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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

FATIMA ABDELRAHMAN, et. al.

Plaintiffs,

v.

CITY HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, et. al.

Defendants.

Case Numbers:
37-2024-00027594-CU-OR-CTL
37-2024-00010272-CL-MC-CTL (consolidated)

Assigned for all purposes to:

Hon. Katherine A. Bacal
Department 63

REPLY IN SUPPORT OF MOTION FOR RELIEF FROM WAIVER OF OBJECTIONS

Hearing date: May 30, 2025
Hearing time: 11:00 a.m.
Location: Department 63

I. INTRODUCTION

Plaintiffs served more than 650 pages of discovery responses on March 14, 2025, just two days after Defendant finally served verifications to the supplemental responses that were due on March 3, 2025 (the same day that Plaintiffs responses were due). Despite the fact that Defendant also missed its discovery deadline (twice), it was unwilling to agree to a reciprocal relief from waiver of objections, absent an agreement that would have placed Plaintiffs in an impossible position. It turns out that Defendant is unconcerned about maintaining attorney-client privilege because it anticipates asserting "reliance on counsel" (meaning its previous counsel) as a defense to the claims. Regardless, Plaintiffs have presented facts that constitute good cause for relief from waiver of objections, and subsequently served discovery responses that substantially comply with the Discovery Act.

Contrary to Defendant's repeated assertions, Plaintiff's attorney is not a liar. His declaration describing the computer glitches experienced in the last hour before the deadline did, in fact, occur. And, yes, it is difficult for three indigent farmers from Sudan to find an experience paralegal willing to assist at a reasonable rate. The paralegal Plaintiffs found, Melissa Penaflor, was unable to work during regular business hours, because she works for other attorneys. This compounded the tight deadline to produce responses to a massive amount of discovery. While Plaintiff could have requested an extension after hours, it is unlikely that opposing counsel would responded, let alone seen the request, before the deadline. Regardless, Defendant fails to identify any prejudice that it would suffer from the court granting relief from waiver. In reality, there could not be any prejudice. Defendant has not even filed an answer, just recently cross-claimed against the City of San Diego, no trial has been set and Plaintiffs discovery responses were served just two-days after Defendant finally served verifications to its supplemental responses. Plaintiffs motion for relief from waiver of objections pursuant to Code of Civil Procedure ¶¶ 2030.290 and 2031.300 should be granted.

A. The Standard for Relief is Substantial Compliance with the Discovery Act, not Technical Perfection.

Defendant cites to a various defects in the discovery responses to claim that the responses and document production were not compliant with the Discovery Act, and therefore Plaintiffs are not entitled to relief from waiver of its objections. Defendant objects to verifications in English by Plaintiffs who admittedly cannot speak or read English, the failure to specify the exact CHCDC employees that Plaintiffs suspect might have knowledge of various events at issue in the lawsuit (ie. demanding Plaintiffs speculate) and "several responses to request production that were left completely blank," as well as requesting more information as to responses that "no such documents exist". Defendant does not cite to any particular response that it feels is a particularly egregious violation of the Discovery Act, but apparently wishes the court to wade through 650 pages of responses to see if a few responses are not technically compliant. However, as will be explained below, the court determines whether the responses, as a whole, serve the purpose of the Discovery Act, not whether each and every response complies with the technical requirements. In this case, Plaintiffs provided the maximum amount of information, well beyond the personal knowledge of the immigrant farmers, to lay out all the facts, witnesses and documents that support Plaintiffs allegations.

