SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 20
JUDICIAL OFFICER: MELISSA O'CONNELL
HEARING DATE: 06/12/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self[1]represented parties will preclude any party from arguing the matter. (Local Rule 3.43(2).)

Note: In order to minimize the risk of miscommunication, parties are to provide an EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED. Dept. 20's email address is: dept20@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 20 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling must be attached to the proposed order when submitted to the Court for issuance of the order.

Courtroom Clerk's Session

1. 8:30 AM CASE NUMBER: MSC24-0413A
CASE NAME: KASSA V. COLLINS
***APPEALED CASE: ORDER OF EXAMINATION-JUDGMENT UPHELD**
FILED BY: COLLINS, BRIAN KEITH
****TENTATIVE RULING:****

Appearance required.

Discovery Law & Motion

2. 9:00 AM CASE NUMBER: MSC20-00827

CASE NAME: DOE VS WEAMER
***HEARING ON MOTION FOR DISCOVERY COMPEL FURTHER RESPONSES (SET 4)**
FILED BY: DOE, JANE
****TENTATIVE RULING:****

Plaintiff's Motion to Compel Further Responses and for sanctions is GRANTED in PART and DENIED in PART.

RFA No. 150. Defendant's objection is overruled, "unintelligible" is not a legal or valid objection. Defendant is ordered to provide a code-compliant objection free response to this request for admission.

RFA Nos. 156, 157, 166-169. The court overrules objections that the requests are compound; they are not, or that they seek an improper expert opinion. "Most of the other discovery procedures are aimed primarily at assisting counsel to prepare for trial. Requests for admissions, on the other hand, are primarily aimed at setting at rest a triable issue so that it will not have to be tried. Thus, such requests, in a most definite manner, are aimed at expediting the trial. For this reason, the fact that the request is for the admission…*calls for an opinion, is of no moment*." (*Cembrook v. Superior Court of San Francisco* (1961) 56 Cal. 2d 423, 429, (*emphasis added*) see also C.C.P. §2033.010.)

Furthermore, to the extent Defendant provided amended responses denying the RFA because "he does not have sufficient information upon which to admit or deny this request," these responses also fail to comply with C.C.P. §2033.220. If this is Defendant's response, he must also state that he made "a reasonable inquiry" and that "the information known or readily obtainable is insufficient to enable that party to admit the matter." (C.C.P. §2033.220, subdivision (c).) Parties have a duty to reasonably investigate the facts. (*Doe v. Los Angeles County Dep't of Children & Family Servs.* (2019) 37 Cal.App.5th 675, 690; *Grace v. Mansourian* (2015) 240 Cal. App.4th 523, 530; see also *Association for Los Angeles Deputy Sheriffs v. Macias* (2021) 63 Cal.App.5th 1007, 1029.)

However, the court finds that the terms "adequate training" and "adequate experience" need to be rephrased in RFA Nos. 156, 157, 166-169 and Plaintiff is so ordered before any responses may be required. "If [the court] finds some requests too ambiguous to allow intelligent reply, it may sustain objection to them or, more consistently with justice, it may order such questions to be rephrased." (*Cembrook, supra,* p. 430.)

RFA No. 163. Defendant has provided a code-compliant and objection free response in his Amended Response to Plaintiff's Requests for Admission, Set Four. Plaintiff's response states the withdrawal of this objection, and the court finds the objection to now be MOOT.

The parties' respective requests for sanctions are DENIED.

The court makes the following Disclosure: Judge O'Connell's spouse is employed by the

Contra Costa County District Attorney's Office.

3. 9:00 AM CASE NUMBER: C24-01206
CASE NAME: ISABELLA ESQUEDA VS. LOS MEDANOS VILLAGE
***HEARING ON MOTION FOR DISCOVERY TO QUASH DEPOSITION SUBPOENA**
FILED BY: PHILADELPHIA INDEMNITY INSURANCE COMPANY
****TENTATIVE RULING:****

The motion is GRANTED. The subpoena was not properly served on the deponent (C.C.P §§2020.220, subd. (b)(2), 2026.010; 2025.280, subdivision (b)) the subpoena for deposition to Philadelphia Indemnity Insurance Company does not describe with reasonable particularity the matters of which examination is requested. (C.C.P §2025.230, §2020.310, subdivision (e) and. See in contrast, Plaintiff's subpoena for deposition to John Stewart Company.) The court does not find valid Defendant's argument pursuant to California Insurance Code §791.13. (See exceptions, Cal. Ins. Code §791.13, subds. (g) & (h).)

