



Superior Court of California,
County of Mendocino

Tentative Rulings

for

Ukiah Department C
Wednesday 9:30am Special Set Calendar

Calendar Date: June 27, 2016

Prior to a Civil Law & Motion or Probate hearing, the Court may issue a tentative ruling pursuant to California Rule of Court 3.1308. Unless a party requests to appear and notifies both the opposing party and the court, no hearing will be held, and the tentative ruling will become the order of the Court.

A party wishing to appear to provide oral argument must advise the opposing party and the Court by phone or by e-mail no later than 4:00pm on the court day before the hearing.

Phone: (707) 468-2007, Option 2
E-mail: tr@mendocino.courts.ca.gov

If you do not notify the opposing party and the Court by 4:00pm on the court day before the hearing, no hearing will be held.

If you do not find information regarding your particular case, and you have not previously been informed that you are excused from the calendar, an appearance is required.

TABLE OF CONTENTS

SCUKCVG 15-65979 Turner v Co. of Mendocino 3

SCUKCVG 15-65979 Turner v Co. of Mendocino

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MENDOCINO
CIVIL DIVISION—UKIAH BRANCH

JOAN H. TURNER,

Plaintiff,

Case no. SCUK-CVG-15-65679

v.

MENDOCINO COUNTY, et.al,

Defendants.
_____ /

[PROPOSED] ORDER GRANTING IN
PART AND DENYING IN PART
DEFENDANTS' MOTION TO COMPEL
FURTHER RESPONSES TO FORM
INTERROGATORIES AND EMPLOYMENT
FORM INTERROGATORIES

SUMMARY OF FACTS

On November 20, 2015, Defendants County of Mendocino and Douglas Losak served form interrogatories and employment form interrogatories on Plaintiff Joan Turner.¹ After obtaining a two week extension to respond, Plaintiff served *unverified* responses on January 6, 2016.

Defendants initiated an omnibus “meet and confer” by sending a letter to Plaintiff on March 17, 2016 which outlined perceived deficiencies in Plaintiff’s compliance with Defendants’ discovery requests. Defendants noted that Plaintiff failed to verify her interrogatory responses, had asserted boilerplate objections, and had provided incomplete answers to some of the interrogatories. Defendants also took issue with Plaintiff’s contention that she need not provide detailed responses to form interrogatories 6.1-6.7 and employment form interrogatories 212.1-212.7 because she was claiming only “garden variety” emotional distress.

On March 22, 2016, Plaintiff provided verifications for her responses to form interrogatories and employment form interrogatories. On March 30, 2016, Plaintiff sent a letter to Defendants which responded to some of the outstanding discovery issues raised in Defendants’ March 17, 2016 letter; however, Plaintiff’s letter did not address Defendants’ concerns about her responses to form interrogatories or employment form interrogatories.

¹ Defendants also served Plaintiff with requests for production of documents and served subpoenas on Plaintiff’s employers and treatment providers on or about the same date. Issues arising from the requests for production have been informally resolved by the parties. Plaintiff’s motion to quash or limit the scope of subpoenas served by Defendants on Plaintiff’s employers and medical providers was heard and decided by the Honorable Clay Brennan on May 27, 2016.

By letter dated April 13, 2016, Defendants again outlined perceived deficiencies in Plaintiff's responses to certain form interrogatories and employment form interrogatories. Defendants suggested that they would be willing to continue "meeting and conferring" regarding the interrogatory responses if Plaintiff was willing to extend the 45 day cut-off for filing a motion to compel further responses. Defendants requested that Plaintiff indicate whether she was willing to grant an extension by April 15, 2016 at 4:00 p.m.

On April 15, 2016, Plaintiff provided her first substantive response to Defendants' letters dealing with Plaintiff's responses to form interrogatories and employment form interrogatories. Plaintiff agreed to provide further responses to form interrogatories 2.1, 2.6, 8.1-8.8, 9.1, 9.2, and employment form interrogatories 210.1-210.4, 210.6. However, Plaintiff also accused Defendants of refusing to meet and confer in good faith, and denied Defendants' request for an extension of time to file a motion to compel further response to interrogatories.

