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10 and Christopher Williams

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
08/21/2020 at 01:43:00 PM
Clerk of the Superior Court
By Gen Dieu, Deputy Clerk

11 SUPRIOR COURT OF CALIFORNIA
12 COUNTY OF SAN DIEGO, HALL OF JUSTICE

13 RICARDO VIDAL, d.b.a., SCHNELLZUG
14 CAPITAL,

15 Plaintiff,

16 v.

17 PICK AXE HOLDING, LLC, a California Limited
18 Liability Company; CHRISTOPHER WILLIAMS,
19 an individual; and DOES 1 through 50, inclusive,
20 Defendants.

21 CHRISTOPHER WILLIAMS, an individual,

22 Cross-Complainant

23 v.

24 RICARDO VIDAL, an individual, and DOES 1
25 through 50, inclusive,

26 Cross-Defendants.

CASE NO. 37-2018-00044217-CU-BC-CTL

**DECLARATION OF ANDREW FLORES
IN SUPPORT OF DEFENDANTS/CROSS-
COMPLAINANT'S *EX PARTE*
APPLICATION TO REOPEN
DISCOVERY PURSUANT TO CCP §
2024.050**

1
2 I, ANDREW FLORES, declare:

3 1. I am over the age of eighteen years and am the attorney of record for
4 Defendant Pick Axe Holding, LLC and Defendant/Cross-Complainant Christopher
5 Williams (herein collectively “Defendants”).

6 2. I am admitted to practice law in this jurisdiction, California Bar No. 272958,
7 and before this court.

8 3. The facts set forth herein are true and correct as of my own personal
9 knowledge.

10 4. This declaration is submitted in support of Defendants’ EX PARTE
11 APPLICATION referenced and captioned above.

12 5. On or about March 18, 2020, after the Governor of California issued a stay
13 at home order in response to the unprecedented global pandemic caused by the COVID-
14 19 pandemic. I sheltered in place and closed operation of my law office. At the time it
15 was anticipated that the respective courts would close but would reopen and continue
16 cases and dates as appropriate.

17 6. The Superior Court did not reopen for limited operations until May 26, 2020.

18 7. Additionally, on May 25, 2020, there were mass protest in and around my
19 office downtown. The glass front door to my office was shattered and replaced with
20 plywood.

21 8. During the period from March 18, 2020 to the end of May 2020, I stayed
22 home and spent the vast majority of my time assisting my two school aged children with
23 distance learning. That is very much a full-time job. My wife is a schoolteacher and she
24 spent most of her time teaching her own fourth grade class which left me to help my sons,
25 ages 9 and 6 navigate distance learning.

26 9. I am a solo practitioner and was unable to access my office for some time
27 due to the stay at home order and safety concerns. Additionally, I could not meet with
28 my client in person, nor could I take any live depositions. I took precautions such as

1 closing my office temporarily to protect my family and others in the public.

2 10. These precautions may be seen as unwarranted however at the time I had no
3 idea what level of precautions I should be taking especially because I have two school
4 aged children. By my understanding and reading of the order, legal work was not
5 “essential” if it did not directly deal with the pandemic and issues caused or related to
6 public health.

7 11. As such, as soon as there were signs that the court would be reopening,
8 despite the uncertain times caused by the mass protests around the county, I propounded
9 discovery devices upon Mr. Vidal.

10 12. July 1, 2020, I served upon Plaintiff’s counsel three separate discovery
11 devices. On July 3, 2020 I sent a courtesy copy to Plaintiff’s attorney Michael Cindrigh.
12 A few days later attorney Robert Crissman, of Mr. Cindrigh’s office, called me to discuss
13 possible settlement in the case. On July 30, 2020 I sent Messrs. Cindrigh and Crissman
14 an email requesting confirmation that they would in fact respond to the discovery requests
15 and I outlined the equitable reasons why discovery should be extended.

16 13. Attached hereto the relevant email correspondence with Mr. Vidal’s
17 attorney (attached as Exhibit 1).

18 14. I believe that discovery should be reopened based not only on the fact that
19 this matter was continued by the Court until December 18, 2020 but also because of the
20 unprecedented and unexpected pandemic that has affected the operations of many
21 business, including my own. To disallow discovery when, with all intention, I would
22 have propounded discovery upon Mr. Vidal but for the pandemic before the discovery
23 cutoff date would be unjust and unfair and unduly prejudice my client.

24 15. I was also under the belief that the courts would continue all court date
25 including those deadlines given the stay at home order, child care issues, and other
26 equitable reasons.

