

Superior Court of the State of California
County of Orange
TENTATIVE RULINGS FOR DEPARTMENT CM06
HON. JUDGE Bradley Erdosi

Date: 05/02/2024

Court Room Rules and Notices

#	Case Name	Tentative
1	Smurro - Trust 01327132	<p style="text-align: center;">MOTION TO COMPEL FURTHER RESPONSES TO INTERROGATORIES</p> <p>Petitioner’s motion to compel further responses to Form Interrogatory 17.1(d) pertaining to RFA nos. 1 and 3-9 is GRANTED.</p> <p>Petitioner’s motion to compel further responses to Form Interrogatory 17.1(b) pertaining to RFA no. 11 is DENIED.</p> <p>Petitioner’s motion to compel further responses to Special Interrogatories 15, 17, 19, 21, and 38-52 is GRANTED.</p> <p>Petitioner’s request for monetary sanctions is GRANTED, as set forth below.</p> <p><u>Form Interrogatory 17.1(d)</u></p> <p>Form Interrogatory 17.1(d) requires Respondent Thomas Smurro (“Respondent”) to identify all documents that support his response to certain requests for admission. With regard to RFA nos. 1 and 3-9, Respondent responded, “Exhibit 3 and Exhibit 4 to the Petition, emails attached to Request for Production, Set One.”</p> <p>In opposition to this motion, Respondent argues that he cannot identify all the documents that support his response to the requests for admission because he needs Petitioner to first produce documents in response to his discovery. Such argument is without merit.</p> <p>Responses to interrogatories must be complete and straightforward based on the information that is available to the responding party at the time the responses are served. (Code Civ. Proc. § 2033.220(a).) “If an interrogatory cannot be answered completely, it shall be answered to the extent possible.” (Code Civ. Proc. § 2033.220(b).) Respondent’s response is not complete and straightforward.</p> <p>Respondent’s reference to “emails attached to Request for Production, Set One” is vague and ambiguous. Emails are not (typically) attached to a discovery request. Respondent might be referring to emails that he anticipates receiving from Petitioner</p>

in response to the document demand propounded on Petitioner. Or Respondent might be referring to emails that he himself produced in response to the document demand propounded on him. Regardless, the documents should be appropriately identified (e.g., by referring to the date, sender, recipient, subject line), based on information presently available to Respondent. If respondent does not have personal knowledge sufficient to respond, he should state so. (Code Civ. Proc. § 2033.220(c).) If Respondent is claiming lack of personal knowledge, Respondent must make a reasonable and good faith effort to obtain the information from other persons or organizations, unless the propounding party has equal access to such sources. (Id.)

The motion to compel further responses to Form Interrogatory 17.1(d) pertaining to RFA Nos. 1, 3, 4, 5, 6, 7, 8, and 9 is **granted**.

Form Interrogatory 17.1(b)

Form Interrogatory 17.1(b) requires Respondent to state all facts that support his response to certain requests for admission. RFA No. 11 requests that Respondent admit that he has “failed” to provide an accounting of the Trust. Presumably, Respondent responded to this RFA with a denial. In responding to Form Interrogatory 17.1(b), Respondent states, “The Trust requires no more than an annual accounting.” Such response sufficiently states the reason why Respondent denies that he “failed” to provide a trust accounting. (Note: The court makes no finding as to the *merit* of such response; this motion concerns only the *sufficiency* of the response.) The motion to compel further response to Form Interrogatory 17.1(b) re RFA No. 11 is **denied**.

Special Interrogatories

Special Interrogatories 15, 17, 19, and 21 seek information regarding the decedent’s assets and accounts. Special Interrogatories 38-52 seek information regarding specific annuities presumably owned by the decedent. Respondent objected to each of these interrogatories on the ground that they are irrelevant because they seek information regarding non-trust assets. The Petition alleges that the decedent left a pour over will transferring all of his assets to the Trust. Further, paragraph 4 of the will (Pet., Ex. 5) states that the decedent does not have any contracts with any person or organization to make distributions upon his death. Petitioner is entitled to determine the existence of any assets that should be placed in the Trust. Thus, the objection on the grounds of relevance is without merit.

Respondent further objected to Special Interrogatories 38-52 on the grounds that they seek “privileged financial information.” Financial information is not “privileged.” It is information

protected by the constitutional right to privacy, a right that does not survive the decedent. (*Hendrickson v. Cal. Newspapers, Inc.* (1975) 48 Cal.App.3d 59,62.)

In opposition to this motion, Respondent refers to some of the "general objections" that he made at the onset of his discovery responses. General objections are not proper. Each objection must be raised "separately" in response to each interrogatory. (Code Civ. Proc. § 2030.210(a)(3).)

The motion to compel further responses to special interrogatories 15, 17, 19, 21, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, and 52 is **granted**.