The request for sanctions is GRANTED but the court finds the fees to be excessive. Sanctions are ordered in the amount of $2,560 against Plaintiff's counsel.

4. 9:00 AM CASE NUMBER: MSC20-02420
CASE NAME: ROBINSON VS ANTIOCH UNIFIED SCHOOL
HEARING IN RE: LEAVE OF COURT FOR A NEUROPSYCHOLOGICAL EXAMINATION OF PLAINTIFF JAYSON ROBINSON
FILED BY: ANTIOCH WATER PARK
****TENTATIVE RULING:****

This court does not see any issue with the Defendant simply changing the name of the doctor to perform the Independent Neuropsychological Evaluation from Dr. June Paltzer to Dr. David O'Grady. It appears that on August 1, 2024, the Defendants provided Plaintiff with an Amended Demand which noticed them of the change in doctor. Plaintiff is ORDERED to appear for the Independent Neuropsychological Evaluation with Dr. O'Grady within the next 30 days unless a future date is agreed upon by counsel.

However, the court makes the following additional orders:

Defendant's Motion for Leave of Court for Neurological Examination filed January 9, 2025 as a "new request" is DENIED as there is no good cause. There is no limitation on the number of requests a party may file with the court for mental examination, however, all require a showing of good cause. (*Shapira v. Superior Court (Sylvestri)* (1990) 224 Cal.App.3d 1249, 1255-1256 ["The trial court's ruling that petitioner was entitled to only one mental examination is erroneous."]) There is no specified limit on the number of mental

examinations, only the necessity of showing "good cause" for each particular exam. (*Shapira v. Superior Court of San Mateo County* (*Sylvestri*) (1990) 224 Cal.App.3d 1249, see also 2 Civil Discovery Practice in Cal. (Cont.Ed.Bar 1988) § 10.13, p. 617; Weil & Brown, Civil Procedure Before Trial (1990) §§ 8:1557, 8:1558, p. 81-14.))

While the court permits Defendant to "change" the name of their doctor for purposes of the Motion for Leave of Court for Neurological Examination, decided on August 21, 2023, Defendants fail to establish good cause to justify their January 9, 2025 request being treated as a new request.

Dr. O'Grady and Dr. Paltzer are both neuropsychologists, both required the same clinical interview of plaintiff, and both requested to conduct a battery of tests. Defendant merely states that they are requesting a change in doctor without any further explanation as to why. The Defendant does not state there was a change in specialty (because there was none) or a need for further testing (presumably because there was no prior exam). The court finds no good cause to treat this request as a "new request." (See *Shapira*, *supra*, p. 1255.) "[M]ultiple examinations should not be ordered routinely; the good cause requirement will check the potential harassment of plaintiffs by repetitive examinations. (*Shapira*, *supra*, p. 1255, citing 1 Hogan, Modern Cal. Discovery (4th ed. 1988) § 8.8, p. 471.) "One federal decision suggests that a court should require a stronger showing of good cause for a second examination than for the first." (*Shapira*, *supra*, p. 1255, See *Vopelak* v. *Williams* (N.D. Ohio 1967) 42 F.R.D. 387, 389.)

Because this court does not find that Defendant's January 9, 2025, Motion for Leave of Court is a new request given a failure to show good cause, the court's August 21, 2023, order conditionally granting the Defendant's Neurological Examination is binding.

Defendant properly cites to California Code of Civil Procedure §1008(b) as the statutory authority for which Defendant now seeks this court to reconsider its conditional granting of the Defendant's May 24, 2023 (subsequently amended June 1, 2023) Motion for Leave of Court for an Independent Mental Examination. Defendant is the moving party to the original application for an order that was granted conditionally or on terms, thus they may make a subsequent application for the same order "upon new or different facts, circumstances, or law." (Cal. Code of Civ. Procedure §1008, subdivision (b).) Unlike C.C.P. §1008, subdivision (a), subdivision (b) does not state that this request must be brought within 10 days of the order, which was orally given August 21, 2023, and signed September 1, 2023. Courts have permitted use of C.C.P. §1008(b) at any time prior to final judgment in a case. A motion for reconsideration under C.C.P. §1008, which includes interim rulings, may only be considered before final judgment is entered and while the case is still pending in the trial court. (*Betz v. Pankow* (Cal. App. 1st Dist. 1993), 16 Cal. App. 4th 931; see also *Board of Medical Quality Assurance v. Superior Court* (Cal. App. 2d Dist. 1988), 203 Cal. App. 3d 691, [Trial courts have inherent authority to reconsider interim rulings until final judgment].) Here the matter is not final and still pending, therefore the motion is properly before this court.