Defendant cites to *Burton v. Campbell* to equate substantial compliance with actual compliance. (Def Opp. at 6:13-18 citing *Burton v. Campbell* (2024) 106 Cal.App.5th 953, 961.) The Burton case is both factually and legally distinguishable. First, the *Burton* case concerned substantial compliance under the notice provisions of the Brown Act, not the Discovery Act. (*Id.* at 966.) The plaintiff in *Burton* failed to send any demand for a cure under the Brown Act, a necessary predicate before filing a lawsuit. Thus, the court held "[s]ubstantial compliance cannot be predicated upon no compliance." (*Id.* quoting *Pacific Tel. & Tel. Co. v. County of Riverside* (1980) 106 Cal.App.3d 183, 188.) Had the plaintiff sent a demand letter that was substantially compliant with the notice provisions of the Brown Act, but lacked compliance with some technical requirement, then the outcome of

the case may have been different. (*Burton, supra,* 106 Cal.App.5th at 965 citing *Bell v. Vista Unified School Dist.* (2000) 82 Cal.App.4th 672, 684.)

However, the court is not faced with a complete failure to respond, but rather whether 650+ pages of discovery responses constitute good faith compliance with the purpose of the Discovery Act. In reviewing discovery responses for substantial compliance, "[T]he court [should] evaluate qualitatively the proposed response to RFAs **in toto** to determine whether it substantially complies with the code." (*St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 779 (emphasis added).) The court found that "actual compliance is not required where the proposed response is facially a good faith effort to respond to RFAs in a manner that is substantially code compliant." (*Id.* at 782.)

Despite such caselaw being set forth in the opening brief, Defendant made no effort to distinguish the *St. Mary* case, and instead simply recited a number of alleged deficiencies, an approach that was expressly criticized by the court in the *St. Mary* case. Defendant complains, without specificity, that a few of the 579 discovery responses did not contain substantive responses. However, objections without responses are permissible under the code. (*Blue Ridge Ins. Co. v. Superior Court* (1988) 202 Cal.App.3d 339, 345.) Further, Plaintiffs have agreed to supplement the responses to the extent that the legal team can divine which employees may have knowledge of the event. (See e.g., Response to SROG #71 (asking for witnesses who may have knowledge of CHCDC locking out Plaintiffs).) Any technical deficiencies can be addressed in a subsequent discovery motion for further responses, should such motion be necessary. (See *St. Mary, supra,* 223 Cal.App.4th at 776.)

Defendant claims that the discovery responses are not compliant because Plaintiffs do not speak English and therefore cannot verify the responses. Defendant's implied theory is that only a court certified translator can translate the 650 pages of discovery responses for the Plaintiffs to properly verify the responses. However, Court certified translators are only required in court proceedings, or in depositions. (Gov. Code § 68561.) Government Code § 68560.5 defines a court proceeding as a "civil, criminal, or juvenile proceeding or a deposition in a civil case." Because the code expressly applies to a "deposition" which is a

form of discovery, it demonstrates that Section 65681 does not apply to other forms of discovery. (See, *RC Operating Co., Inc. v. Chevron USA, Inc.* (2024) 102 Cal.App.5th 1040, 1074 ("*expressio unius est exclusio alterius*, i.e., the express mention of one thing excludes all others").) The verifications comply with the letter of the law, in that the discovery responses are verified under oath.

Furthermore, whether the verifications are compliant is not before the court at this time. First, the verifications are technically compliant. Secondly, even if they were not compliant, the verifications demonstrate a good faith effort at compliance. Third, the issue of whether a non-English speaking party can sign a verification, under oath, in English should be determined at a subsequent motion, where the parties have a full opportunity to brief the law and public policy implications of Defendant's interpretation.

Defendant argues that some of the SROG responses which identify witnesses, fail to provide as complete information as possible. This is completely understandable. Most of the information on witnesses is in the possession of the defendant CHCDC. For example, SROG 49 (Abdelrahman) requests:

> Identify by name, last known address, and last known telephone number each and every individual having knowledge of facts which support, or otherwise evidence, the following allegations set forth in paragraph 71 of the consolidated second amended complaint on file herein:
>
> > It is alleged on information and belief that on January 20, 2024, when Plaintiffs were away from the New Roots Farm, without the consent and against the will of Plaintiffs, the CHCDC completed its unlawful entry to the property, changed the locks and took possession of Plaintiffs' plots without a court order.

