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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION

FATIMA ABDELRAHMAN, an individual; NADIA ABDULRAHMAN, an individual; NATALINA KANTIEKO, an individual, and; IDZAI MUBAIWA, an individual,

Plaintiffs,

v.

CITY HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, a California Non-Profit Corporation; and DOES 1-50, inclusive,

Defendants.

And Related Cross-Actions

Case No.: 37-2024-00027594-CU-OR-CTL
[*Consolidated Case – Subordinate Case is 37-2024-00010272-CL-MC-CTL]*

DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR RELIEF FROM WAIVER OF OBJECTIONS

Date: May 30, 2025
Time: 11:00 a.m.
Dept: C-63
Judge: Hon. Katherine A. Bacal

TABLE OF AUTHORITIES

Cases

Statues and Rules

I. INTRODUCTION

If the facts and circumstances present in this motion do not call for the denial of relief from waiver of objections, then Cal. Civ. Proc. Code §2030.290 and §2031.300(a) carry little meaning. First, plaintiffs' counsel fails to demonstrate how plaintiffs' untimely responses "substantially comply" with the relevant provisions of the Discovery Act. Second, even if the Court were to find that plaintiffs' untimely responses are in substantial compliance with the relevant provisions of the Discovery Act, the excuses proffered by plaintiffs' counsel for the untimely responses are not, by any stretch of the imagination, "mistake, inadvertence, or excusable neglect." The proffered excuses are contradictory and simply not credible. Further, even if believed by the Court, plaintiff's proffered excuses for not timely responding to discovery, after multiple extensions, clearly do not meet the statutory burden for relief. The motion should be denied.

II. FACTUAL BACKGROUND

On August 13, 2024, defendant CHCDC, through counsel, propounded discovery requests on plaintiffs ("August 13 Discovery"). TLC Dec. ¶4. The August 13 Discovery was withdrawn, pursuant to agreement with plaintiffs' counsel on September 12, 2024. TLC Dec. ¶4. The agreement to withdraw the August 13 Discovery was based on plaintiffs' counsel's representation that he was amending the complaint, and his request that the August 13 Discovery be reformatted so that the paragraph numbers included in the requests corresponded to the correct paragraph numbers of the amended complaint. TLC Dec. ¶4, Ex. A. Plaintiff's counsel understood that these requests would be re-served on plaintiffs with minimal changes. Additionally, plaintiffs' counsel agreed to waive any objection based on the number of discovery requests propounded in exchange for defendant's willingness to reformulate the requests to correlate with the eventual amended complaint. TLC Dec. ¶4, Ex. A.

On December 18, 2024, after having waited almost four months for an amended complaint, defendant City Heights Community Development Corporation ("CHCDC"), through counsel, propounded the reformulated discovery requests on plaintiffs ("December 18 Discovery"). TLC Dec. ¶6; PL NOL, Ex. 1. The December 18 Discovery requests were substantially similar to the August

13 Discovery requests, with the exceptions of (a) renumbered paragraphs, (b) the addition of a few requests, addressing new allegations of the amended complaint, and (c) the exclusion of a handful of requests counsel for defendant had re-evaluated based on meet and confer efforts. TLC Dec. ¶6. However, the substance and format of a large majority of the December 18 Discovery requests were unchanged from the August 13 Discovery requests. TLC Dec. ¶6. The majority of both discovery sets were standard contention-style interrogatories and document requests. TLC Dec. ¶6.

