



# Superior Court of California County of San Benito

## **Tentative Decisions for December 4, 2024**

**Courtroom #1: Judge J. Omar Rodriguez**

**10:30 a.m.**

**CU-20-00062 Flores Avena v. Pacific Scientific Energetic Co.**

Plaintiff's Motion for Final Approval of Class and Representative Action Settlement is GRANTED as requested. The final accounting hearing is scheduled for April 7, 2025 at 10:30 a.m. Counsel shall file a final accounting report from the Administrator no later than March 21, 2025.

**CU-24-00174 Jane Doe, et al. v. Hollister School District, et al.**

In light of Plaintiff's Case Management Conference Statement, the Case Management Conference is continued to February 24, 2025 at 10:30 a.m. Plaintiff is ordered to provide notice of the hearing.

**PR-18-00065 Estate of Mark Allen Jahn**

The Petition for Approval of Final Distribution is APPROVED as requested. Petitioner is ordered to submit a proposed order.

**PR-24-00042 Estate of Estate of John D. White**

The Petition for Approval of Final Distribution is APPROVED as requested.

**PR-24-00105 Estate of Joseph Herrera**

The Petition is APPROVED as requested. Bond is waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set for hearing on May 5, 2025 at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

**3:30 p.m.**

**CU-20-00189 Rocket Restrooms and Fencing, Inc v. Frank Leal, et al.**

The court GRANTS Plaintiff's Motion for Protective Order in part. The parties are ordered to meet and confer to determine which specific invoices and how many linear feet of fencing Defendant is asserting the Plaintiff may have retained for each invoice, and how to determine if Plaintiff's inventory controls for the amount of fencing in their possession and control during each of these specific invoice periods is tracked, documentation supporting purchases of additional linear feet of fencing during said invoice periods, among other documents specifying the number of linear feet of fencing owned, purchased, and possessed by Plaintiff for each invoice Defendant asserts Plaintiff failed to return Defendant's fencing.

The Civil Discovery Act only authorizes for each type of discovery propounded, the ability to file a motion to seek further responses. (Cal. Civ. Proc. §§2030.300; 2031.310) In each code section, the statute lays out what is required to put forward a motion to compel further discovery. For each type of discovery allowed under the code, a propounding party must put forward a notice of motion, declaration, and when seeking further responses, a separate statement compliant with California Rule of Court 3.1345. The code also states at each relevant provision that sanctions will be awarded to each party who successfully makes or defends a motion to compel discovery.

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**\*\*Please contact Judicial Courtroom Assistant, Wendy Guerrero, at  
(831) 636-4057 x129 or [wguerrero@sanbenitocourt.org](mailto:wguerrero@sanbenitocourt.org) with  
any objections or concerns.**

The California Code of Civil Procedure section 2031.060(b) lists six illustrative types of orders the court can issue in response to a motion for protective orders from an inspection demand. Each should provide protection from unwarranted annoyance, embarrassment, oppression, or undue burden or expense. (*Ibid.*) The court may order that all or some of the categories of items demanded need not be produced or made available at all. If many items are sought, the court may order production of only a statistically significant sampling. The court may extend the time specified to respond to the demand or to a particular category in the set. The court may alter the place of production specified in the demand, or that the inspection, copying, testing, or sampling be made only on specific terms and conditions. The motion must be brought by the party to whom the demand has been directed, promptly, and accompanied by a meet and confer declaration. (Cal. Civ. Proc. §§2016.040; 2031.060(a).) The moving party must make a showing of good cause. Good cause includes, but is not limited to, the ground that production will result in excessive burden, expense or intrusion pursuant to Code of Civil Procedure section 2017.020(a). The court must measure that burden as part of weighing it against the general policies favoring discovery. (*Williams v. Sup. Ct.* (2017) 2 Cal. 5<sup>th</sup> 531,549-550.) It requires proof an analysis of specific details, showing the amount of work needed to furnish the requested discovery (*Id.* at 550; *see also West Pico Furniture Co. v. Sup. Ct.* (1961) 56 Cal. 3rd 407, 417.) The court should also consider alternatives such as shifting of cost before denial of the discovery. The court may also limit discovery in view of the context in which it is being requested.