ANALYSIS

A. Defendants Complied with Their Duty To Meet and Confer In Good Faith Prior to Filing the Motion to Compel Further Responses to Interrogatories

California discovery statutes "must be construed liberally in favor of disclosure unless the request is clearly improper by virtue of well-established causes for denial." (*Greyhound Corp. v. Superior Court* (1961) 56 C. 2d 355, 377) Doubts "should generally be resolved in favor of permitting discovery." (*Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 C. 3d 161, 173) Answers to interrogatories must be "as complete and straightforward as the information reasonably available to the responding party permits." (CCP 2030.220(a); *Collin v. CalPortland Co.* (2014) 228 CA 4th 582, 590) Responses such as "see my response to request for production of documents" are considered legally insufficient (*See, e.g., Deyo v. Kilbourne* (1978) 84 CA 3d 771, 783-784).

Before bringing a motion to compel further responses to interrogatories, the moving party is required to engage in reasonable and good faith efforts to confer and resolve informally each issue presented by the motion. A failure to meet and confer can be punished by imposition of monetary sanctions regardless of the ruling on the merits of the motion (CCP 2023.020).

Plaintiff asks the court to deny Defendants' motion solely on the ground that Defendants failed to meet and confer in good faith prior to bringing the motion (*See, e.g., Volkswagenwerk Aktiengesellschaft v. Superior Court* (1981) 122 CA 3d 326, 331). Plaintiff asserts that Defendants unreasonably demanded a response within 2 days of their April 13, 2016 "meet and confer" letter. Additionally, Plaintiff contends that it was inappropriate for Defendants to bring a motion concerning certain interrogatories which Plaintiff had agreed to provide supplemental responses to. Plaintiff's argument ignores several important facts. First, Defendants' April 13, 2016 meet and confer letter was the *second* letter by which Defendants attempted to confer with Plaintiff about her responses to form interrogatories and employment form interrogatories; Plaintiff did not respond to Defendants' initial attempt to address these issues by letter sent on March 17, 2016. Second, Defendants *did not* demand in their April 13 letter that Plaintiff provide additional substantive responses to the interrogatories within 2 days; Defendants merely

requested that Plaintiff decide whether to extend Defendants' 45 day time limit to file a motion to compel within 2 days. This is not an unreasonable request. Third, Plaintiff's refusal to extend the 45 day time limit for Defendants to file a motion to compel was the reason that Defendants were forced to move to compel further responses to interrogatories which Plaintiff had agreed to supplement. As of May 6, 2016, the deadline for filing the motion, Plaintiff had not yet served the supplemental responses she had agreed to provide. In fact, Plaintiff's supplemental responses were not served until May 13, 2016, a week later. Defendants had no choice but to include all of the contested interrogatories in the motion or risk waiving their right to move to compel further responses.

It is unfortunate that the neither of the attorneys in this case picked up the phone or scheduled a face to face meeting in order to have a more meaningful meet and confer discussion. Courts always prefer to see attorneys extend professional courtesies to each other and resolve issues by stipulation. Nevertheless, the two meet and confer letters sent by Defendants' attorney to Plaintiff's attorney clearly outlined the issues presented and were professional and reasonable in tone. Taken together with the facts discussed above, Plaintiff's argument that Defendants failed to meet and confer in good faith prior to filing the motion to compel is unfounded.

B. Plaintiff Must Provide Further Responses to the Form Interrogatories and Employment Form Interrogatories Pertaining to Damages She Claims were Proximately Caused by Defendants' Misconduct

Because Plaintiff served supplemental responses to certain form interrogatories and employment form interrogatories on May 13, 2016, it is the court's understanding that Defendants are no longer requesting further responses to the following interrogatories:

- 1) Form interrogatories: 2.1, 2.6, 8.1-8.8, inclusive, 9.1-9.1; and
- 2) Employment form interrogatories: 210.1-210.4, 210.6.