Plaintiffs' counsel requested multiple extensions to respond to the subject discovery. TLC Dec. ¶7. The reasons for the extension requests varied. TLC Dec. ¶7. On **January 20, 2025**, plaintiffs' counsel requested a mutual one-week extension of the then-January 31 deadline, claiming that "**Ash Kuhnert is on vacation and has been unable to assist**, and I have been working on yet another appellate brief, which is due tomorrow. (Cal. Chaparral Inst. V. Board of Forestry, D083484.)"[1] TLC Dec. ¶7, Ex. B. Counsel for defendant CHCDC granted this January 20 request based on plaintiffs' counsel's representation that his "paralegal" was on vacation and that he had other pressing matters to attend to. TLC Dec. ¶7. Now, in an attempt to secure relief from waiver, plaintiffs' counsel states in his declaration that Ms. Kuhnert stopped "working" for him in **December 2024** and claims he was forced to hire another paralegal.[2] Cardiff Dec. ¶5. Conspicuously missing from plaintiffs' counsel's, or his paralegal's, declarations are facts establishing when the new paralegal was hired and when she began working on the responses to the December 18 Discovery.

On February 4, 2025, plaintiffs' counsel requested an additional extension, to February 14, 2025. TLC Dec. ¶8, Ex. C. Counsel for CHCDC agreed to a one-week mutual extension – for the responses and production of plaintiffs and for defendant CHCDC's supplemental production

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[1] Conveniently, plaintiffs' counsel omits from his rendition of the facts that he had an oral argument in this case, Cal. Chaparral Inst. v. Board of Forestry, D083484, before the California Court of Appeal **two days before he served plaintiffs' discovery responses and productions**.

[2] Plaintiffs' counsel either made misrepresentations to counsel for defendant CHCDC in order to secure additional time to respond to the subject (December 18) discovery, or he is making misrepresentations to this Court to secure relief from his waiver of objections in violation of Cal. Professional Rules of Conduct, Rule 3.3.

originating from the prior Forcible Detainer case. [3] TLC Dec. ¶8, Ex. C. On February 12, 2025, plaintiffs' counsel requested an additional one-week extension, claiming that the "language barrier and the sheer number of discovery requests are proving impossible to make the deadline." TLC Dec. ¶9, Ex. D. Counsel for CHCDC agreed to another one-week mutual extension to February 21, 2025. TLC Dec. ¶9, Ex. D. On February 19, 2025, plaintiffs' counsel requested an additional extension until March 3, 2025. TLC Dec. ¶10, Ex. E. Counsel for CHCDC agreed to a mutual extension until March 3, 2025. TLC Dec. ¶10, Ex. E.

March 3, 2025, passed without responses, production, communication, or extension request from plaintiffs' counsel. TLC Dec. ¶11. The following morning, March 4, 2025, plaintiffs' counsel sent an email to counsel for defendant CHCDC stating, in relevant part:

> I was unfortunately not able to get the discovery in timely yesterday. It is simply **too much of a challenge to respond** to close of [sic] 600 separate discovery requests and gather documents and meet and confer with my clients. In addition, none of my clients read English, and **have not reviewed the final discovery responses regardless. I suspect it will take considerable time to get through the discovery review process. … And reading and translating the documents themselves will take an unbelievable amount of time.**

TLC Dec. ¶12, Ex. F. Notably, plaintiffs' counsel made no mention about his later and now-claimed late night "technical issues". In fact, based on the March 4 email, wherein plaintiffs' counsel stated it would require "considerable time" to get through the discovery review process with his clients, it is clear the responses were **nowhere near complete and had not even been close to ready for service and production on the previous deadline day.** Even though it should have been readily apparent to counsel that he would need an additional extension of time, plaintiffs' counsel made **no attempt** to seek one. He intentionally chose to allow the deadline to pass.[4]

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[3] Counsel for CHCDC has acknowledged Ms. Talbert's waiver of objections to certain requests in the Forcible Detainer discovery and has since produced all responsive Talbert-CHCDC privileged material, in part, due to its anticipated reliance on advice of counsel as a defense. TLC Dec. ¶19.

[4] Plaintiffs' counsel has previously emailed counsel for defendant at all hours of the night and early morning, including between the hours of midnight to 2:30 a.m. TLC Dec. ¶20. His claim that it was "impossible" to request an extension is without merit.

