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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION

LARRY GERACI, an individual,

Plaintiff,

v.

DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

Defendants.

AND RELATED CROSS-ACTION

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil

**PLAINTIFF/CROSS-DEFENDANT
LARRY GERACI'S OPPOSITION TO
DEFENDANT/CROSS-COMPLAINANT
DARRYL COTTON'S MOTION FOR
ORDER THAT INITIAL ANSWERS TO
INTERROGATORIES BE DEEMED
BINDING AND FOR SANCTIONS**

[IMAGED FILE]

DATE: April 26, 2019
TIME: 9:00 a.m.
DEPT: C-73

Filed: March 21, 2017
Trial Date: June 28, 2019

I. INTRODUCTION

By this motion, Defendant/Cross-Complainant Darryl Cotton ("Cotton") seeks an order: a) that Plaintiff/Cross-Defendant Larry Geraci's ("Geraci's") "initial answers to interrogatories" be deemed binding; and b) for sanctions. Cotton's motion has been brought pursuant to CCP § 2030.310(b), which addresses the situation wherein a party *amends* a previous interrogatory response, and the opposing party seeks to bind the party who *amended* to the previous response given. Here, Cotton seeks an order binding Geraci to interrogatory responses *which have never been amended*!

This motion lacks any legal basis. Geraci has never amended his "initial answers to

1 interrogatories” so there is no justification for an order binding Geraci to his “initial interrogatory
2 responses.” Moreover, even assuming for the sake of argument only that it would be relevant to this
3 motion, Geraci’s “initial answers to interrogatories” are not contradicted by any position Geraci has
4 taken in this case. Geraci stands by this initial answers. Defendant can use that discovery response in all
5 appropriate ways.

6 As the prevailing party in the motion, Plaintiff is entitled to an award of sanctions in the amount
7 of \$1,500.00, which amount is supported by the supporting Declaration of Scott H. Toothacre.

8 **II. LEGAL ARGUMENT**

9 **A. Cotton is not entitled to the requested order under Code of Civil Procedure Section** 10 **2030.310(b) because Geraci has never amended his initial answers to interrogatories.**

11 Cotton requests this Court issue an order pursuant to CCP § 2030.310(b) that Geraci’s “initial
12 answers to interrogatories” be deemed binding.

13 Cotton’s Notice of Motion fails to identify the “initial answers to interrogatories” to which the
14 motion is addressed. Cotton also fails to submit any Proposed Order, let alone a Proposed Order
15 identifying the “initial answers to interrogatories” to which the motion is addressed. In Mr. Cotton’s
16 supporting Memorandum of Points and Authorities he states that “In November of 2017, Geraci
17 provided Verified Answers to Form Interrogatories (Set One) ...” (Cotton Memo of Ps and As, p.1,
18 1.14.) That statement is incorrect as Geraci did not serve any such interrogatory responses in November
19 of 2017. Later in his supporting Memorandum of Points and Authorities Mr. Cotton states that “On
20 September 25, 2017, Geraci provided his September 2017 Answers (Austin Dec. Ex. 1.)” (Cotton
21 Memo of Ps and As, p. 6, l. 7.) **Mr. Geraci’s did serve initial answers to Form Interrogatories-**
22 **General, Set One, on September 25, 2017; this opposition assumes that these are the “initial**
23 **answers to interrogatories” to which this motion is addressed.**

24 Cotton’s argument in his Memorandum of Points and Authorities is incoherent and, at least to
25 the extent it can be understood, is scurrilous, irrational, and legally unsupportable. His argument never
26 bothers to address the key issue at the heart of this motion—has Geraci amended his “initial answers to
27 interrogatories” such that he is entitled under CCP § 2030.310(b) to an order that Geraci’s original
28 interrogatory responses be deemed binding. **The answer is NO.**

1 CCP § 2030.310(b) provides: “The party who propounded an interrogatory *to which an*
2 *amended answer has been served* may move for an order that the initial answer to that interrogatory be
3 deemed binding on the responding party for the purpose of the pending action.” Geraci has never
4 served any **amended answers** to his “initial answers to interrogatories”; thus, Cotton’s motion should
5 be denied. **This statute is simple and straightforward – the statute is applicable only when a party**
6 **serves an amended answer to an interrogatory that is different from his initial answer.** Not only
7 is the language of the statute clear and unambiguous, it is also clear from the two cases *cited by Cotton*
8 in support of his motion. Both *Gordon v. Superior Court* (1984) 161 Cal.App. 3d 157 and *Universal*
9 *Underwriters Ins. Co. v. Superior Court* (1967) 250 Cal.App.2d 722, each involved a motion under
10 CCP § 2030.310(b) for an order binding a party who served (or sought leave to serve) amended
11 answers to that party’s initial interrogatory answers. The statute simply does not apply to the instant
12 motion, which does not involve any amended interrogatory responses.

