SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/15/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV1800188

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: YOUNG REAL ESTATE GROUP LLC

vs.

DEFENDANT: MORGAN PROPERTIES, INC., ET AL

NATURE OF PROCEEDINGS: MOTION – DISCOVERY; DISCOVERY FACILITATOR; FOR ORDER ESTABLISHING ADMISSIONS AND FOR MONETARY SANCTIONS BY DEFENDANTS MORGAN PROPERTIES AND DANIEL MORGAN

RULING

Defendants Daniel Morgan and Morgan Properties, Inc.'s ("Defendants") motion to deem matters admitted is GRANTED as to Morgan Properties, Inc.'s Requests for Admission, Set Two ("Morgan Properties RFAs Set Two"). (Code Civ. Proc., § 2033.280, subds. (a), (c).) It is DENIED as to Dan Morgan's Requests for Admission, Set One ("Dan Morgan RFAs Set One"). Plaintiff Young Real Estate Group, LLC ("Plaintiff") and its counsel are ordered to pay a total of $5,330.50 in monetary sanctions. (Code Civ. Proc., § 2033.280, subd. (c).)

BACKGROUND

On August 7, 2023, Morgan Properties, Inc. served its Requests for Admission, Set One ("Morgan Properties RFAs Set One") on Plaintiff. (McReynolds Dec., ¶ 2 & Ex. 3.) On October 23, 2023, Plaintiff served unverified responses, which included denials as to RFA Nos. 4-12 and 15-17. (McReynolds Dec., ¶ 3 & Ex. 4.)

On February 1, 2024, Morgan Properties, Inc. served its Morgan Properties RFAs Set Two on Plaintiff. (McReynolds Dec., ¶ 5 & Ex. 4.) Responses were due no later than March 6, 2024. (McReynolds Dec., ¶ 6.) As of May 3, 2024, the date Defendants filed their reply in support of this motion, Plaintiffs still had not responded to Morgan Properties RFAs Set Two. (McReynolds Reply Dec. ¶ 4.)

Also on February 1, 2024, Dan Morgan served his Dan Morgan RFAs Set One on Plaintiff. (McReynolds Dec., ¶ 5 & Ex. 5.) On May 2, 2024, in response to this motion, Plaintiff served responses to Dan Morgan RFAs Set One. (McReynolds Reply Dec., ¶ 3 & Ex. 1.)

Defendants filed the instant motion to deem admitted Morgan Properties RFAs Set One, Nos. 4-12 and 15-17; Morgan Properties RFAs Set Two, in their entirety; and Dan Morgan RFAs Set One, in their entirety. (Notice of Motion, p. 1.) Defendants also request sanctions. (*Id.*, p. 2.) Morgan Properties RFAs Set One, Nos. 4-12 and 15-17 are no longer at issue because Plaintiff served verifications in response to this motion. (Dec. of Non-Resolution, ¶¶ 3-4.) Remaining for resolution are Plaintiff's failure to respond to Morgan Properties RFAs Set Two; the sufficiency of Plaintiff's responses to Dan Morgan RFAs Set One; and the sanctions issue.

LEGAL STANDARD

"If a party to whom requests for admission are directed fails to serve a timely response, . . . [the party] waives any objection to the requests, including one based on privilege or [work product protection]." (Code Civ. Proc., § 2033.280, subd. (a).) The court, on motion, may relieve the party from this waiver if certain specified conditions are met. (*Ibid.*) Additionally, the party that served the requests "may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010)." (Code Civ. Proc., § 2033.280, subd. (b).) The court "shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220." (Code Civ. Proc., § 2033.280, subd. (c).) The court is required to impose sanctions on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated a motion pursuant to Section 2033.280. (*Ibid.*)

Code of Civil Procedure, section 2033.220 sets forth the requirements for responses to requests for admission. "Each answer . . . shall be as complete and straightforward as the information reasonably available to the responding party permits." (Code Civ. Proc., § 2033.220, subd. (a).) Each answer must "admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party"; must "deny so much of the matter involved in the request as is untrue"; and must "specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge." (Code Civ. Proc., § 2033.220, subd. (b).) To the extent the responding party cites lack of information or knowledge as a reason for failure to admit all or part of a request for admission, it must "state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." (Code Civ. Proc., § 2033.220, subd. (c).)

