

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 12/28/2018                      EVENT TIME: 08:20:00 AM                      DEPT.: 20  
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2018-00509997-CU-PA-VTA  
CASE TITLE: GARCIA VS. MESSNER

CASE CATEGORY:    Civil - Unlimited    CASE TYPE: PI/PD/WD - Auto

EVENT TYPE: Motion to Compel - Further Responses to Form Interrogatories, Set One  
CAUSAL DOCUMENT/DATE FILED: Motion - Other, 11/30/2018

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Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at Courtroom20@ventura.courts.ca.gov or by fax to Judge Guasco's secretary, Art Alvara at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, this case is assigned for all purposes to Judge Guasco.

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The following is the Court's tentative decision concerning the motions of plaintiffs, Carlos Garcia and Olga Duarte ("plaintiffs") compelling further responses of defendant, Mark Messner ("defendant") to (1) Form Interrogatories, Set One; and (2) Special Interrogatories, Set One:

**Rulings Common to Both Motions**

The Court finds the motions are timely pursuant to the parties' stipulations extending the time to bring them.

The Court finds that plaintiffs have met their burden of meeting and conferring with defendant in good faith as a precondition to bringing the motions.

**Motion to Compel Further Responses to Form Interrogatories, Set One**

The Court GRANTS this motion IN PART and DENIES it IN PART as follows:

**Numbers 15.1 and 17.1:** The Court GRANTS the motion to compel further responses to these two interrogatories and their subparts. The Court OVERRULES each of the objections defendant has raised to these interrogatories. These interrogatories are not subject to the Rule 2, subdivision (d), limitation for a simple reason: this ground of objection expressly is reserved for the 16.0 series of form interrogatories only. The objection that responding to these interrogatories asks for expert or legal opinions or conclusions is equally without merit: "An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial." (Code of Civ. Proc., § 2030.010, subd. (b).)(*Accord, Rifkind v. Superior Court* (1994) 22 Cal.App.4<sup>th</sup> 1255, 1261.) Defendant does not support the attorney/client privilege or work product privilege assertions with either facts or law. In light of the preceding discussion, any such objections are overruled.

Since defendant did not provide substantive responses, only objections, to these interrogatories, the Court ORDERS defendant to provide further, verified, code-compliant responses to these form interrogatories, without objection, **by no**

later than January 24, 2019.

**Numbers 16.2, 16.3, 16.4, 16.5, and 16.6:** The Court DENIES the motion to compel further responses to these form interrogatories WITHOUT PREJUDICE. The Court SUSTAINS defendant's objection to these interrogatories on the sole ground of Rule 2, subdivision (d); the discovery was propounded much too soon in the litigation to permit defendant the opportunity to conduct meaningful basic discovery in order to respond to these damage-oriented interrogatories. Rule 2, subdivision (d), is intended to prevent that situation. The Court sustains this objection without prejudice to plaintiffs serving timely, code-compliant supplemental interrogatories later in the litigation once defendant's opportunity to complete basic discovery, particularly that related to causation and damages, is complete. The Court OVERRULES the remainder of defendant's objections.

**Sanctions:** The Court DENIES both parties' cross-requests for monetary sanctions. The results of this motion as to these form interrogatories are mixed; in some respects plaintiffs have prevailed. In others, defendant has prevailed. In this limited circumstance, the Court finds it is most fair and just to direct that each side bear its own costs and attorney's fees as to this discovery dispute. The Court finds it would be unjust to award either party monetary sanctions in association with this motion.

### **Motion to Compel Further Responses to Special Interrogatories, Set One**

The Court GRANTS this motion in its entirety (numbers 1-12). These special interrogatories are reasonably clear and straightforward contention interrogatories. They relate principally to defendant's contentions with regard to negligence and liability, as well as the supporting facts, witnesses and documents concerning same. The objection-only responses are not code-compliant. Code of Civil Procedure section 2030.220, subdivision (a), requires defendant to provide responses which are "as complete and straightforward as the information reasonably available to [defendant] permits." Further, "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." (Code of Civ. Proc., § 2030.220, subd. (b).) "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." (Code of Civ. Proc., § 2030.220, subd. (c).) Thus, assuming some objections are well-taken, defendant still has the burden of responding to the extent possible based on information reasonably available to him upon good faith inquiry. Clearly, defendant did not comply with this obligation as to these special interrogatories.

As to defendant's boilerplate objections, they suffer the same deficiencies as those noted in relation to the form interrogatories discussed above. Contention interrogatories precisely of the type propounded here are statutorily-approved as against the objections asserted by defendant. (Code of Civ. Proc., § 2030.010, subd. (b); *Rifkind v. Superior Court*, *supra*, 22 Cal.App.4<sup>th</sup> at p. 1261.) The Court, therefore, OVERRULES each of defendant's objections to these special interrogatories.

The Court ORDERS defendant to provide further, verified, code-compliant responses to Special Interrogatories, Set One, numbers 1-12, without objection, **by no later than January 24, 2019.**

**Sanctions:** The Court GRANTS plaintiffs' request for monetary sanctions in the sum of \$1,600 jointly and severally against defendant, and his counsel of record, the law office of McClaugherty & Associates. Plaintiffs are the prevailing parties as to this motion. Defendant's objections are without merit and its responses plainly are not code-compliant. Thus, the Court cannot find that defendant's position as to these special interrogatories is substantially justified. It would be unjust to deny sanctions to plaintiffs as to this motion. In light of the Court's ruling, defendant's cross-request for sanctions is DENIED. The Court finds the above sum is reasonable in light of the experience and skill of counsel, the nature and complexity of the services performed, and the results obtained. The Court ORDERS defendant and his counsel of record, jointly and severally, to pay the sum of \$1,600 to plaintiffs, at the direction of their counsel of record, **by no later than January 31, 2019.**

Counsel for plaintiffs shall serve and file a notice of ruling and proposed order consistent with the above. A copy of this tentative decision (if adopted as the Court's ruling) may be attached to and incorporated by reference in any such notice or proposed order in lieu of copying same verbatim in the body of the document.