

Wilmer Cutler Pickering Hale & Dorr
LLP
Attn: Slenkovich, Keith L.
950 Page Mill Rd.
Palo Alto, CA 94304

California Department of
Transportation Legal Division
Attn: Ikeda, Tiffany S.
PO Box 24325
Oakland, CA 94623-1325

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Sanchez <p style="text-align: center;">Plaintiff/Petitioner(s)</p> <p style="text-align: center;">VS.</p> <hr/> <p style="text-align: center;">California Department of Transportation Defendant/Respondent(s) (Abbreviated Title)</p>	No. <u>RG16842117</u> Order Motion for Protective Order Granted
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The Motion for Protective Order filed for Natale Leimkuhler and Susan Halpern and Western Regional Advocacy Project and Homeless Action Center and Patricia Moore and Christopher Craner and Scott Russell and James Leone and Kimberlee Sanchez was set for hearing on 03/12/2019 at 09:00 AM in Department 16 before the Honorable Michael M. Markman. The Tentative Ruling was published and was contested.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

Plaintiffs Kimberlee Sanchez, James Leone, and Patricia Moore's (collectively, "Class Plaintiffs") Motion for Protective Order is GRANTED. (Code Civ. Proc. § 2030.090(a).) Class Plaintiffs are excused from responding to defendants California Department of Transportation and Malcolm Dougherty's (collectively, "Defendants") first sets of special interrogatories in their entirety.

The Court finds that the burden, expense, and intrusiveness of Defendants' first sets of 293 special interrogatories to each of the three Class Plaintiffs -- for a total of 879 special interrogatories -- clearly outweigh the likelihood that the information sought will lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.020.) Defendants' interrogatories are oppressive. (*West Pico Furniture Co. of Los Angeles v. Superior Court* (1961) 56 Cal.2d 407, 417.) They are voluminous, largely unfocused, and boilerplate in form. (*Day v. Rosenthal* (1985) 170 Cal.App.3d 1125, 1172.) It ought to go without saying that having to respond to 879 special interrogatories is burdensome as a logistical matter, expensive in the time invested by counsel and paralegal support, and intrusive -- notwithstanding the fact that Plaintiffs' counsel apparently managed to serve objections and responses anyway. The blunderbuss special interrogatories are in no way tailored to obtaining information concerning the factual underpinnings of Plaintiffs' legal contentions. A number of interrogatories make no sense due to typographical errors. And, many interrogatories seek information best obtained in a short deposition.

Defendants' excuse for the unusually voluminous special interrogatories appears to be based on a misunderstanding of the Court's prior orders denying Defendants' Motions for Summary Judgment. The Court had referenced Defendants' ability to serve comprehensive contention interrogatories to establish the lack of evidence to support a triable question of material fact on summary adjudication. The Court had been referring to the fact that a defendant bringing a "no evidence" summary judgment motion need only present evidence that the plaintiff "does not possess, and cannot reasonably obtain, needed evidence" in support of one of more essential elements of a cause of action. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854-855.)

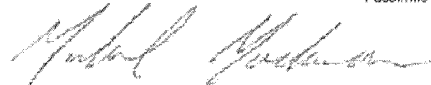
The approach identified in Aguilar and related cases does not make it necessary or appropriate for Defendants to propound blunderbuss contention interrogatories directed to 70 categories of contentions in order to prevail on summary judgment. (See Defs.' Opp. at 9:12.) Rather, Defendants would need to identify the essential elements of each claim in the First Amended Complaint, identify the contentions that support the essential elements of those claims, and propound contention interrogatories directed only to the contentions that address an essential element on which Defendants intend to move for summary judgment. Defendants' Opposition did not identify an essential element of any cause of action on which they intend to move for summary judgment or adjudication. Further, the overlap between various legal contentions is striking, and led to an unnecessary multiplication of the total number of interrogatories served. Defendants also rely on inapposite authority such as Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants (2007) 148 Cal.App.4th 390, 402, which cited Code of Civil Procedure section 2019.030. Plaintiffs did not move for relief under that section.

Plaintiffs' request for sanctions is GRANTED IN PART and DENIED IN PART. (Code Civ. Proc., § 2030.090(d).) The Court rejects Defendants' suggestion that the Court lacks jurisdiction to impose sanctions here. Sanctions are sought against Caltrans in the Notice of Motion, and the basis for seeking the sanctions is set out in the Notice and in Plaintiffs' accompanying Memorandum of Points and Authorities. The Court will not, however, impose the full amount of sanctions that Plaintiffs seek. (See Code Civ. Proc. § 2023.030(a).) The declarations of Plaintiffs' counsel did not adequately "set[] forth facts supporting the amount of any monetary sanction sought." (Code Civ. Proc. § 2023.040.) Attorney Spencer Gall merely states in his declaration that he spent 25 hours preparing the instant Motion. Without more information, that amount of time is excessive and unreasonable for a motion for protective order for facially oppressive written discovery. The Court can only award sanctions for the "reasonable expenses" incurred by Plaintiffs as a result of Defendants' sanctionable conduct. (Code Civ. Proc., § 2023.030(a); see Ghanooni v. Super Shuttle (1993) 20 Cal.App.4th 256, 262-263 [court may impose monetary sanctions based on reasonable expenses incurred but not as pure penalties unrelated to actual expense].) There is also no support that a rate of \$730.00 per hour is reasonable under the circumstances. The Court awards monetary sanctions based only upon the reasonable attorney fees incurred in bringing the motion: 8.0 hours at a reduced rate of \$400.00 per hour, plus the \$60.00 filing fee.

Defendants must pay monetary sanctions in the amount of \$3,260.00 to Plaintiffs' counsel no later than March 26, 2019.

This Order is without prejudice to Defendants' right to propound additional sets of interrogatories that are actually reasonable and tailored to the facts in this case. Plaintiffs did not move for a protective order generally restricting Defendants' right to propound interrogatories. (Code Civ. Proc. § 2019.030.) However, the Court will be inclined to again impose sanctions if future sets are similarly defective.

Dated: 03/15/2019

Facsimile


Judge Michael M. Markman

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG16842117
Order After Hearing Re: of 03/15/2019


DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 03/15/2019.

Chad Finke Executive Officer / Clerk of the Superior Court

By

 Digital

Deputy Clerk