Monetary Sanctions

Respondent asserts that Petitioner should not be awarded sanctions because Petitioner did not adequately meet and confer. The evidence shows that Petitioner's counsel sent a meet and confer letter on 11/9/23 and thereafter conferred over the telephone with Respondent on 11/20/23. When the efforts to meet and confer over the telephone were unsuccessful, Petitioner's counsel sent a second meet and confer letter that same date, stating a willingness to further meet and confer if Respondent would agree to extend the deadline for filing the motion. Respondent would not agree to extend the motion deadline. (Menzel Dec., ¶ 5-7 and Exs. F-H.) The court finds that Petitioner adequately met and conferred before filing this motion.

Sanctions are mandatory in connection with motions to compel responses to interrogatories against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel unless the court "finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc. § 2030.290(c).) The court finds the opposition to this motion was largely without substantial justification.

The court finds the time expended by Ms. Menzel in connection with this motion to be reasonable. However, Ms. Menzel's hourly rate is higher than that of other attorneys with similar experience in the community. Further, the court will not award costs, as this motion should have been filed as two separate motions. Counsel is advised to file separate motions as to each item of discovery going forward.

Pursuant to Code of Civil Procedure sections 2023.010(e) and (f), and 2023.030(a), the court imposes monetary sanctions against Respondent Thomas Smurro in the amount of **\$2,500** (10 hours x \$250 p/h.)

ORDERS

		<p>Respondent Thomas Smurro is ordered to provide further written responses to Form Interrogatory 17.1(d) pertaining to RFA nos. 1, 3, 4, 5, 6, 7, 8, and 9 and Special Interrogatories 15, 17, 19, 21, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, and 52 within 10 days of notice of ruling of this motion. Said responses must be Code-compliant and must not raise new objections that were not raised in the initial responses to each interrogatory.</p> <p>Petitioner is ordered to give notice.</p>
2	Smurro - Trust 01327132	<p style="text-align: center;">MOTION TO COMPEL COMPLIANCE</p> <p>Respondent Thomas Smurro’s motion to compel compliance is DENIED.</p> <p>Respondent concedes that Petitioner James Smurro timely responded to requests for production of documents by mailing a hard copy of his written responses and a flash drive containing responsive documents. Respondent brings this motion because he wants Petitioner to serve hard copies of the responsive documents.</p> <p>Respondent argues that his agreement to grant Petitioner an extension of time to respond to the discovery was conditioned upon Petitioner’s counsel’s agreement to produce hard copies of all responsive documents. Petitioner’s counsel denies making any such agreement. Petitioner’s counsel mailed a hard copy of the written responses, along with a flash drive containing over 2,000 pages of responsive documents because she understood that Respondent did not agree to electronic service.</p> <p>There is no statutory requirement for the responding party to produce hard copies of responsive documents. The Discovery Act only requires that the documents be made available for inspection.</p> <p>Respondent states that the parties had an agreement, confirmed in writing, that Petitioner would produce hard copies of the responsive documents. However, the written confirmation of the parties’ agreement says nothing about the method of service of responsive documents. (Menzel Dec., Ex. B.)</p> <p>There is no evidence that Petitioner has failed to produce documents in accordance with his statements of compliance. On that basis, this motion is denied. No part of this order prohibits Petitioner from filing a motion to compel compliance if, after he has reviewed the documents, he determines the document production is deficient.</p>

		<p>The cost of bringing and opposing this motion far exceeds the cost of printing documents. Both parties' requests for monetary sanctions are denied.</p> <p>Counsel for Petitioner is ordered to give notice.</p>
3	Smurro - Trust 01327132	<p style="text-align: center;">MOTION TO COMPEL COMPLIANCE</p> <p>Petitioner James Smurro's motion to compel compliance is GRANTED.</p> <p>The evidence before the court establishes that Petitioner served Respondent Thomas Smurro with a request for production of documents on 8/28/23. On 10/2/23, the parties agreed to extend Respondent's time to provided responses to 10/13/23. Respondent timely served his written responses on 10/13/23. In response to demand numbers 1-5, 8-9, 11, 13, 15, 17-36, 40-44, 46, 49, 53, 57, 62, 72, 74-76, 79-80, 83-84, 87-90, 95-96, 98-99, 127-136, and 142-147, Respondent responded with a statement of compliance. To date, Respondent has not produced any responsive documents.</p> <p>Respondent's reason for not producing responsive documents is that Petitioner has not produced hard copies of Petitioner's responsive documents. (T. Smurro Dec., Ex. 6; Menzel Dec., Ex. G.) Such is not a valid reason for failing to produce responsive documents. Even if Petitioner were obligated to produce hard copies and failed to do so, Petitioner's failure to comply with discovery would not excuse Respondent's failure to comply with discovery.</p> <p>The court finds the time expended by Ms. Menzel in bringing this motion is reasonable. However, Ms. Menzel's hourly rate is higher than that of attorneys with similar skill and experience in the community. The court imposes monetary sanctions of \$1,810.00 (7hrs x \$250p/h + \$60) against Thomas Smurro.</p> <p>Counsel for Petitioner is ordered to give notice.</p>
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