Plaintiff responded:

> Objections: Impermissible subparts. Calls for speculation. Without waiving said objections, Plaintiff responds as follows:
>
> > Defendant and its employees; Paul Liebmann; Salvador Ojeda ((619) 430-5619); Plaintiffs Fatima Abdelrahman, Natalina Kantieko, Nadia Abdulrahman and their families

Plaintiffs would agree that such response is insufficient IF Plaintiffs had not already identified the names, addresses and phone numbers of Plaintiffs and their families multiple times in prior responses. (See e.g. Plaintiffs Response to SROG #1 & 3 (NOL. Ex. 3).) Further, it is unclear even from the Defendant's communications who exactly ordered or had knowledge of the lockout that occurred on the night of January 20, 2024. It is clear that someone with the CHCDC ordered the lockout. However, this information is in the possession of Defendant. It serves no purpose under the Discovery Act to demand that three refugee farmers with limited English skills to speculate which employees may have knowledge of the lockout on January 20, 2024.

As to the privilege logs, Plaintiffs disagree that such responses were inadequate. Detailed document-by-document privilege logs of attorney-client communications are not necessary, because standard attorney-client communications during litigation and pre-litigation are per se privileged. (Code Civ. Proc. § 2031.240(c)(1).) The fact that a paralegal was employed to communicate and gather facts does not render the privilege inapplicable. (Bus. and Prof. Code § 6453 (paralegals have same duty to maintain privilege).) However, when necessary, Plaintiffs provided a more detailed log. For example, Plaintiffs provided a detailed log for some communications between Sahar Abdalla and Natalina Kantieko. The log stated that Plaintiffs were withholding the following:

a. Text from Sahar Abdalla to Natalina Kantieko re questions by counsel dated March 25, 2024.
b. Text from Sahar Abdalla to Natalina Kantieko re Fee Waiver dated April 8, 2024
c. Text from Sahar Abdalla to Natalina Kantieko re Fee Waiver dated April 9, 2024
d. Text from Sahar Abdalla to Natalina Kantieko re Fee Waiver Signature dated April 9, 2024

Sahar Abdalla is Plaintiff Fatima Abdelrahman's daughter and was being used as a translator and contact person for the Plaintiffs. Thus, her texts are arguably attorney-client privileged. (Evid. Code § 952 (applying to "those to whom disclosure is reasonably necessary for the transmission of the information)".) Whether the court ultimately finds that texts from Sahar are privileged is irrelevant. The privilege log(s) demonstrate a good faith

effort at compliance with the Discovery Act, even if Defendant disagrees with the assertion of privilege.

Finally, Defendant complains that the document production was not in compliance with the Discovery Act. Counsel claims that they have repeatedly requested that the documents be bate-stamped and identify which bate stamps are responsive to which request. (Def. Opp. at 12:23 to 13:14.) It is necessary to create a PDF to batestamp documents. Plaintiff had previously batestamped documents in PDF format and was accused of failing to provide ESI. So, this time, Plaintiffs organized all the documents in folders identified by the Discovery Request number. Most of the document files were renamed to identify the date and author and/or subject. For example, in responses to RFP #28, (documents supporting Paragraph 3 of the Second Amended Complaint) were placed in a folder labeled "Abdelrahman RFP028 Para 3." Inside such folder contained all the electronic documents that Plaintiff believe are responsive labeled by date and subject and/or author. So, for example, an email string between Gary Geiler (City of San Diego) and Elena Lopez (CHCDC) was in a file labeled "10.5.2023 G.Geiler to Elena Lopez Email String." A photograph of the notices posted by CHCDC for deadlines for lease renewals was identified as "12.12.2023 CHCDC Farm Posting re Deadline to Sign Lease."