Plaintiff seeks protective orders because Defendant Leal's special interrogatories, set two, and request for production of documents set two, are overbroad, oppressive, unduly burdensome and seek information that is both privileged and irrelevant. Specifically special interrogatories items 40-79 and requests for production are objectionable on these grounds. The special interrogatories ask for 1) identification of the total number of linear feet of fencing Plaintiff had in its inventory in three-month increments between 1-1-19 and 11-22-22; and 2) identification of all documents demonstrating how Plaintiff acquired said fencing. The production requests, 9 and 14 seek similar information in the form of inspection demands. The defendant also seeks physical examination of all temporary fencing currently in the Plaintiff's possession, custody, and control at their principal place of business on Sept 3, 2024. This

effectively requires the plaintiff to take every item of fencing it owns, whether it is in use by customers, wherever it may be and make it available for inspection.

Plaintiff has founded their request for a protective order on the basis that the production request and related interrogatories are overbroad and unduly burdensome, noting the relevant dates for this litigation, and that the inquiries made, and items sought relate to times outside the relevant time period of the litigation. Despite the assertions of Defendant, the court notes the massive scope of what is requested, and the limited relevance of that information. While Defendant does have the right to pursue discovery relevant to their own claims or defenses, in this case the claim that Plaintiff retained fencing owned by RentAFence as a possible offset to the invoices claimed due by Plaintiff, the request to inspect at Plaintiff's primary place of business every linear foot of fencing in their possession and control would create the kind of undue burden envisioned in *Williams*. Similarly, having Defendant go to every job site where Plaintiff's fencing (whether owned by Plaintiff or sourced from other vendors as a rental), to determine if any of said fencing is Defendant's fencing would create significant logistical issue in terms of time, scheduling, distance, and the possible disruption of Plaintiff's end user contracts. Defendant here seeks not just every single invoice for fencing, whether related to RentAFence or not, for a period starting in 2019 and ending in 2022, but also the inspection of every linear foot of fencing in possession and control of the Plaintiffs, whether in use, contracted for use currently, in storage, in transit to other locations, without regard to the fact that moving all of the fencing to that location would result in violation of current contracts magnifying the Plaintiff's expenses. Nor does allowing Defendant to go to every site where Plaintiff's fencing is in use presently to inspect the fencing, or to every storage yard, transit depot, or other location alleviate the problem, as this would require Plaintiff to contact every client using their fencing and arrange the time and place for Defendant's inspection.

What is unclear is how a tally of every linear foot of fencing made every three months, cross referenced against each and every invoice produced to each and every customer or contractor (from whom fencing was rented) over a period of four years would clarify whether Plaintiff had any of RentAFence's fencing in their possession, without relating it to specific invoices charged by Plaintiff. Similarly, the same analysis applies from the inspection

demands to the Specially prepared interrogatories and warrants pursuant to CCP§2030.090(b), the issuance of a protective order. Defendant will revise his requests for production and his specially prepared interrogatories to state, in connection with specific invoices, which dates and how many linear feet of fencing he is asserting Plaintiff obtained from RentAFence and failed to return. While meet and confer could have narrowed the scope, the record reflects that the parties had two conversations about discovery matters. While they dispute in what they discussed, it appears that the parties did meet and confer and were unsuccessful in their attempts to create a good faith resolution short of this proceeding.

