

**Judge Benson – Law & Motion – Wednesday, June 11, 2025 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1-2. 21CV00597 Zotnowski, Stephen R v. Chuck Patterson, Inc. et al.**

*EVENT: (1) Defendants' and Third Party Vettx Inc.'s Motion to Quash Plaintiff's Deposition Subpoena for Production of Business Records; (Records of John A. Powell and Associates, LLP)*

*(2) Defendants' and Third Party Vettx Inc.'s Plaintiff's Motion to Quash Deposition Subpoena for Production of Business Records (Records of Richard W. Powell Certified Public Accountant, Inc.)*

The motions are denied as set forth herein.

*Relevance*

A civil litigant's right to discovery is broad. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 541) The First Amended Complaint seeks damages for "... forfeiture of his A180 business venture according to proof." A measurement of that damage could include the valuation of shares. Although the FAC makes no mention of Vettx, the subject matter of the subpoena is relevant because it goes to the damages sought in the pleading. The fact that Vettx is not specifically mentioned does not render the information irrelevant for discovery purposes. Plaintiff's representations that A180 and Vettx are substantially similar is sufficient to support a finding that the information sought is relevant for the purposes of this motion. (Whether the evidence obtained is admissible at trial in light of the operative pleading is a question the Court does not address in this motion. Relevance in the context of discovery and relevance at trial are separate matters)

*Tax Returns*

The broad language of the subpoena arguably includes tax returns. Because Plaintiff has not demonstrated an exception to the privilege concerning tax returns, the subpoena is modified to exclude tax returns.

*Privacy*

Whether or not a corporation has a right of privacy, there is a protective order in place in this case which addresses privacy concerns and provides a procedure for identifying documents as confidential.

### *Trade Secrets*

The Court struggles to see how the request as phrased implicates trade secrets. In any event, out of an abundance of caution, the parties are ordered to meet and confer on a supplemental protective order concerning trade secrets. The protective order with respect to trade secrets shall be an “attorneys’ eyes only” protective order. If the parties cannot agree on a protective order within 2 weeks, the parties shall each submit a proposed protective order to the Court and the Court will select one.

Responses, as set forth in this ruling, shall be served no later than July 16, 2025.

Plaintiff shall prepare and submit the form of order.

### **3. 23CV01364 Dickson, Amber Bowen v. Amber Grove Place, LLC**

#### *EVENT: Amber Grove Management LLC’s Motion for Sanctions*

The motion is denied as premature. Defendant has put the cart before the horse, or in this case, two carts before the horse. The motion was filed and briefed prior to responses to the subject production of document request becoming due. No discovery misconduct can be ascertained until after the discovery responses are provided or the statutory time for Plaintiff to respond has passed with no response. Even then, until there has been a violation of a court order, we do not have misconduct warranting the severe sanctions sought in this motion.

Further, it is the Court’s understanding Defendants were in the process of obtaining the records from T-Mobile. Until that has run its course, Defendants’ conclusion that the evidence no longer exists is premature.

Plaintiff shall prepare and submit the form of order.

### **4. 23CV02221 Dinwiddie-Hines Construction, Inc v. Laswell, Mary Ellen**

#### *EVENT: Motion to set aside order*

Motion to set aside order is GRANTED. The March 19, 2025 order is set aside. The Court deems the opposition to Plaintiff’s Motion to Compel filed. This hearing is continued to July 9, 2025 at 9:00am. Plaintiff shall file a reply to Defendant’s opposition no later than June 25, 2025.

**5-10. 23CV02816 PPB Oroville Pads, LLC v. Underwood, Jack Lyle**

*EVENT: (1) Cross-Defendant Cornish & Carey Commercial DBA Newmark Cornish & Carey's Motion to Compel Defendant/Cross-Complainant Jack Lyle Underwood's Further Responses to Form Interrogatories, Set One and Request for Sanctions in the amount of \$3,705 against Defendant and his counsel*

*(2) Cross-Defendant Cornish & Carey Commercial DBA Newmark Cornish & Carey's Motion to Compel Defendant/Cross-Complainant Jack Lyle Underwood's Further Responses to Form Interrogatories, Set Two and Request for Sanctions in the amount of \$3,705 against Defendant and his counsel*