III. RELEVANT LEGAL AUTHORITY

Where a party to whom demands for production of documents or requests for answers to interrogatories are propounded, fails to serve a timely response, the party to whom the requests are directed waives **any objection** to said requests or interrogatories, including those based on attorney-client privilege. Cal. Civ. Proc. §2031.300(a), §2030.290. However, the court, on motion, may relieve that party from this waiver on its determination that **both** of the following conditions are satisfied: (1) "The party has subsequently served a response that is in **substantial compliance** with Sections 2030.210, 2030.220, 2030.230, and 2030.240" [as to interrogatory responses], and "2031.210, 2031.220, 2031.230, 2031.240, and 2031.280" [as to demands for the production of documents and the production itself], ***and*** (2) "[t]he party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect." Cal. Civ. Proc. §§2030.290, 2031.300(a)(1)-(2).

"'Where a **reasonable** attempt has been made to comply with a statute in good faith, … the doctrine of substantial compliance holds that the statute may be deemed satisfied…' … 'Substantial compliance means "'***actual*** compliance in respect to the substance essential to every reasonable objective of the statute,' as distinguished from 'mere technical imperfections of form.'"'" *Burton v. Campell* (2024) 106 Cal.App.5th 953, 965, quoting *People v. Green* (2004) 125 Cal.App.4th 360, 371. Emphasis added.

IV. ARGUMENT

A. Plaintiffs Failed to Provide Timely Responses and Waived Objections

Plaintiffs were granted multiple extensions to respond to the December 18 Discovery. TLC Dec. ¶7. The final extension provided plaintiffs' counsel until March 3, 2025, to provide responses and produce documents. TLC Dec. ¶10. Plaintiffs' responses were not served until March 14, 2025. Cardiff Dec. ¶13. Plaintiffs' responses and productions were 11-days late and, therefore, they have "waive[d] any objection to the demand[s] [and interrogatories], including one[s] based on privilege or on the protection for work product…" Cal. Civ. Proc. §§2030.290, 2031.300(a).

B. Plaintiffs' Interrogatory Responses Are Not in "Substantial Compliance" With the Relevant Provisions of the Discovery Act

To secure relief from waiver of objections to the interrogatory requests, plaintiffs' counsel must first establish that the responses subsequently served were in "substantial compliance" with Cal. Civ. Proc. Sections 2030.210, 2030.220, 2030.230, and 2030.240. Cal. Civ. Proc. §2030.290.

Notably, plaintiffs' counsel makes **no effort in his moving papers to establish compliance with the relevant code sections contained within Cal. Civ. Proc. §2030.290**.[5]

Cal. Civ. Proc. 2030.210

Cal. Civ. Proc. 2030.210 states, in relevant part:

> (a) The party to whom interrogatories have been propounded shall respond in writing **under oath** separately to each interrogatory by any of the following:
> 1. An answer containing the information sought to be discovered.
> 2. An exercise of the party's option to produce writings.
> 3. An objection to the particular interrogatory.

First, several of the requests for answers to interrogatories were left completely **blank**. TLC Dec. ¶15. Thus, by their very nature, such responses are not in compliance with Cal. Civ. Proc. §2030.210.

Second, Plaintiffs' verifications alone establish that the responses are **not in substantial compliance** with Cal. Civ. Proc. 2030.210 because they are ineffective to render the responses as made "under oath". For example, Plaintiff Abdelrahman utilized the following language to attempt to verify her answers to interrogatories:

> I, Fatima Abdelrahman, declare: **I have reviewed the above responses** to discovery. I declare under penalty of perjury under the laws of the State of California that the foregoing responses are true and correct, except for statements made on information and belief and as to such statement, I believe them to be true.