This method of document production complies with what is demanded under the Discovery Act. First, Plaintiffs do not have to produce documents in more than one electronic format. (Code Civ. Proc. § 2031.280(d)(2).) Secondly, Plaintiffs organized all the documents per request. (Code Civ. Proc. § 2031.280(a).) The fact that some documents were produced multiple times in response to multiple requests simply emphasizes that the RFPS and SROGS were incredibly repetitive. For example, documents support the allegation that the CHCDC lacked authority to control or manage the New Roots Farm (or similar allegations), was requested more than 60 times in some form, despite the fact that such documents would be the same for all three Plaintiffs. Plaintiffs responded to 579 separate discovery requests in GOOD FAITH. If the purpose of Discovery is to allow counsel to prepare for trial, and not to pound an opponent into submission, Plaintiffs

responses demonstrate substantial compliance with the Discovery Act. Defendant knows exactly what evidence Plaintiffs believe support their allegations.

B. Plaintiffs' Attorney is not a Liar and the Failure to Timely Respond Demonstrates Excusable Neglect and Mistake.

Defendant's primary argument is that Plaintiff's counsel is a liar and should not be believed. (Opp. at 14:20-23.) Defendant Attorney's accusations, while unpleasant and offensive, constitute an admission that the facts constitute excusable neglect sufficient to justify relief from waiver. Any claimed inconsistencies are easily explainable and are not the result of the lack of integrity of counsel.

First, an attorney's declaration, as an officer of the court, is entitled to credibility absent clear evidence that it is erroneous. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396 (discussing verified time records).) An attorney has a duty to "never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." (Bus. & Prof. Code § 6068.) Plaintiff's attorney has dedicated his practice to defending the environment and the underserved, such as indigent refugee farmers, and clearly takes his duties as an attorney seriously. (See e.g., Bus. & Prof. Code § 6068(h)(duty to represent the defenseless and oppressed).) Further, to side with the Defendant, the court would not only have to disbelieve Plaintiffs' attorney's declaration, but would also need to disbelieve the declaration of Melissa Penaflor, the independent paralegal hired by Plaintiff.

The declarations support the following: 1. Ms. Kuhnert left the case in December of 2024 and then refused to return. (Cardiff Dec. ¶¶ 5 & 10); 2. Independent Paralegal was only able to work after 5 p.m. and on weekends (Cardiff Dec. ¶ 6; Penaflor Dec. at 5); 3. Plaintiff's counsel's computer had multiple issues, including freezing while attempting to convert the responses into PDF format shortly before the deadline. (Cardiff Dec. ¶ 8.) In fact, Plaintiff's counsel informed his paralegal of such problems. (Cardiff Dec. ¶ 8; Penaflor

Dec. ¶ 8.) There is no reason or evidence to question the credibility of any of these statements.

Opposing counsel questions why Attorney's counsel did not bring up the computer issues in its initial email on the morning of March 4, 2025. The key to such question is in the last paragraph of such email, which states "I do note that I did not receive the anticipated documents production from your client yesterday either. I would suggest yet another week long mutual extension. Thank you for your consideration." (NOL, Ex. 2, p. 206 (last page before Ex. 3).) Thus, because Defendant had missed its own deadline for serving supplemental discovery responses, it was reasonable to believe that reciprocity in mutual extensions would be honored. There was no need to go into the various computer glitches, when Plaintiff's counsel was suggesting a mutual weeklong extension.

Defendant questions the statements about Ash Kuhnert stepping away from the case in December and arguing that Plaintiff's counsel should have just hired another paralegal. (Def. Opp. at 15:8-15.) This demonstrates a fundamental blind spot of Defendant's counsel. Plaintiffs are not only refugees with limited English skills, but they are indigent. Unlike Defense counsel who is undoubtedly paid handsomely for every minute they work on the case, Plaintiffs and Plaintiffs' Counsel have limited financial resources. It takes time to identify and hire an experienced paralegal at an affordable rate. Plaintiffs were incredibly thankful for the work on Ash Kuhnert while she was on the case, and are similarly thankful that Melissa Penaflor was willing to work on the case, particularly after she already worked full days on other cases.