*(3) Cross-Defendant Cornish & Carey Commercial DBA Newmark Cornish & Carey's Motion to Compel Defendant/Cross-Complainant Jack Lyle Underwood's Further Responses to Request for Production of Documents, Set One, and Request for Sanctions in the amount of \$3,705 against Defendant and his counsel*

*(4) Cross-Defendant Cornish & Carey Commercial DBA Newmark Cornish & Carey's Motion to Compel Defendant/Cross-Complainant Jack Lyle Underwood's Further Responses to Request for Production of Documents, Set Two, and Request for Sanctions in the amount of \$3,705 against Defendant and his counsel*

*(5) Cross-Defendant Cornish & Carey Commercial DBA Newmark Cornish & Carey's Motion to Compel Defendant/Cross-Complainant Jack Lyle Underwood's Further Responses to Special Interrogatories, Set One, and Request for Sanctions in the amount of \$3,705 against Defendant and his counsel*

*(6) Cross-Defendant Cornish & Carey Commercial DBA Newmark Cornish & Carey's Motion to Compel Defendant/Cross-Complainant Jack Lyle Underwood's Further Responses to Special Interrogatories, Set Two*

*(Continued from 5/21/25)*

**FORM INTERROGATORIES SET ONE**

*Interrogatory 17.1*

The motion is granted in part and denied in part. The motion is denied as to Request for Admission no. 9. The motion is granted as to Request for admission no. 11. Regarding the later, the objection that an interrogatory has been previously answered in a deposition (not shown to have been corrected or signed), standing alone, will not suffice as an excuse for refusing to reply to that interrogatory. (See *Coy v. Superior Court of Contra Costa County* (1962) 58 Cal.2d 210, 219)

### *Interrogatory 50.1*

The motion is denied. The request is limited to information pertaining to “each agreement alleged in the pleadings”. Thus, the further response sought by this motion is not warranted based on the limitations of the request.

### *Interrogatory 50.2*

For the same reasons discussed re: 50.1, the motion is denied. There is no oral agreement alleged to have been breached in the pleadings, and the request is limited to agreements alleged in the pleadings.

## FORM INTERROGATORIES SET TWO

### *Interrogatory 17.1*

The motion is granted. As discussed, a responding party cannot refuse to respond to an interrogatory simply because the question was previously answered at deposition. *Coy v. Superior Court of Contra Costa County*, *supra*, still appears to be good law.

## PRODUCTION OF DOCUMENTS, SET ONE

### *Nos. 1 – 6, 8, 15, 22, 25, 27, 28*

The motion is GRANTED. Contrary to Newmark’s contentions, the responses are not evasive. However, because the responses indicate some documents were lost/destroyed, the responses must be amended indicating a diligent search was conducted. While it stands to reason that a diligent search is not required for documents that never existed, it is required for documents that did exist at some point in time.

Thus, amended responses are required for documents that were lost or destroyed, but not required for documents that never existed.

### *Nos. 7, 9, 11-14, 16, 17*

The motion is GRANTED. Unlike other responses, these responses indicate a computer technician is attempting to retrieve a file (singular). While that representation might satisfy the “diligent search” requirement, because the response does not indicate the computer technician is attempting to retrieve all documents lost or destroyed which are responsive to the request, the response must be amended.

Nos. 18,19,23,26

The motion is DENIED. The responses adequately represent a diligent search was conducted and are complete responses.

Nos. 20,21

The motion is DENIED.

*Weil & Brown, California Practice Guide: (the Rutter Group 2024) Civil Procedure Before Trial*

[8:1180] Ruling on motion to compel further answers: The granting or denial of a motion to compel rests within the court's sound discretion.

[8:1181] Factors considered: The ruling usually is based on consideration of the following factors:

- The relationship of the information sought to the issues framed in the pleadings;
- The likelihood that disclosure will be of practical benefit to the party seeking discovery;
- The burden or expense likely to be encountered by the responding party in furnishing the information sought. [Columbia Broadcasting System, Inc. v. Sup.Ct. (Rolfe) 1968 263 CA2d 12,19 69 CR 348, 352]

There is no practical benefit to granting the motion as to these requests. It is clear that Mr. Underwood's damages, if any, correlate to the underlying action between himself and Plaintiff.

## PRODUCTION OF DOCUMENTS SET TWO

Nos. 28,31,32,33

The motion is DENIED. The responses adequately represent a diligent search was conducted and are complete responses.