Plaintiffs' NOL ("PL NOL"), Ex. 3. In contrast, Plaintiff Abdelrahman's verification of her responses to document requests states that she "reviewed the above responses to discovery with the

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[5] Rather, plaintiffs' counsel complains about how "burdensome" the amount of discovery was. Plaintiffs' counsel waived any objection based on the number of discovery requests and agreed to respond. Plaintiffs' Memo, Pgs. 7-8, 11-12.

help of my daughter translating." Plaintiffs' NOL, Ex. 3. The two declarations of Plaintiff Abdelrahman are inconsistent – she was either able to review them, period, or she needed the assistance of her daughter translating to do so. Furthermore, plaintiffs' Points and Authorities and Plaintiffs' counsel's declaration state, on multiple occasions, that **plaintiffs cannot speak or read English**. Plaintiffs' Memo ("PL Memo"), Pgs. 7:26-27, 10:24, 15:16, 15:28; Cardiff Dec. ¶4. As such, it is unclear how the responses written in English were reviewed by plaintiff or were read or communicated to plaintiff. The same can be said for the other two plaintiffs' and their responses. PL NOL, Ex. 3. Plaintiffs' "verifications" raise the obvious question – if plaintiffs needed Arabic translators to verify their responses, and their counsel attests that they cannot read or speak English, how can their standard verifications of their responses be deemed valid and truthful?

Furthermore, verified responses to discovery requests are admissible evidence. *Melendres v. Superior Court* (2013) 215 Cal.App.4th 1343, 1349 ("[T]here [are] two purposes to a verification: **first, to ma[ke] the discovery responses admissible**; second, to provide a witness who could testify concerning the sources for the discovery responses."). Surprisingly, plaintiffs' counsel states in his declaration that plaintiffs have limited personal knowledge of the events.[6] Cardiff Dec ¶7. *See also* PL Memo., Pg. 8:1, 21-22. This calls into question the validity of the attestation made in the verifications, that the information in over four hundred pages of written discovery responses is true of their own personal knowledge. Second, to the extent that plaintiffs' "verified" discovery responses will be utilized as evidence in trial, Cal. Evid. Code §751(a) states that "[a]n interpreter shall take an oath that he or she will make a true interpretation to the witness in a language that the witness understands and that he or she will make a true interpretation of the **witness' answers** to questions to counsel, court, or jury, in the English language, with his or her best skill and judgment." Additionally, Cal. Evid. Code §751(c) states that "[a] translator shall take an oath that he or she will make a true translation in the English language of any writing he or she is to decipher or translate."

[6] As such, it is also unclear to defendants how, considering their "limited personal knowledge", plaintiffs have verified as being true of their own personal knowledge not only their discovery responses but also their 170-paragraph consolidated second amended complaint.

There has been no evidence thus far that these responses have been translated truthfully, how they have been translated, to what language, and by whom they have been translated. Defendants will be unable to utilize plaintiffs' responses as evidence at trial because their "verifications" are not in compliance with the relevant provisions of the Cal. Evid. Code.

Cal. Civ. Proc. 2030.220

Cal. Civ. Proc. 2030.220 states:

> (a) Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the responding party permits.
> (b) If an interrogatory cannot be answered completely, it shall be answered to the extent possible.
> (c) 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 in inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

Several of plaintiffs' responses to interrogatories which ask for contact or identifying information of witnesses who can support specific allegations of the consolidated second amended complaint are incomplete and evasive. For example, in providing witness information, plaintiffs simply respond "defendant and its employees", "defendants employees", "defendant's employees and board members." TLC Dec. ¶15. These responses are insufficient. Defendant is a corporate entity with multiple employees and board members. TLC Dec. ¶3. Defendant is entitled to undertake discovery to determine who, *according to plaintiffs*, allegedly made specific representations or undertook certain alleged actions. By way of further example, plaintiffs have also provided the following responses to requests for witness information: "all farmers who sought to enter the farm between January 21-24…", "current farmers", or "plaintiffs and their family members." These answers are not as complete as possible. TLC Dec. ¶15. To the extent that plaintiffs did not have personal knowledge of these facts (i.e. witness names or contact information), plaintiffs were required to so state under oath. Cal. Civ. Proc. §2030.220(c).