DISCUSSION

Morgan Properties RFAs Set Two

Plaintiff's half-page opposition brief says, in relevant part, the following, which is not supported by an attorney declaration or any other evidence: "On May 2, 2024, Young served answers to the Requests for Admissions, Set One, from Daniel Morgan, without objections and including verification. The responses to the Form Interrogatories, Set One, Section 17.1, was included in the Request for Admissions, Set One, responses. Identical discovery was served by Morgan Properties, Inc. and the verifications to same have been received and as soon as word processing finishes the identical responses to the identical discovery[,] that will be served." Although this indicates that Plaintiff was merely waiting for "word processing" to "finish"

responses identical to those it had already submitted before serving responses to Morgan Properties RFAs Set Two, Plaintiff had not served responses by the time Defendants filed their reply and Declaration of Non-Resolution the next day. (McReynolds Reply Dec. ¶ 4; Dec. of Non-Resolution, ¶¶ 3-4.)

The Court has no basis to find that Plaintiff has served, prior to the hearing on this motion, responses to Morgan Properties RFAs Set Two that are in substantial compliance with Section 2033.220. As a result, it is required to, and does, order that the truth of the matters specified in these requests is deemed admitted. (Code Civ. Proc., § 2033.280, subds. (a), (c).)

Dan Morgan RFAs Set One

Defendants argue that these responses do not substantially comply with Section 2033.220 because the majority of the responses neither admit nor deny the content, but instead merely restate the request. (Reply, pp. 2-3.) Here is a representative example of what Defendants are referring to:

> "**REQUEST FOR ADMISSION NO. 1:** Admit that the document attached hereto as EX-1 is a true and correct copy of the Real Estate Transfer Disclosure Statement and attachments that Julie Young received prior to close of escrow on the sale of 87 Laurel Grove Avenue, Ross, California.
> **RESPONSE TO REQUEST FOR ADMISSION NO. 1:** Admit that the document attached as Ex 1 is a true and correct copy of the Real Estate Transfer Disclosure Statement and Attachment thereto and Residential Earthquake Hazards Report and Supplement to Disclosure Statement and Supplemental Disclosures that Julie Young received prior to close of escrow on the sale of 87 Laurel Grove Avenue, Ross, California. Except as admitted, denied on the grounds that the response accurately describes the documents in Ex. 1."

This response does not merely restate the request without admitting or denying its content. It admits it, then restates the request, as modified in some respects, to qualify the admission. Plaintiff's method of indicating admissions and denials could certainly be clearer. For example, Plaintiff could have started the above response with, "Plaintiff admits . . ." That said, it is not so unclear that the Court had difficulty locating an admission or denial in the response.

Accordingly, the Court finds that Plaintiff "has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220" and denies Defendants' request to deem these matters admitted. (Code Civ. Proc., § 2022.280, subd. (c).)

Form Interrogatory 17.1

Defendants argue that Plaintiff has also failed to provide responses to Form Interrogatory 17.1, which Defendants served on February 1, 2024. (See Reply, pp. 2-3; McReynolds Reply Dec., ¶ 4.) This motion was brought pursuant to Code of Civil Procedure, section 2033.280, which relates only to requests for admissions and not other discovery vehicles. Motions to compel responses to interrogatories are governed by Code of Civil Procedure, section 2030.290, and Defendants must file a motion pursuant to that

statute if they want an order compelling Plaintiffs to respond to Form Interrogatory 17.1. The Court also notes that Plaintiff's failure to respond to Form Interrogatory 17.1 was not mentioned either in Defendants' Notice of Motion or their brief, but simply raised on the reply, which would prevent the Court from ordering Plaintiff to respond in any event. (Cal. Rules of Court, rule 3.1110(a); *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.)

Sanctions

Before filing this motion, defense counsel requested on numerous occasions that Plaintiff verify its responses to Morgan Properties RFAs Set One and respond to the other two sets of RFAs at issue. (McReynolds Dec., ¶¶ 4, 6, Exs. 1, 2.) Plaintiff has provided no explanation for its failure to heed these legitimate requests until after this motion was filed. The Court concludes that Plaintiff's failure to timely respond to this discovery necessitated this motion and sanctions are mandatory.

Defense counsel's rate is $525 per hour. (McReynolds Reply Dec., ¶ 5.) Defense counsel states that he spent 10 hours working on matters relating to this motion, including 3.5 hours attempting to meet and confer and preparing the moving papers; 2.5 hours preparing the application to hear this motion ex parte and attending that hearing; 1 hour conferring with opposing counsel and the discovery facilitator; 2 hours preparing the reply; and an anticipated 1 hour preparing for and attending the hearing on this motion. (*Ibid.*) The ex parte application was necessary in order to advance the date for the hearing on this motion so that it would not take place after the May 20, 2024 cutoff date for discovery motions in this case. (*Ibid.*) Defendants further seek $80 in costs. (*Ibid.*) Plaintiff has not made any argument about the appropriateness of imposing sanctions or the reasonableness of the amount requested.