Defendant's Motion to Compel Response to Special Interrogatory #90 is GRANTED. Plaintiff's objection as to vagueness is without merit. The word payment, in context of the question, and in light of the ordinary dictionary definition of the word leaves no doubts as to the information sought by the Defendant. The larger question is whether the question of what payments were made by Plaintiff to Molina and when is relevant to the subject matter of the litigation, or if it tends to prove or disprove a fact relevant to a claim or defense or will lead to admissible evidence. Here, Defendant states that these payments are relevant to prove that Molina may have defrauded his employer by taking kickbacks for directing business to Plaintiff, thus calling into question whether it was reasonable for Plaintiff to have believed he was acting within the scope of ostensible agency. While Plaintiff is correct, this is ultimately a case about unpaid invoices for products and services provided to Defendant, the defense is that as a result of the alleged kickbacks, the contract made between the ostensible agent (Molina) and Plaintiff may have been the result of fraud, calling into question whether it was reasonable to believe Molina was Defendant's agent when taking an unusual commission from Plaintiff. The material is relevant to that course of inquiry and may lead to admissible evidence. The Plaintiff will answer.

Plaintiff's Motion to Compel Attendance by Zoom and testimony of Defendant Popescu is GRANTED. The deposition shall take place at the earliest possible time and date. The Parties shall meet and confer to select times to start the Deposition, to be taken by remote

technology, such that it will conclude by no later than 9:00 p.m. in Romania. The parties to discuss multiple dates to ensure that these time restrictions may be accommodated by continuing the deposition over a minimum of two calendar days.

The court notes that after nearly two years of meet and confer, which the record of both parties makes clear occurred, Plaintiff scheduled the deposition of Mr. Popescu, who currently is in Romania. Despite Defendant's assertions to the contrary, the declarations filed in support of the motion to compel the deposition, is replete with evidence of extensive meet and confer efforts by Plaintiff to schedule the deposition of this party. Despite Mr. Popescu's counsel's claim on information and belief that Mr. Popescu is suffering from unspecified medical conditions which prohibit him from sitting for deposition, Defendant has failed to produce documentation supporting this assertion. Despite this, the documentation provided by Plaintiff shows efforts made to accommodate both counsel's schedule and the alleged health concerns of the deponent. Defendant failed to provide alternative dates or provide any objective proof of a medical condition which would prevent Mr. Popescu from testifying. Defendant's counsel asserted Mr. Popescu's ill health but failed to pursue protective orders. Despite the claim to the contrary, this too is relevant. While it is true that Mr. Popescu could not be brought into a deposition in California, the rules of court permit remote attendance and testimony at deposition and include provision that the court reporter need not be in the same room as the deponent. (CRC 3.1010.) CRC 2026.010 is also clear that Mr. Popescu may be deposed in his current state of residency, which Plaintiff arranged by noticing the deposition to be taken by remote means.

As to the relevancy of the deponent's testimony, the court looks to the operative complaint, which alleged that Defendant Leal, either himself or doing business as RentAFence failed to pay Plaintiff for services provided according to invoice. Plaintiff avers via declaration that during the deposition of Molina, it was learned that Popescu purportedly owned RentAFence during the time many of the invoices at issue were created. Therefore, Plaintiff seeks to discover if Popescu has information relating to RentAFence or Mr. Leal's failure to pay said invoices, which is directly relevant to the non-payment claims and the affirmative defenses raised by Mr. Leal and RentAFence in their answer. The testimony is relevant. The remaining issue appears therefore to be scheduling and time. The court notes

that a party may be deposed once, for a total of 7 hours. The parties may be able to meet and confer to spread the deposition over two days, starting at an earlier hour than 10 a.m. California time to ensure that the deposition begins, pauses, continues, and is finished at a reasonable time in Romania.

Defendant's Motion to Compel Answers to Deposition Questions by Plaintiff's PMK is GRANTED as to Topic 4. Defendant's motion for further responses to deposition topics 3, and 15 is Denied. As to topic 4, the request is GRANTED.