During meet and confer efforts, plaintiffs' counsel has agreed to supplement some of these responses and even provided some specific names of "employees" or "family members" vaguely referred to in plaintiffs' responses. PL Memo., Pg. 9:10-11; TLC Dec. ¶18. Thus, it is clear that

plaintiffs initial untimely-served responses were not in substantial compliance with Cal. Civ. Proc. §2030.220 because plaintiffs' counsel has made clear he intends to supplement and/or amend the responses. TLC Dec., ¶18 Ex. I. Notably, those supplemental or amended responses have **not yet been served.** Therefore, plaintiffs have not met the conditions to be eligible for relief from waiver; that is, "providing responses in substantial compliance" with the cited portions of the Discovery Act. The supplemental responses may render plaintiffs' responses in substantial compliance; however, **they have not yet been provided.** TLC Dec., ¶18.

The responses left completely blank by plaintiffs are also clearly not in compliance with Cal. Civ. Proc. §2030.220. TLC Dec. ¶15.

Cal. Civ. Proc. §2030.230 and Cal. Civ. Proc. §2030.240

Cal. Civ. Proc. 2030.230 is not at issue here. For the sake of brevity, defendants will not address each and every deficiency with respect to plaintiffs' objections under Cal. Civ. Proc. 2030.240.

C. Plaintiffs' Responses to Request for Production of Documents Are Not in "Substantial Compliance" With the Relevant Provisions of the Discovery Act

To secure relief from waiver of objections to the requests for production of documents, plaintiffs' counsel must first establish that the responses subsequently served were in "substantial compliance" with Cal. Civ. Proc. Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280. Cal. Civ. Proc. §2031.300(a)(1).

Notably, plaintiffs' counsel makes **no effort in his moving papers to establish substantial compliance** with the relevant code sections contained within Cal. Civ. Proc. §2031.300(a)(1).

Cal. Civ. Proc. §2031.210

Cal. Civ. Proc. §2031.210 states, in relevant part:

> (a) The party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:
>
> 1. A statement that the party will comply with the particular demand for inspection, copying, testing, or sampling by the date set for the inspection, copying, testing, or sampling pursuant to paragraph (1) of subdivision (c) of Section 2031.030 and any related activities.
> 2. A representation that the party lacks the ability to comply with the demand for inspection, copying, testing or sampling of a particular item or category of item.

3. An objection to the particular demand for inspection, copying, testing, or sampling.

Much like their response to request for answers to interrogatories, several of plaintiffs' responses to request for production of documents were left **completely blank**. TLC Dec. ¶15. Blank responses are clearly not in compliance with Cal. Civ. Proc. 2031.210.

Cal. Civ. Proc. §2031.220

Defendants believe that Plaintiffs complied, at least substantially, with Cal. Civ. Proc. 2031.220.

Cal. Civ. Proc §2031.230

Cal. Civ. Proc. §2031.230 provides:

> A representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. This statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

In response to several requests for production of documents, plaintiffs (particularly plaintiffs Abdulrahman and Kantieko) state that "no responsive documents exist…" or, in some cases, "after a diligent search and reasonable inquiry, no such documents exist." TLC Dec. ¶15. These responses do not satisfy the requirements of Cal. Civ. Proc. §2031.230 because they do not provide context as to whether these documents ever existed, whether they were destroyed, etc. As such, plaintiffs are not eligible for relief from waiver under Cal. Civ. Proc. §2031.300(a)(1).

Cal. Civ. Proc. §2031.240

Cal. Civ. Proc. §2031.240 provides, in relevant part:

(a) If only part of an item or category of item in a demand for inspection, copying, testing, or sampling, is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category.
(b) If the responding party objects to the demand for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following:

1. Identify with particularity any document, tangible thing, land, or electronically stored information falling within any category of item in the demand to which an objection is being made.
2. Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product… that claim shall be expressly stated

(c) (1) If an objection is based on a claim of privilege or a claim that the information sought is protected work product the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.