In reviewing the interrogatories still in contention, the main issue in dispute appears to be the parties' disagreement whether Plaintiff must provide more detailed information concerning her physical or mental condition.

Plaintiff has clearly stated that she is *not* claiming that she suffered any physical injury as a result of being discriminated against or retaliated against in the workplace. (*See*, Plaintiff's response to form interrogatory 6.1 and employment form interrogatory 212.1). Because she is not making a claim for damages based on physical injuries, Plaintiff should not be compelled to provide further responses to interrogatories which ask her to describe the physical injuries suffered or treatment sought for physical injuries. For this reason, the court has determined that Plaintiff need not provide further responses to form interrogatories 6.2, 6.6, 10.1-10.3, and 11.1, nor further response to employment form interrogatory 212.2 (pertaining to physical injuries).

A significant issue of disagreement is whether Plaintiff should be compelled to provide further responses to interrogatories which inquire about emotional distress which Plaintiff allegedly experienced as a result of Defendants' alleged discrimination and/or retaliation while Plaintiff was employed by the County of Mendocino. Normally, information about a party's

mental health is considered private (CA Constitution, Article I, Section 1) and therapist's records are privileged (Evidence Code 1012). However, the privilege does not apply if the plaintiff has tendered her emotional health as an issue in the case (Evidence Code 1016(a)). Plaintiff states that she suffered "garden variety emotional distress" as a result of Defendants' alleged misconduct. In *Doyle v. Superior Court* (1996) 50 CA 4th 1878, 1887, a plaintiff seeking damages for "garden variety" emotional distress she experienced as a result of sexual harassment by her supervisor at work was held not to put her mental status at issue:

"In contrast, where a plaintiff alleges that she is not suffering any current mental injury but only that she has suffered emotional distress in the past arising from the defendant's misconduct, a mental examination is unnecessary because such an allegation alone does not place the nature and cause of the plaintiff's current mental condition 'in controversy.'" (*Doyle, supra*, 50 CA 4th at 1887)

By her use of the legal term of art "garden variety emotional distress damages" in response to form interrogatory 6.1 and employment form interrogatory 212.1, Plaintiff has informed Defendants that she is not claiming continuing emotional distress damages, therefore, Plaintiff has not placed her current mental state in controversy:

"A simple sexual harassment claim asking compensation for having to endure an oppressive work environment or for wages lost following an unjust dismissal would not normally create a controversy regarding the plaintiff's mental state. To hold otherwise would mean that every person who brings such a suit implicitly asserts her or she is mentally unstable, obviously an untenable proposition." (*Vinson v. Superior Court* (1987) 43 C. 3d 833, 840)

As discussed above, *Doyle* holds that a plaintiff who has not put her current mental state in controversy cannot be compelled to undergo a mental examination as a form of discovery (CCP 2032.320). Neither party has cited a case which rules on the precise issue presented by this case, namely, whether a plaintiff claiming "garden variety" emotional distress damages arising from employment discrimination or retaliatory conduct by her former supervisor and former employer can be compelled to provide interrogatory responses delineating the extent of the emotional distress she experienced at the time she was allegedly undergoing the adverse employment actions and consequential emotional distress.

In balancing the Defendants' need to learn the basis for Plaintiff's damage claims and prepare for trial against Plaintiff's right to privacy about issues which are not in contention in this litigation, the court concludes that it is permissible for Defendants to explore the nature of the "garden variety" emotional distress which Plaintiff claims she experienced as a result of Defendants' alleged adverse employment actions against her. It would be unfair to preclude Defendants from discovering *anything* about Plaintiff's claim for emotional distress damages simply because Plaintiff describes her claim as "garden variety." Defendants are entitled to learn during what time frame Plaintiff allegedly suffered emotional distress, whether Plaintiff had appointments with any treatment providers or was prescribed medication or other treatment for

the emotional distress during the relevant time frame. Accordingly, Plaintiff should provide further responses to employment form interrogatories 201.1, including subparts; 201.3, 203.1, 207.2, including subparts; 212.2-212.7, inclusive; 213.1, and 213.2. Plaintiff has adequately responded to employment form interrogatories 204.3, 204.6, and 212.1; therefore, no further response to these interrogatories will be required.