No. 30

The motion is GRANTED. Contrary to Newmark's contentions, the responses are not evasive. However, because the responses indicate some documents were lost/destroyed, the responses must be amended indicating a diligent search was conducted. While it stands to reason that a diligent search is not required for documents that never existed, it is required for documents that did exist at some point in time.

Nos. 43,46,47,48

The motion is DENIED. Unlike other responses, the response does not indicate that any documents responsive to this request have been lost or destroyed. The response is complete.

*No. 45*

The motion is GRANTED. It was the intent of the Court in signing the order following the pretrial discovery conference to re-set the previously propounded discovery in an attempt to move beyond some of the technical issues with the initial discovery requests.

It is the Court's understanding that there are no substantive changes between the original requests and amended requests. Should the request have referenced amended form interrogatories instead of form interrogatories? Probably, but it is clear Newmark attempted to comply with the spirit of the discovery conference order. Request no. 45 is hereby modified to read "Amended Form Interrogatories ..." Accordingly, Mr. Underwood shall provide a further response.

#### SPECIAL INTERROGATORIES, SET ONE

*No. 8*

The Motion is DENIED. The request does not identify the items (date, manner, etc.) Newmark contends are a required component of the response. The term "specificity" is not in and of itself specific.

#### SPECIAL INTERROGATORIES, SET TWO

*No. 27*

The motion is denied. There is no practical benefit to compelling further responses to this request.

*No. 30*

The motion is denied in part and granted in part. Earlier in this ruling in the production of documents context, the Court explained that a diligent search is not required for

documents that never existed. However, if documents were in existence at some point, then there must be a diligent search.

The same reasoning applies here. The response states there are no records from mail carriers. Thus, there is no need for further effort to obtain the information. However, the response indicated emails may have existed. Thus, there should be some statement concerning an effort to obtain the information.

*Nos. 28,32,33*

The motion is denied. The response is complete to the request as phrased.

*No. 34*

The motion is granted. Setting aside the fact that an interrogatory cannot be objected to on the basis that it was previously answered at deposition, the request seeks to elicit more specific contact information not elicited at the deposition.

To the extent the motions are granted, Mr. Underwood shall provide further responses within 20 days of this order.

All requests for sanctions are denied.

Newmark shall prepare and submit a form of order consistent with this ruling within 2 weeks.

**11. 24CV00887 Gibson, Casey v. Aristotle Custom Homes, LLC**

*EVENT: Motion to be relieved as counsel (Counsel for Defendants)*

The motion does not include mandatory Judicial Council form MC-052. The motion is continued to July 16, 2025 at 9:00am for counsel to file and serve form MC-052.

**12. 24CV02216 Garbolinsky, Greg v. Gillingham**

*EVENT: Motion to Be Relieved as Counsel (Plaintiff's counsel)*

The motion does not include mandatory Judicial Council form MC-052. The motion is continued to July 16, 2025 at 9:00am for counsel to file and serve form MC-052.

**13. 24CV03215 Erwin, Dana v. Estate of Terri L. Brooks**

*EVENT: Amended Motion to Vacate Default Judgment (Continued from 5/7/25)*

Amended Motion to Vacate Default Judgment is GRANTED. The default judgment and Abstract of Judgment are vacated. Defendant's answer attached to the moving papers is deemed filed. A Case Management Conference is hereby scheduled for July 30, 2025 at 10:30am. The Court will prepare the order.

**14. 25CV01351 In re: DeRenard, Yvonne Jean**

*EVENT: Change of name (adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**15. 25CV01358 In re: Jenkin, Maureen**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.



**16. 25CV01359 In re: Self-Dunning, Shelby Nicole**

*EVENT: Change of name (adult)*

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

**17. 25CV01388 In re: Gonzales, Herlinda**

*EVENT: Change of name (adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**18. 25CV01516 In re: Scott, Christopher Allen**

*EVENT: Change of name (adult)*

The Court is in receipt of the proof of publication and is awaiting the results of the background check.

**19. 25CV01169 In re: Esquivel, Tonantzin**

*EVENT: Change of name (adult)*

The Court is in receipt of the proof of publication and will sign the decree provided.

**20.    24CV00999 Butte Credit v. Bujor, Melissa**

*EVENT: Opposition to Claim of Exemption*

The Court will conduct a hearing.