Defendants believe that, given the unique circumstances of this case (i.e. plaintiffs' counsel hiring a percipient witness as a paralegal, and thereby claiming all of her communications, even those predating the involvement of plaintiffs' counsel, are protected by privilege), the description of the withheld documents are insufficient. The **purpose** of Cal. Civ. Proc. §2031.240(b)(1)-(2), and (c)(1) is to allow the "other parties to evaluate the merits of that claim" of privilege. To establish that such a privilege exists, plaintiffs should have, at the very least, provided the dates and recipients of the communications being withheld which include Ashley Kuhnert. The withholding of any documents or communications by Ms. Kuhnert which were created or occurred prior to Attorney Cardiff's involvement in this matter, cannot possibly be properly withheld under Attorney Cardiff's claims of attorney-client privilege or work product. Furthermore, plaintiffs have apparently withheld communications between themselves and Ms. Abdelrahman's daughter, Sahar Abdalla, under claims of attorney-client privilege. TLC Dec. ¶15; PL NOL, Ex. 3. Sahar Abdalla is not an attorney and, unless plaintiffs' counsel has now hired her, she is also not an agent of Attorney Cardiff.

Plaintiffs' responses to defendant's document requests are not in substantial compliance with the relevant provisions of the Discovery Act, as is required by Cal. Civ. Proc. §2031.300(a)(1). Therefore, plaintiffs are ineligible to seek relief from the waiver of objections.

D. Plaintiffs' Document Production is Not in "Substantial Compliance" With Cal. Civ. Proc. §2031.280, As Required by Cal. Civ. Proc. §2031.300(a)(1)

Cal. Civ. Proc. §2031.280

Cal. Civ. Proc. §2031.280 provides, in relevant part:

(a) Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond.

…

(d) Unless the parties otherwise agree or the court otherwise orders, the following shall apply:

1. If a demand for production does not specify a form or forms for producing a type of electronically stored information, the responding party shall produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable.
2. A party need not produce the same electronically stored information in more than one form.

Plaintiffs' document production is divided into numerous folders, with multiple levels of hundreds of subfolders, without any sort of identifying bates numbering. TLC Dec. ¶17. Plaintiffs produced dozens of duplicates of the same documents, in numerous subfolders. TLC Dec. ¶17. The amount of data produced, excluding duplicates, is unclear. TLC Dec. ¶17. In fact, the manner in which plaintiffs' counsel made the document productions (i.e. including dozens of duplicates distributed throughout hundreds of subfolders) shows why it apparently took him such an inordinate amount of time to complete. Counsel for defendant has requested, on numerous occasions, that plaintiffs provide a single production of documents, with bates numbers, and then simply state, in the written responses, which bates numbers are responsive to which requests. TLC Dec. ¶17. Instead, plaintiffs made their productions in a format which is not reasonably usable. TLC Dec. ¶17.

E. Counsel's Post-Review-of-the-Statute Justifications for his Untimely Responses are Not "Excusable Neglect, Mistake, or Inadvertence"

"'Excusable neglect' is generally defined as an error 'a reasonably prudent person under the same or similar circumstances might have made.'" *Ambrose v. Michelin North America, Inc.* (2005) 134 Cal.App.4th 1350, 1354, internal citations omitted. In *Ambrose*, counsel failed to properly request a continuance of a summary judgment motion.[7] *Id.* The trial court stated counsel's "explanation essentially is that [he/she] was in a hurry to meet a filing deadline that that [he/she] had several concurrent obligations due to other pending litigations. That is not excusable neglect as defined by the cases." *Id.* The California Court of Appeal agreed, holding that "[c]onduct falling

[7] As cited by plaintiffs, "[t]he terms 'mistake, inadvertence or excusable neglect' are intended to have the same meaning as those terms are used in Code of Civil Procedure section 473. (*New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1419.)" PL Memo., Pg. 6:11-14.

below the professional standard of care, **such as failure to timely object** to or properly advance an argument, is not therefore excusable." *Id.* Emphasis added.