C. Plaintiff Must Pay Defendants' Attorneys' Fees as Sanctions For Failing to Provide Complete Discovery Responses

The prevailing party on a motion to compel further responses to interrogatories shall be awarded monetary sanctions unless the court finds that the opposing party acted "with substantial justification" or other circumstances render an award of sanctions unjust (CCP 2030.300(d)). Defendants ask the court to award a monetary sanction of \$5777 (21.8 hours at \$265/hour).

Plaintiff raises several arguments in an effort to avoid the imposition of sanctions. First, Plaintiff asserts that Defendants did not adequately meet and confer. However, as discussed above, Defendants appeared to be willing to continue to meet and confer provided that their time limit to bring a motion to compel was extended; Plaintiff denied this request.

Second, Plaintiff contends that Defendants' discovery requests were propounded in bad faith or for the purpose of harassment. The court rejects this contention. Propounding several types of discovery at the same time is permitted under the Discovery Act. Plaintiff could have sought a protective order if she felt that Defendants' requests were truly burdensome.

Similarly, Plaintiff's novel complaint that Defendants have "unclean hands" based on Defendants' allegedly insufficient responses to Plaintiff's discovery requests also fails. Plaintiff cites no authority to support her "unclean hands" theory. This is not surprising, given that endorsing Plaintiff's theory would completely undermine the Discovery Act: discovery would not be possible if each party could willfully withhold responses based on the suspicion that the opposing party had not produced all information in his or her possession. If Plaintiff believed that Defendants' response to her request for production of documents was incomplete, the remedy under the Discovery Act was to move to compel further responses and for sanctions.

On balance, the court concludes that Plaintiff did not act "with substantial justification" in resisting Defendants' efforts to obtain interrogatory responses about the nature and scope of Plaintiff's "garden variety emotional distress" claim. Several of Plaintiff's actions were unreasonable and increased the costs associated with the motion: 1) failing to verify her interrogatory responses until March 22, 2016;² 2) failing to address the deficient interrogatory responses until April 15, 2016; 3) failing to serve the supplemental responses to interrogatories until after the deadline had passed for Defendants to file a motion to compel further responses; and 4) objecting to providing any information whatsoever about her claim for "garden variety emotional distress" damages. Accordingly, an award of monetary sanctions against Plaintiff and

² The reason for the late verifications was not adequately explained in Plaintiff's opposition to Defendant's motion. Plaintiff appears to have signed the verifications on January 6, 2016, yet the verifications were not sent to Defendants until March 22, 2016.

her attorney of record is required (CCP 2030.300(d)). Defendants' request for monetary sanctions of \$5777 is too high in light of the similarity of issues raised in two separate motions and Defendants' lack of success on some of the issues raised. The court has therefore exercised its discretion to reduce the monetary sanction to \$3710 (14 hours at \$265/hour).

ORDER

Good cause appearing, IT IS ORDERED:

- 1) Plaintiff shall provide further response without objection to employment form interrogatories 201.1, 201.3, 203.1, 207.2, 212.2 (re emotional distress claim), 212.3-212.7, 213.1 and 213.2, including subparts, within 30 days after being served with this order; and
- 2) Plaintiff and her attorney of record shall pay Defendants a monetary sanction of \$3710 pursuant to CCP 2030.300(d).

Dated: June 29, 2016

Judge of the Superior Court

Cc: Sue Cercone
Edward Anaya