"The case law interpreting C.C.P. §1008 has specifically held that a moving party must give a satisfactory explanation for the previous failure to present the allegedly new or different

evidence or legal authority offered in the second application." (*Kerns v. CSE Ins. Group* (Cal. App. 1st Dist. 2003) 106 Cal. App. 4th 368, 383; *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1194-1201 [""Public policy requires that pressure be brought upon litigants to use great care in preparing cases for trial and in ascertaining all the facts. A rule which would permit the re-opening of cases previously decided because of error or ignorance during the progress of the trial would in a large measure vitiate the effects of the rules of res judicata." Citing (Rest., Judgments, § 126, com. a.)'"] (*Kulchar v. Kulchar* (1969) 1 Cal. 3d 467, 472)]; *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 688-691.)

Defendants seek to have the court reconsider its August 1, 2023, order granting Defendants' request for an Independent Mental Examination of Plaintiff on the conditions that: the Plaintiff's psychologist may be present during the examination, that Plaintiff may record the entirety of the examination and that Plaintiff is not to sign anything. In their motion, Defendants cite to numerous articles, cases and statutes. While C.C.P. §1008(b) invites the court to reconsider its ruling based on changed or different law, facts or circumstances, Defendant must still satisfactorily explain why they did not present this evidence in the first instance. Defendants have failed to do so.

Defendants were on notice that the court may issue conditions in its August 21, 2023, order given Plaintiff raised the above issues in their August 7, 2023, Opposition and Defendant responded to the issues in their August 15, 2023 Reply. None of what Defendants cite to is new and all of it was available to them at the time of the August 21, 2023, hearing. Furthermore, while Defendants bring up different law and possibly circumstances, given the numerous studies they have offered, Defendant fails to explain why they did not rely on *any* of this evidence in their original application. There are just two things that Defendants cite to that were issued the same year as the hearing, everything else was published well in advance. For example, the studies Defendants rely on to support their position that a third party should not be present during the examination were from 1981,1996, 2000, 2001, 2013, 2021, 2022, and 2023. The 2023 study, *Statement of Concern: Disclosure of Sensitive Neurological and Psychological Test Information (2023), California Psychological Association,* Defendants cite to but did not provide as an attached exhibit. By Defendant's own summary "The California Psychological Association spoke against the release of test data materials, in written or recorded form, as it exposes the test questions to the public preventing their future use. (Statement of Concern: Disclosure of Sensitive Neurological and Psychological Test Information (2023), California Psychological Association, p. 2.) The CPA points out that these tests undergo revisions for decades and that the validity of the tests is based on the examinee's unfamiliarity with the tests. (Id.)" Here, the court's August 21, 2023, order simply states the Plaintiff's psychologist may be present and the evaluation recorded. This court would assume that Plaintiff's psychologist would have the same ethical obligations and education on these issues as Defendants' neuropsychologist and counsel could seek a protective order if they desire and have a basis to do so. Furthermore, the only case that was cited from 2023, *Randy's Trucking, Inc. v. Superior Court* (2023) 91 Cal. App. 5th 818, was decided four months before the original hearing and was cited by Plaintiff in their August 7, 2023 Opposition, p. 7. Defendants have failed to comply with C.C.P. §1008 by satisfactorily explaining, or explaining at all, why they failed to provide any of this evidence in their initial brief, their reply, oral argument or during nearly 18 months before filing the January 9, 2025

motion.

Trial courts have broad discretion in discovery matters and “trial courts retain the power to…take…prophylactic measures *when needed*." (See generally *Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355; *Vinson v. Superior Court* (1987) 43 Cal.3d 833, 846, italics added; *Golfland, supra* p. 747-748, [Petitioner did not contest the mother being present during the mental examination, nor did the court of appeal find the trial court abused its discretion by permitting the mother to attend, (“[T]he ‘existing case law’ referenced in section 2032, subdivision (g)(2) makes it clear that, in most cases, counsel should not be permitted to attend a mental examination, even though trial courts retain the discretion to allow counsel's presence in exceptional cases.”)].)

Defendants’ motion to reconsider the court’s August 21, 2023 order is DENIED. The court’s prior conditional granting of the Independent Mental Examination of Plaintiff on August 21, 2023, remains so ordered except for changing the doctor’s name to conduct the exam to reflect Dr. David O’Grady.