

TENTATIVE RULINGS FOR DECEMBER 2, 2024
Department S29 - Judge Nicole Quintana Winter

This court follows California Rules of Court, rule 3.1308(a) (1) for tentative rulings. (See San Bernardino Superior Court Local Emergency Rule 8.) Tentative rulings for each law & motion will be posted on the internet (<https://www.sb-court.org>) by 3:00 p.m. or 7:00 p.m. on the court day immediately before the hearing.

If you wish to submit on the ruling, call the Court, check-in and state that you will be submitting on the Tentative, and your continued appearance is not necessary. However, you must check in. If both sides do not appear, the tentative will simply become the ruling. If any party submits on the tentative, the Court will not alter the tentative and it will become the ruling. If one party wants to argue, Court will hear argument but will not change the tentative. If the Court does decide to modify tentative after argument, then a further hearing for oral argument will be reset for both parties to be heard at the same time by the Court. This procedure is meant to minimize your waiting time in Court.

JOHNNY HOUSTON
v.
AUTOZONE, INC. et. al,

CIVSB2201289

Motion(s): Motion To Compel Responses to Requests for Production, Set 3

Movant(s): Defendant Autozone Parts, Inc.

Respondent(s): Plaintiff Johnny Houston

DISCUSSION

On May 15, 2024, Defendant propounded a third set of Requests for Production of Documents (RFPs). Plaintiff failed to respond by the due date. On October 7, 2024, Defendant moved to compel response to RFP, Set 3. Plaintiff represents that on or about October 24, 2024, he produced all of his medical records to the Defendant. (Counsel Martin Jerisat Decl., at ¶ 5.) On November 21, 2024, Plaintiff appears to have verified his responses to RFP, Set 3, and filed his opposition to the Defendant’s motion to compel. On November 22, 2024, Defendant replied.

ANALYSIS

Ordinarily, within 30 days after service of the requests for production, the party to whom the demand is directed shall serve responses to the demanding party. (Code Civ. Proc., § 2031.260(a).) The responding party must sign the response under oath. (Code Civ. Proc., § 2031.250(a).) An unsworn response is equivalent to no response; therefore Code Civ. Proc., § 2031.300 applies and

the moving party is entitled to sanctions. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.) In addition, if the responding party fails to provide any response, the party making the demand for inspection, copying, testing, or sampling may move for an order compelling a response to the demand. (Code Civ. Proc., § 2031.300(b).) Per the Code of Civil Procedure, there is no meet and confer requirement for this type of motion to compel initial responses. (See Code Civ. Proc., § 2031.300(b); See also *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411; See also *Leach v. Superior Court (Jesse Markum)* (1980) 111 Cal.App.3d 902, 906.)

The court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand, unless it 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., § 2031.300(c).)

Opposition papers must be served and filed at least nine court days before the hearing date, “unless otherwise ordered or specifically provided by law.” (Code Civ. Proc., 1005(b).) The court, in its discretion, may refuse to consider late-filed papers in ruling on the motion. In such event, the court’s minutes or order must so indicate. (Rules of Court, Rule 3.1300 (d).) A court’s decision to disregard late-filed papers may not be exercised arbitrarily. (*Kapitanski v. Von’s Grocery Co., Inc.* (1983) 146 Cal.App.3d 29, 32-33 [court can summarily reject late-filed papers under local rules, but if it considers them at all, it must apply Code of Civil Procedure section 473 standards, and it is an abuse of discretion to refuse relief if “excusable neglect” shown].) At least one court has held that a court has discretion to consider late-filed papers even without a Section 473 showing. (See *Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1202 (*Juarez*) [filing 2 days late with no showing of prejudice by other side supported court’s discretion in “view of the strong policy of the law favoring the disposition of cases on the merits”].)

In this case, the Court notes that there was no requirement to meet and confer and therefore, finds Plaintiff’s contention that the Defendant failed to meet and confer without merit. In addition, the Court finds that the Plaintiff delayed responding to RFP, set 3, until November 21, 2024, when the Plaintiff finally verified his responses to RFP, set 3, which were allegedly sent to the Defendant on October 24, 2024. In addition, over the Defendant’s objection that the Opposition by Plaintiff was late, the Court exercises its discretion to consider the Plaintiff’s Opposition, and to decide this matter on its merits. Here, the Court grants the Defendant’s motion to compel but further finds that the motion is moot as of November 21, 2024.

Here, not only did the Plaintiff fail to reply to the RFP submitted by the Defendant until October 24, 2024, it also replied with unverified responses, which was tantamount to no response at all. The Plaintiff verified the responses, on November 21, 2024, in its Opposition to the Motion to Compel, which was also submitted by the Plaintiff six days late to the Court. Based on the dilatory actions of the Plaintiff, the Defendant is the prevailing party and is entitled to sanctions. The court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand, unless it 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., § 2031.300(c).) Based on the analysis

above, there is no substantial justification or other circumstances that make the imposition of sanctions unjust. Defendant's request for sanctions is granted in the amount of \$1,140.00.

Dated: December 2, 2024

Judge N. Quintana Winter