The Court in *Ambrose* stated that a "glitch in office machinery" or an "error by clerical staff" may, perhaps, be considered "mistake" or excusable neglect. *Id.* at 1354-1354. However, the "stresses of a busy law practice", the "hurry to meet the deadline", and "several concurrent obligations due to other pending litigation", are not. *Id.* at 1355. **Conveniently, after multiple extensions claiming the later set of *inexcusable* circumstances, and only after actually missing his deadline, does Plaintiffs' counsel claim the former, potentially excusable, set of circumstances**.[8]

Counsel's March 4, 2025, morning email, stating that he still needed a "considerable" amount of additional time to have the responses and production ready for service, calls into question his now-claimed "technical issues." TLC Dec. ¶12, Ex. F. It was only later that day, after counsel for defendant made clear that plaintiffs had waived their objections, that plaintiffs' counsel began claiming "technical issues." TLC Dec. ¶13, Ex. G. Clearly, counsel had read the relief from waiver provision before sending his afternoon email because he proffered an entirely new set of excuses for the untimely responses. In his March 4 morning email, his excuses were it was too much work, it will take time for my clients to review the responses, and this is still going to take a long time to finish. But then, in his March 4 afternoon email, his excuses were multiple "computer glitches", problems converting large Word documents into PDFs, Dropbox renaming file issues, and paralegal mistakes. Plaintiffs' counsel confusingly claims that there were late night "technical issues" uploading responses and productions which were, in counsel's own words, **not even ready for production and had not even been reviewed with plaintiffs**. TLC Dec. ¶12, Ex. F. That is simply not credible.

[8] Again, plaintiffs' counsel omits the fact he had an oral argument before the California Court of Appeal, two days before he provided his clients' responses. Cal. Chaparral Inst. v. Board of Forestry, D083483.

First, counsel claims "excusable neglect" based on "[t]he sheer number and scrambled nature of the discovery requests." PL Memo., Pg. 12:3. Plaintiffs' counsel waived any objection based on the number of responses in exchange for counsel for defendant's agreement to renumber the requests to align with an amended complaint. TLC Dec. ¶5, Ex. A. Further, the requests were not "scrambled." Counsel for defendant predominately served standard form contention style interrogatories (facts, witnesses, documents) and document requests to each plaintiff, utilizing the paragraphs of the complaint which were applicable to each plaintiff.[9] TLC Dec. ¶6.

Second, plaintiffs' counsel states that his failure to provide timely responses is excusable neglect because his "paralegal" Ash Kuhnert went on "vacation in **December** and then quit[]". PL Memo., Pg. 12:4-5. Putting aside plaintiffs' counsel's various renditions of when Ms. Kuhnert did, or did not, work for his office, plaintiffs' counsel's inexplicably prolonged trouble with staffing his office or this case are clearly not "mistake" or "inadvertence". It is also not "excusable neglect" as a reasonably prudent person in plaintiffs' counsel's position would have timely hired a new paralegal, requested additional time to respond, or simply served objections even if it required that he draft them himself.

Third, plaintiffs' counsel's "computer glitches" did not "prevent[] timely service of documents and responses", as claimed. PL Memo., Pg. 12:7. Plaintiffs responses and production took an additional 11 days to provide. Had "computer" or "technical" "glitches" been the source of the untimeliness, plaintiffs' counsel could have delivered a flash drive the next day (he did not) or requested additional time on the evening of March 3 (he did not). Plaintiffs' responses were served on March 14, 2025. TLC Dec. ¶14. The responses and productions were not ready for service on the night of the deadline, as counsel clearly stated in his first March 4 email.

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[9] For example, if paragraph 1 of the complaint only referenced Plaintiff Abdelrahman, then a contention style request based on paragraph 1 would only be served on Plaintiff Abdelrahman. If paragraph 2 of the complaint only referenced Plaintiff Kantieko, then a contention style request based on paragraph 2 would only be served on Plaintiff Kantieko. Simply because plaintiffs' counsel could not "copy and paste" the same responses for each plaintiff does not mean that the requests were intentionally scrambled. Plaintiffs' counsel represents three individual clients, each with their own burden of proof and the amended complaint alleges a number of fact-based intentional torts.