As to the PMK deposition, the allegation herein is that the Plaintiff's witness was unprepared to answer all questions posed within the scope of the designated topics. The transcripts indicate that there were some gaps in the information provided, and that the witness did review documents or have conversations with another possible PMK prior to the deposition. The issue is ultimately one of degree. The transcript reveals that the Plaintiff's witness answered most questions at length but was unable to respond to the very limited selections of questions posited in the motion to compel. For example, Defendant highlights on 7:13 to 7:16 that the witness states he did not prepare to respond to topic 2, however, in the next question at 7:18 to 7:24, the witness goes on to clarify that he spoke with another member of the company and confirmed that no one was aware of any communications with Mr. Popescu. Such a series of question is repeated in similar context in regard to topics, 3, 4, and 15. What the court notes is that the Defendant excises most of the pages following their highlighted portions, which indicate that there were additional questions and answers pursued in response to each of these topics. And while the witness repeatedly states he did not prepare he nonetheless repeatedly answers some of Defendant's questions.

The information sought is essentially the content and date of every single telephone conversation, or other communication with Molina occurring over the span of more than a year, and requiring review of every telephone bill generated for every employee in the entity, and then interviewing each person who may have spoken with Molina with regard to each conversation occurring up to four years in the past also does not seem to fit within the ambit of information that is reasonably available for review. it appears that the witness engaged in

some middle ground by responding to the questions, and was able, if not perfectly, to respond to the questions posed. However, the testimony given is also clear that the deponent had access to information which would have refreshed his memory, was aware of such information, and yet failed to review it. It is incumbent on the person most knowledgeable to at least familiarize himself if not with the detailed specifics, at least with enough information to respond to the inquiry with a bit more specificity.

As to the objections posed as to relevancy and trade secret privilege, the court notes that while the existence of a policy is not something protected by trade secret privilege, the content of that policy, is protected, even if it is relevant. This raises whether the Defendant can clearly state how the need to obtain the information in that policy (client identification, client retention, client sourcing practices) is relevant to the subject matter of a claim or a defense such that in the balance the trade secret privilege is overcome. Here, the defense posed is that there should be an offset against the amounts charged by the Plaintiff for fencing which the Defendant alleges was wrongfully retained by the Plaintiff. It is not clear how client sourcing, identification, and retention would pertain to a claim of offset.

Defendant's Application to take the deposition of Mike Burt on shortened time is GRANTED. His deposition was scheduled September 5, 2024, but he failed to appear, nor has, according to Defendant, Plaintiff been willing to provide alternative dates, until there was an agreement that he would be available on two dates.

Per Defendant, Plaintiff avers that Defendant waived the remainder of their statutorily permissible time. The focus of the dispute appears to be the production of certain texts that Mr. Burt reviewed prior to his testimony, but which were not produced in native format. The agreement asserted is that Plaintiff's counsel would see how to make the texts available, and they would conclude for the day, but they would resume on the 27<sup>th</sup>, so that, if necessary, they could follow up on the text messages. (Welling Dec ¶5.) Herein, Plaintiff did not serve any objections to the Deposition notice (Cal. Civ. Proc. §2025.450 sub (a).) The notice itself specifies that the deposition would be broke up over two days (Welling dec ¶4, ex 1.) The court concurs with Defendant that absent timely objection to the deposition notice, which



specified the time format of the deposition, and absent any motion for protective order in this regard, the deposition is properly noticed and should proceed.

Defendant's unopposed Motion for Leave to Complete Discovery and Hear Discovery Motion is GRANTED.

The requests for sanctions are all DENIED. The court notes that both parties bear responsibility in their lack of effective communication in regard to these discovery disputes, absent more definitive evidence of a lack of meaningful meet and confer, given the short timelines involved at the time of these discussions, the court will not sanction either party for their lapses as perceived by the other.

**CU-24-00241 People of the State of California v. Eric Wong**

The Motion is CONTINUED to January 13, 2025 at 10:30 a.m. The moving party is ordered to provide notice of the new hearing date and file a proof of service as a separate document.

**PR-22-00024 Estate of Robert Kenneth Kuster**

The Petition for Settlement and for Final Distribution is APPROVED as requested.

**PR-24-00098 In re the Matter of: Harold H. Wells, Jr. and Nancy E. Wells Revocable Trust**

The Petition for Order Confirming Trust Asset is APPROVED as requested.

**END OF TENTATIVE DECISIONS**