expenses.

Petitioner seeks an order approving the transfer of the structured settlement payments pursuant to the provisions of Insurance Code § 10134, et seq., on the ground that the transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, considering the welfare and support of the payee's dependents. (Ins. Code § 10137(a).)

"No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the provisions of this section are satisfied." (Ins. Code § 10136(a).)

"When determining whether the proposed transfer should be approved, including whether the transfer is fair, reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents, the court shall consider the totality of the circumstances,

including, but not limited to, all of the following: [¶] (1) The reasonable preference and desire of the payee to complete the proposed transaction, taking into account the payee’s age, mental capacity, legal knowledge, and apparent maturity level. [¶] (2) The stated purpose of the transfer. [¶] (3) The payee’s financial and economic situation. [¶] (4) The terms of the transaction, including whether the payee is transferring monthly or lump sum payments or all or a portion of his or her future payments. [¶] (5) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to pay for the future medical care and treatment of the payee relating to injuries sustained by the payee in the incident that was the subject of the settlement and whether the payee still needs those future payments to pay for that future care and treatment. [¶] (6) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to provide for the necessary living expenses of the payee and whether the payee still needs the future structured settlement payments to pay for future necessary living expenses. [¶] (7) Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for the injuries that the payee sustained in connection with the incident that was the subject of the settlement and whether the payee lacks other resources, including insurance, sufficient to cover those future medical expenses. [¶] (8) Whether the payee has other means of income or support, aside from the structured settlement payments that are the subject of the proposed transfer, sufficient to meet the payee’s future financial obligations for maintenance and support of the payee’s dependents, specifically including, but not limited to, the payee’s child support obligations, if any. The payee shall disclose to the transferee and the court his or her court-ordered child support or maintenance obligations for the court’s consideration. [¶] (9) Whether the financial terms of the transaction, including the discount rate applied to determine the amount to be paid to the payee, the expenses and costs of the transaction for both the payee and the transferee, the size of the transaction, the available financial alternatives to the payee to achieve the payee’s stated objectives, are fair and reasonable. [¶] (10) Whether the payee completed previous transactions involving the payee’s structured settlement payments and the timing and size of the previous transactions and whether the payee was satisfied with any previous

transaction. [¶] (11) Whether the transferee attempted previous transactions involving the payee's structured settlement payments that were denied, or that were dismissed or withdrawn prior to a decision on the merits, within the past five years. [¶] (12) Whether, to the best of the transferee's knowledge after making inquiry with the payee, the payee has attempted structured settlement payment transfer transactions with another person or entity, other than the transferee, that were denied, or which were dismissed or withdrawn prior to a decision on the merits, within the past five years. [¶] (13) Whether the payee, or his or her family or dependents, are in or are facing a hardship situation. [¶] (14) Whether the payee received independent legal or financial advice regarding the transaction. The court may deny or defer ruling on the petition for approval of a transfer of structured settlement payment rights if the court believes that the payee does not fully understand the proposed transaction and that independent legal or financial advice regarding the transaction should be obtained by the payee. [¶] (15) Any other factors or facts that the payee, the transferee, or any other interested party calls to the attention of the reviewing court or that the court determines should be considered in reviewing the transfer." (Ins. Code § 10139.5(b).)

Notice of the hearing and copies of the petitioning papers must be filed and served 20 days prior to the hearing, plus five days when served by regular U.S. mail or two court days when served by express mail. (Ins. Code § 10139.5(f)(2); Code of Civ. Proc. § 1013(a), (c).)

The proofs of service in the court's file declare that petitioner served notice of the hearing, the petition, and supporting documents on the beneficiary/payee of the structured settlement payments, the annuity issuer and the payment obligor by mail and overnight mail on March 11, 2022.

Having reviewed and considered the petitioning papers, it appears appropriate to grant the petition, absent any objections.

TENTATIVE RULING # 7: PETITION IS GRANTED. 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) 621-6551 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. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED, AND THE PARTIES ARE TO CONTACT THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. A LONG CAUSE HEARING WILL BE SET ON ONE OF THE THREE MUTUALLY AGREEABLE DATES. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF ANY PARTY WISHES TO APPEAR TELEPHONICALLY THEY MUST APPEAR BY “VCOURT,” WHICH MUST BE SCHEDULED AND PAID FOR THROUGH THE COURT’S WEBSITE AT www.eldorado.courts.ca.gov/online-services/telephonic-appearances. MATTERS IN WHICH THE PARTIES’ TOTAL TIME ESTIMATE FOR ARGUMENT IS 15 MINUTES OR LESS WILL BE HEARD ON THE LAW AND MOTION CALENDAR AT 8:30 A.M. ON FRIDAY, MAY 27, 2022, EITHER IN PERSON OR BY VCOURT TELEPHONIC APPEARANCE UNLESS OTHERWISE NOTIFIED BY THE COURT.