The Court considers all of the tasks above to have been made necessary by Plaintiff's unexplained failure to respond to discovery. It also considers the amounts of time spent and defense counsel's rate reasonable. Accordingly, the Court imposes sanctions in the amount of $5,330.50, to be paid within thirty days. Thereafter, statutory interest shall accrue.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for May, 2024 is as follows:
Zoom link for Courtroom H CIVIL 160 781 1385 passcode 082614
Meeting ID: 160 781 1385
Passcode: 082614

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/15/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV2002251

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: DEBORAH BARIGAN

vs.

DEFENDANT: VILLAGE INVESTMENTS, INC., ET AL

NATURE OF PROCEEDINGS: MOTION – SANCTIONS

RULING

Continued to May 22, 2024 at 1:30 pm.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/15/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV2201691

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PLAINTIFF: DIV 15 TECH vs. DEFENDANT: THOMPSON BUILDERS CORPORATION	

NATURE OF PROCEEDINGS: MOTION – OTHER: ORDER FOR ISSUANCE OF WRIT

RULING

Plaintiff Div Tech's ("Plaintiff") application for additional writ is GRANTED.

LEGAL STANDARD

Following the issuance of a writ of attachment, a plaintiff may apply for an additional writ of attachment. (Code Civ. Proc. §485.510.) The application executed under oath must include a statement that the plaintiff has been issued a writ of attachment, the amount to be secured by the attachment, and a description of the property to be attached, including the belief that the property is not exempt from attachment. (Code Civ. Procedure §485.520.) Additionally, in the event of an ex parte application, there must be a statement demonstrating that great or irreparable injury would result to the plaintiff if issuance of the order were delayed for notice. (*Id.*)

DISCUSSION

Upon review of the application, Plaintiff has met all of the prerequisites for an additional undertaking. Although Defendant Thompson Builders Corporation ("Defendant") asserts that Plaintiff has failed to meet its burden of demonstrating any great or irreparable injury would result without an attachment, this requirement applies where there is no notice to Defendant. At the time this matter came on for an ex parte hearing, the court permitted Defendant to respond to the application and therefore, notice was provided to Defendant. The court notes that it initially approved a writ attachment in the amount of $348,811.18, but reduced the amount to $207,306.54 in the event that payment was made by Defendant to Plaintiff on or before December 21, 2022. Moreover, counsel for DIV 15 Tech has stated in a declaration that arbitration is set for August 13, 2024, such that there is a need to obtain a levy in advance of the arbitration date.

For these reasons, the additional writ of attachment is appropriate.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/15/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV2301159

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PETITIONER: BRUCE CORCORAN	
vs.	
RESPONDENT: COUNTY OF MARIN	

NATURE OF PROCEEDINGS: MOTION – RECONSIDERATION

RULING

Petitioner's Motion for Reconsideration is DENIED.

LEGAL STANDARD

Motions for reconsideration are governed by Code of Civil Procedure section 1008, subdivision (a), which provides:

> "When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown."

Motions for reconsideration are restricted to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. (*Gilberd v. AC Transit (*1995) 32 Cal.App.4th 1494, 1500.) A court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon "new or different facts, circumstances, or law." (*Ibid.*) There is a strict requirement of diligence--i.e., the moving party must present a satisfactory explanation for failing to provide the evidence or different facts earlier. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690.) "Section 1008 gives the court no authority when deciding whether to grant a motion to reconsider to 'reevaluate' 'or 'reanalyze' facts and authority already presented in the earlier motion." (*Forrest v. Dept. of Corrections*

(2007) 150 Cal.App.4th 183, 204, disapproved on other grounds in *Shalant v. Girardi* (2011) 51 Cal.4th 1164.)

DISCUSSION

Petitioner argues that there are two "new facts" that justify reconsideration of the Court's March 25, 2024 order ("Order"): (1) the Order itself, which according to Petitioner leaves inconsistencies in the Countywide Plan by erroneously limiting its remedy to the removal of precedence clauses alone; and (2) the County's consideration of potential amendments to its zoning ordinance, which according to Petitioner rely on the precedence clauses at issue in the Order.

With respect to (1), the inconsistencies at issue were addressed at length by the parties in their briefing and by the Court in its Order. The Court found that the County had "recognized that its updated Housing Element created inconsistencies within the CWP, including language in its community plans," but that the County also included "programs (and funding) to reconcile inconsistencies within those plans," an approach that is "[c]onsistent with *Friends of Aviara*." (Order at pp. 8-9.) To the extent Petitioner claims the Order does not address this issue, the Court disagrees. Petitioner challenged not only the inconsistencies themselves but also the precedence clauses. The Court found that the relevant statutes and case law *permit* inconsistencies in limited circumstances (where the inconsistencies are created in an effort to comply with the applicable housing requirements *and* when the documents themselves identify the inconsistencies and create a timeline to address them). Here, the inconsistencies themselves fell into this permitted category because they were properly identified and the plan to reconcile them was also spelled out. There was no need to order Respondent to adopt further schedules to reconcile the inconsistencies because the schedules were already included (unlike some of the cases where the Court ordered such a schedule be created when none existed). The only area where the Respondent was out of compliance with relevant laws, was in their use of precedence clauses. The Order specifically instructs them to fix this issue by removing the improper precedence clauses.