The bottom line is this – a "reasonably prudent" attorney in plaintiffs' counsel's position would have sought additional time to respond and, if he couldn't secure more time from counsel, would have made an attempt to secure additional time from the court, as plaintiffs' counsel has attempted in the past. ROA #20. If both of those efforts were unsuccessful, plaintiffs' counsel could have simply served objections to preserve them. *See* Cal. Civ. Proc. §§2030.250(a), 2031.250(a) (serving objection-only responses do not require responding parties' verifications). Plaintiffs' counsel took none of these actions to avoid untimely service of responses and knowingly allowed his deadline to pass. Plaintiffs' waiver of objections was the product of their counsel's choice to do **nothing and simply let his deadline pass.** That is not "mistake, inadvertence, or excusable neglect". Plaintiffs' counsel should not be granted relief from his waiver of objections that resulted from his choice to let his clients' deadline pass.

F. "The Balance of Equities" Is Not A Factor For Consideration On This Motion

Plaintiffs claim that the Court should consider "the equities and harm that would result" in deciding whether to grant relief from waiver of objections. PL Memo., Pg. 14-16. The Court should not be swayed by this argument.

First, the statutes, Cal. Civ. Proc. §§2030.290 and 2031.300, are completely devoid of any direction to the Court to take "equities and harm" into consideration.

Second, waiving objections to discovery responses, particularly the attorney-client privilege, would presumably be harmful **to any litigant in any case.** If relief from waiver were to be granted where waiver would be "harmful" to a litigant, then there would be no purpose for the statute because denial of the motion would always be harmful to the waiving litigant. The statutes specifically lay out the burden plaintiffs must meet to secure relief from objection waiver. The issue here is whether they met that statutory burden. They clearly did not. Having failed to meet their statutory burden for relief, plaintffs should not still be accorded relief from their objection waiver based solely on the claimed (but not proven) harm their attorney's action and inactions, and the resulting objection waiver, would cause them.

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V. CONCLUSION

Plaintiffs' counsel's choice not to provide timely responses, or seek an additional extension of time to respond, is precisely what §§2030.290 and 2031.300(a)(1)-(2) were designed to address. Plaintiffs' counsel's rendition of the facts supporting his motion is **highly suspect**. If his failure to serve timely responses and productions are the product of a late night "computer glitch", why did he state in his first email, the day after the deadline, that the responses would still take a "considerable amount" of additional time to complete and review with his clients? Alternatively, if the responses were complete and could not be served due to late-night computer glitches, why didn't he attempt to serve the responses in a physical thumb drive the next morning? If the responses were not complete the morning **after** his deadline and had not been reviewed by his clients, as he stated in his initial email, then what was he purportedly attempting to upload the night of the deadline and why did it then take an additional 11 days for him to serve responses and productions?

If failure to serve responses was the result of the claimed loss of his "paralegal", Ashley Kuhnert, in **December**, why did plaintiffs' counsel state in **late January** that he would need an extension to respond because Ashley Kuhnert was on vacation and was unable to assist with the effort? If plaintiffs' counsel was unable to get discovery responses served because of the "sheer amount" of work, why claim a "computer glitch" precluded providing responses in a timely fashion? None of this is credible.

Plaintiffs' responses were not in substantial compliance with the relevant provisions of the Discovery Act as required by Cal. Civ. Proc. §§2030.290 and 2031.300. Even if the Court accepts plaintiffs' counsel's contradictory representations as true, plaintiffs' counsel's conduct is still not "mistake, inadvertence, or excusable neglect." Plaintiffs' motion for relief from waiver of objections should be denied.

Dated: May 16, 2025

James D. Crosby
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