13 As noted above, Geraci served initial answers to Form Interrogatories-General, Set One, on
14 September 25, 2017. (Austin Dec. Ex. 1.) Cotton’s motion fails to identify any amended answer to
15 these interrogatories served by Geraci because no amended answers were ever served. Cotton’s motion
16 does mention answers to discovery responses served by Geraci in November 2018, stating: “In
17 November of 2018, Geraci provided: “Response to Request for Admission (Set One), Form
18 Interrogatories (Set Two), Special Interrogatories (Set Two), and Request for Production (Set Two).
19 Austin Dec. Ex. 5, 8, 9, and 10, respectively.” (Cotton Memo of Ps and As, p. 7, ll. 13-15.) Cotton
20 goes on to discuss the Geraci responses therein to Form Interrogatory No. 17.1 and to Request for
21 Admissions Nos. 22, 23, and 24, *but Cotton does not identify or discuss any amended discovery*
22 *responses of any kind, let alone any amended responses to any initial answers to interrogatories served*
23 *by Geraci.* In fact, none of Geraci’s responses served in November 2018 *amend* any of the responses
24 made by Geraci in his “initial answers to interrogatories” (i.e., in his initial answers to Form
25 Interrogatories-General, Set One, served by Geraci on September 25, 2017). In fact, the opposite is the
26 case. **Cotton fails to point out to the Court that the Form Interrogatories (Set Two), to which Geraci**
27 **responded in November 2018 (Austin Dec., Ex 8), contained a number of duplicate questions**
28 **previously asked in Form Interrogatories (Set One), to which Geraci responded on September 25, 2017**

(Austin Dec., Ex. 1) (e.g. Form Interrogatories Nos. 50.1-50.6); Geraci's responses to those form interrogatories in both Set Two and Set One are identical, not different.

B. Cotton and His Attorney Jacob Austin Should be Sanctioned for this Ridiculous Motion¹

CCP § 2030.310(d) provides: "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2033.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to deem binding an initial answer to an interrogatory, 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." A simple reading of the statute reveals there is no statutory authority supporting the motion in this instance; the motion is not only without substantial justification, it is frivolous.

Attorney Scott H. Toothacre spent 4.0 hours reading Cotton's Motion to Bind, researching the statutes and case law mentioned therein, trying to make heads or tails of attorney Austin's incoherent arguments, and drafting the opposition papers. Attorney Toothacre's hourly rate on this case is \$375.00, resulting in a requested sanction amount of \$1,500. (See Declaration of Scott H. Toothacre, filed and served herewith.) Both the time spent, the hourly rate, and the dollar amount is fair and reasonable; in fact, it is conservative in that it excludes any anticipated attorney time for preparation for and participatiin in oral argument. The court should award a sanction against Defendant Cotton or his counsel, Mr. Jacob Austin, in the amount of \$1,500.00.

In awarding this sanction, the Court should take note that Cotton's argument, which ignored the language of the statute pursuant to which the motion was brought, was an all too familiar rehash of his prior motions for judgment on the pleadings and his argument in his pending summary judgment motion. No reasonable attorney would have made such arguments in support of the instant discovery motion, let alone in the tone used, in which he unjustifiably continues to accuse Plaintiff's counsel of lying. This motion is just another in a long line of pleadings filed in this case in which Cotton's

¹ In his moving papers, Cotton seeks sanctions against Plaintiff. For the reasons stated herein, it is Plaintiff Geraci who is entitled to a sanctions award. However, it should be noted that Cotton's sanction request does not specify any requested amount and the "request" is not supported by any admissible facts set forth in any supporting declaration.


1 counsel, Jacob Austin, has acted irresponsibly and without regard to any rules of civility.

2 **III. CONCLUSION**

3 Cotton's motion to bind Geraci to his "initial interrogatory responses" should be denied as
4 Geraci has never sought to amend his initial interrogatory responses and, therefore, CCP §2030.310(b)
5 provides no authority for the relief requested. In addition, the motion is more than without substantial
6 justification, it is frivolous. A monetary sanction in the amount of \$1,500.00 representing the time
7 Attorney Toothacre spent to oppose the motion should be granted in favor of Plaintiff Geraci.

8
9 Dated: April 15, 2019

FERRIS & BRITTON,
A Professional Corporation

10
11 By: 
12 Michael R. Weinstein
Scott H. Toothacre

13 Attorneys for Plaintiff/Cross-Defendant
14 LARRY GERACI and
Cross-Defendant REBECCA BERRY
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