The Court has no ability to 'reevaluate' 'or 'reanalyze' facts and authority already presented. (*Forrest v. Dept. of Corrections, supra,* 150 Cal.App.4th at p. 204.) Since the inconsistencies were already raised and evaluated in the prior Order (and found to comply with applicable laws), the fact that the Court did not order Respondent to remove them is not a proper basis for a motion for reconsideration. (*Gilberd v. AC Transit, supra,* 32 Cal.App.4th at p. 1500.) A party's mere belief that a prior ruling was erroneous is not sufficient to support a motion for reconsideration. (*See Global Protein Prods. v. Le* (2019) 42 Cal.App.5th 352, 364.)

Regarding (2), Petitioner argues that "the additional new circumstance supporting Petitioner's Motion is the County's recent administrative proceedings intended to approve broad scale changes to the zoning code to implement Housing Element policies." (Graf Decl., ¶ 2, Ex. 1.) Petitioner claims, without any evidentiary support, that these amendments will necessarily rely on improper precedence clauses. This does not qualify as a new or different fact or circumstance under section 1008. Petitioner has provided no evidence that the zoning code amendments will rely on precedence clauses. No amendments have been adopted yet. It is unclear what the final language of the amendments will be.

Petitioner has failed to identify any new or different facts, law, or circumstances as expressly required by Code of Civil Procedure section 1008(a) and therefore, the motion for reconsideration must be DENIED.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/15/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV0001418

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PETITIONER: THOMAS MICHAEL COLT vs. RESPONDENT: BOARD OF PAROLE HEARINGS, ET AL	

NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

Plaintiff Thomas Michael Colt's motion for leave to file a supplemental complaint is DENIED without prejudice.

BACKGROUND

Plaintiff's initial complaint filed on November 21, 2023, asserts a claim for deprivation of rights. (Comp. ¶1-13, p. 2-7.) His second cause of action is for "Falsifying a Public Document." (Comp. ¶ 7-19, p. 7-10.) His third cause of action alleged "Obstruction of Justice." (Comp. ¶ 20-65.). On March 22, 2024, Plaintiff filed an amendment to the complaint, which amends paragraph 65 and the prayer for relief.

Plaintiff has yet to file a proof of service demonstrating that Defendants have been served. Defendants have not appeared in this action.

LEGAL STANDARD

A motion to amend a pleading before trial must include a copy of the proposed amended pleading and should be serially numbered (i.e. "Second Amended Complaint") to differentiate it from prior complaints. (Cal. Rule Ct. 3.1324(a)(1).) Additionally, the motion must state the proposed allegations to be added to the complaint (Cal. Rules Ct. 3.1324(a)(3).) Additionally, the motion must be accompanied by a declaration specifying the effect of the amendment, why it is necessary, the facts giving rise to the amended complaint, and the reasons why the amendment was not made earlier.

Discussion

Plaintiff's motion for leave to amend does not comply with the California Rules of Court. Plaintiff did not attach a proposed amended complaint. Nor did the motion specify with particularity how Plaintiff intended to modify the amended complaint. Plaintiff's motion attaches a declaration of another inmate, Rodney Blach, but again, nothing in that complaint asserts how he intends to amend the complaint.

Based on the above, Plaintiff's motion for leave to file an amended complaint is denied without prejudice.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 05/15/24 TIME: 1:30 P.M. DEPT: H CASE NO: CV0002116

PRESIDING: HON. SHEILA S. LICHTBLAU

REPORTER: CLERK: ALINA ANDRES

PETITIONER: PLEASANT TRAVEL SERVICE, ET AL vs. RESPONDENT: JOHN MANDERFELD	

NATURE OF PROCEEDINGS: MOTION – LEAVE TO FILE CROSS-COMPLAINT

RULING

On March 7, 2023, Ventura Superior Court granted Defendant John Manderfeld's ("Defendant) unopposed motion to transfer venue to Marin Superior Court. The court also vacated Defendant's hearing on his unopposed motion for leave to file a cross-complaint.

Plaintiff Pleasant Travel Service does not oppose Defendant's request for leave to file his cross-complaint. Accordingly, Defendant's motion is GRANTED. Defendant shall file his cross-complaint within ten (10) days of service of this order.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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