27 16. Furthermore, if discovery were reopened and the responses given, the parties
28 may avoid the need for trial and potentially could provide evidence that would assist in

1 the granting of a dispositive motion.

2 17. It would be fair and equitable for this Court to reopen discovery for a limited
3 time to have Vidal respond to the discovery and time to object to discovery responses
4 should adequate answer not be provided. It would not prejudice any party and would not
5 cause the trial to be delayed any further.

6 18. On August 20, 2020 at approximately 12:20 p.m. I informed opposing
7 counsel, via email, of the ex parte hearing currently calendared for this application to
8 reopen discovery on August 25, 2020 at 8:45 a.m. in the above entitled court.

9
10 I declare under penalty of perjury according to the laws of the State of California
11 that the foregoing is true and correct, and that this declaration was executed on August
12 21, 2020 at San Diego, California.

13 

14 _____
ANDREW FLORES

EXHIBIT 1

Andrew flores

From: Robert Crissman <robert@michaelcindrich.com>
Sent: Thursday, July 30, 2020 5:18 PM
To: Andrew flores
Cc: Michael Cindrich
Subject: RE: Vidal v. Pick Axe Holdings, et al. Meet and Confer

Mr. Flores

As I intimated to you in our phone call earlier this month, this trial has been continued multiple times and the discovery cut off date is long past due. You did not propound discovery prior to September 2019 continuance, or before the continuance of the May deadline either.

CCP section 2024.020 states “any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action.”

Our office continued operations during the coronavirus, despite the fact the courts themselves were not open. There was no announcement by courts stating that cases were to stand still during the court hiatus, or that law firms could just cease operations at the expense of their clients or their cases or deadlines of the cases. If you had sent discovery prior to the deadline, we would have answered it. In fact, all of our other cases stayed active during the shutdown period, including this case.

You did not send discovery last year or earlier in the year, and you did you ask to reopen discovery immediately after the deadline expired; you waited almost two months after the deadline passed and only discussed opening up discovery after I brought it up myself in response to your untimely discovery. My client does not agree to re-open up discovery.

Additionally, since the discovery was propounded after the deadline for discovery motions as well, a motion to compel would be improper and we will ask for sanctions if a motion to compel is filed. If anything, a motion could be filed pursuant to CCP 2024.050 to reopen discovery, but we will argue that there was a “lack of diligence of the party seeking the discovery”. Our client is prepared to go to trial and this is our final statement on matter of your untimely discovery requests or potentially untimely discovery motions.

Fro: Andrew flores <andrew@floreslegal.pro>
Sent: Thursday, July 30, 2020 11:00 AM
To: Michael Cindrich <mike@michaelcindrich.com>
Cc: Robert Crissman <robert@michaelcindrich.com>
Subject: Vidal v. Pick Axe Holdings, et al. Meet and Confer

Hello Messrs. Cindrich and Crissman,

As you know on 07/1/2020 I served on you certain discovery requests for your client Ricardo Vidal, on behalf of my clients Pick Axe Holdings LLC and Christopher Williams . As you are also aware, on 09/27/2019, the court continued the jury trial in this matter to 06/19/2020 and the Discovery cut off date to 5/22/2020. On or about 03/17/2020, due to the covid-19 pandemic, the Superior Court of San Diego ceased all operations. On 5/16/2020, the Court, *sua suponte* rescheduled the jury trial to 12/18/2020. The Court resumed limited service on 05/26/2020. My office was ostensibly

closed during the shut down period. That period was approximately 69 days. As such it would be my contention that in all fairness and equity the discovery cut off date should be automatically extended by 69 days, which would make it 08/03/2020. My discovery request were not excessive, duplicative, or frivolous. The request for admission and special interrogatories do not exceed 35 request each and the form interrogatories cover mainly the contractual interrogatories.

It is my understanding that it is your position that since the discovery cut of date was 5/22/2020 that you do not intend to respond the my discovery requests. Please inform me of your intent to respond to these discovery requests. It would be my intention to file a motion to compel based on the information referenced above. Additionally, should you not respond to discovery request I will seek leave to take Mr. Vidal's deposition also in light of the issues referenced above.

I want to be clear that it is not my intent to harass or otherwise encumber you or your client; obviously these are unprecedented and unique situations we are dealing with. I would prefer not have to take your clients deposition. That being said it is clear to me that in light of everything that has occurred we can work together to get this case resolved or to trial if need be without the unnecessary intervention of the court. I hope to hear from you soon.

p.s. I relayed your previous offer to my client and he does not agree to simply "walk away," as is my understanding of your offer.

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