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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF DESERT PALMS

FELICIA GRANT, et al., ) CASE NO. 2224-9876

)

##### Plaintiffs, ) OPPOSITION TO MOTION

) TO COMPEL FURTHER RESPONSES

v. ) TO REQUESTS FOR ADMISSION

v. )

NATHAN NORMAN, et al., )

)

Defendants. ) Limited Civil Case

)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) Date: July 20, 2004

Time: 2:00 p.m.

Dept. 5

###### **Introduction**

There are 15 plaintiffs in this action. On March 12, 2004 plaintiff Grant served a request for production and requests for admissions on defendant Norman that contained 10 individual Requests for Production and 8 individual Requests for Admissions. (See Declaration of Terry Baylor in Opposition to Plaintiffs’ Motion to Compel Further Responses to Requests for Admissions [“Baylor declaration”].) On March 28, 2004, 7 plaintiffs of the 15 served 7 individual sets of Requests for Admissions to defendant Norman. *(Id.)*  Each set of Requests for Admissions contained 8 individual requests, totaling 56 requests. Defendant responded timely. *(Id.)*  To the first 17 requests defendant responded with objections as to form (imposing the same objections as the responses to Grant’s 10 Requests for Production of Documents and 8 Requests for Admissions.) *(Id.)* As to the remaining requests, defendant objected that the limit of 35 had been exceeded.

Plaintiffs’ counsel did not object to any of the objections to the form of the requests numbering less than 35. (*Id.*)

On June 5, 2004, plaintiffs’ counsel demanded further responses to the requests where the objection to the 35 limit had been imposed. (Exhibit A, to Baylor declaration.) He did not offer any authority for his request. On June 6, 2004, defense counsel Baylor responded, pointing out that a mere demand for further responses is not a good faith attempt to meet and confer and invited plaintiffs counsel to provide legal authority and/or his analysis to justify his position. (Exhibit B, to Baylor declaration.) Plaitniffs’ counsel did not respond, but filed this motion instead.

1. **DEFENDANT’S OBJECTIONS ARE WELL-TAKEN: PLAINTIFFS ARE**

**ALLOWED ONLY 35 REQUESTS FOR EACH SIDE.**

Plaintiffs argue that each of them – all 15 – is entitled to serve a total of 35 discovery requests on defendant, a total of 525 in all. This is contrary to the objections they themselves imposed in the prior discovery in this case.

Surely the restrictions on discovery for the limited jurisdiction courts do not permit each of 15 plaintiffs to assert 35 discovery requests. If they are permitted only one (joint) deposition, they can be permitted only one (joint) aggregate of 35 written discovery requests. Moreover they cannot be permitted to take one position in their responses to discovery then the opposite when they are the propounders.

Defendant submits that permitting plaintiffs such as these to assert 35 written discovery requests defeats the purpose of the limited jurisdiction discovery restrictions. If such discovery is necessary in good faith, stipulations can be sought or motions can be made, neither of which occurred here.

1. **PLAINTIFFS’ COUNSEL DID NOT MEET AND CONFER.**

Plaintiffs’ motion must be denied since plaintiffs’ counsel did not meet and confer. Meeting and conferring must be done in good faith. In this case, plaintiffs’ counsel merely demanded that the responses be provided, without any argument or authority, and certainly without compromise or discussion.

Moreover, he did not attempt to resolve the underlying objections, making substantive responses to the requests impossible, even if defendant had agreed to make them.

Plaintiff’s counsel placed defendant in a catch-22: he demanded further responses, but failed to address the underlying objections he knew would be asserted if the objections to excessive requests were withdrawn. Defendant could not appease plaintiff’s counsel and respond substantively to the requests.

Plaintiffs’ motion must be denied because their attorney failed to meet and confer in good faith.

1. **SANCTIONS ARE NOT JUSTIFIED.**

Sanctions are awardable if the Court finds that the objections were asserted without substantial justification. In this instance, the objections were meritorious and the very same objections asserted by plaintiffs.

Moreover, even if by some stretch sanctions could be argued as appropriate, counsel has not satisfied the requirements of filing and serving a declaration that establishes evidence of the expenses plaintiffs have allegedly incurred. He also failed to show how his hourly rate of $400.00 is reasonable.

1. DEFENDANT IS ENTITLED TO SANCTIONS BECAUSE PLAINTIFFS FAILED TO MEET AND CONFER IN GOOD FAITH AND FOR HAVING TO OPPOSE PLAINTIFFS’ MOTION

CCP 2023(9) states:

“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, …Notwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that party or attorney who fails to confer as required to pay the reasonable expenses, including attorney’s fees, incurred by anyone as a result of that conduct.”

As the declarations of both counsel show, plaintiffs’ counsel failed to meet and confer in bad faith since he failed to even attempt to address the issues raised by either the objections as to number or to form.

CCP 2033 (l) states in pertinent part:

“The court shall impose a monetary sanction under Section 2023 against any party, a person, or attorney who unsuccessfully makes or opposes a motion to compel further response, 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.”

## Plaintiffs’ motion is made in bad faith. Plaintiffs should be sanctioned for bringing such a frivolous motion and for requiring defendant to oppose it.

## **Conclusion**

Plaintiffs’ counsel failed to meet and confer in good faith. Plaintiffs further exceeded the limit of discovery provided by law. Even if plaintiffs had not exceeded the limits on discovery, plaintiffs failed to address the objections stated in the defendant responses to identical requests made by other plaintiffs. Plaintiffs’ motion to compel should be denied and defendant Norman should be awarded sanctions for having to oppose plaintiff’s motion.

# Respectfully submitted,

# Dated: July 12, 2004 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Terry Baylor, Esq.

Attorney for Defendants

Nathan Norman and Robert Daniels