Defendant also questions why Plaintiff did not serve the discovery responses for another 11 days if the responses were close to being finished on March 3, 2025. (Def. Opp. at 15:16-22.) It is true that Plaintiffs' counsel was intending to serve unverified responses signed by counsel on March 3, 2025 and then serving the verifications later. (*Blue Ridge Ins. Co. v. Superior Court* (1988) 202 Cal.App.3d 339, 345.) This is a relatively common practice, and, in fact, Defendant CHCDC served verifications separate from the discovery responses both in its initial discovery responses and supplemental responses. However, as

noted above, relief from waiver of objections requires subsequently served responses that substantially comply with the Discovery Act. (Code Civ. Proc. § 2030.290, 2031.300.) Once Plaintiffs missed the deadline and it was clear that Defendant was going to require Plaintiffs to move for relief from waiver, Plaintiffs spent the time to ensure that their responses and document production complied with the Discovery Act. Substantial compliance includes verifications. Plaintiffs served all of its verified responses on March 14, 2025 only two days after finally receiving Defendant's verifications for its supplemental responses. (Cardiff Dec. ¶ 17.)

Defendant claims that Plaintiff should have asked for more time. In hindsight, that would have been preferable. However, as displayed in the correspondence, Defendant had already indicated that it was unlikely to grant another extension. (See Callender Dec., Ex. E.) Further, Plaintiffs' counsel believed that he would be able to meet the deadline. (Cardiff Dec. ¶¶ 7.) It was only when it was too late, that Plaintiffs counsel realized it would miss the deadline. The claim that Plaintiff could have still obtained an extension far after business hours is not reasonable. (Def. Opp. at 5:26-28, fn. 4.) While Plaintiffs' has drafted and sent emails in the middle of the night, he has never expected an immediate response outside of business hours.[1]

Finally, the court can and should consider not only the balance of equities in the case, but the lack of prejudice suffered by Defendant by grantING of relief from waiver of objections. Defendant fails to articulate any prejudice that it would suffer from the grant of relief from waiver. (Def. Opp. at 16:12-26.) And, yes, prejudice should be considered. As noted in Plaintiffs opening brief, "[If] the moving party promptly seeks relief and there is no prejudice to the opposing party," then only slight evidence of mistake, inadvertence, or neglect is required." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343.) There is certainly no prejudice that could be claimed by Plaintiff serving complete discovery

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[1] For an inexplicable reason, Defendant claims that Plaintiff's counsel had oral argument in *Cal. Chaparral Inst. V. Board of Forestry*, Appellate Case no. D083484, two days prior to serving discovery responses and productions. (Def. Opp. at 4:25-26, fn. 1 and 14:27-28 fn. 8.) That is not accurate. Oral argument in such case was held earlier this month on May 12, 2025.

responses with verifications and documents to a massive amount of discovery just two days after Defendant finally served verifications to its supplemental discovery responses.

Further, Defendant missed both its initial deadline to responding to a very reasonable amount of discovery (20 SROGS, 27 RFPS, 30 RFAS, and FROGS), and the agreed upon deadline of March 3, 2025 to supplement its responses. (Cardiff Dec. ¶¶ 9, 16.) It turns out that Defendant is unconcerned about preserving attorney-client privilege because Defendant intends to assert "reliance on advice of counsel" as a defense. (Def. Opp. at 5:25-26 fn. 3.) Likely, a reciprocal grant of relief from waiver would have been agreed to had the Defendant been concerned about maintaining its attorney-client privilege. However, a voluntary relinquishment of attorney-client privilege is much different than a compelled relinquishment of attorney-client privilege

Unlike Defendant, Plaintiffs' privileged information is not admissible at trial. Failing to grant relief from waiver of objections will require disclosing medical records of two Plaintiffs who are not asserting medical damage claims, communications concerning settlement, communications concerning strategy and opinion about the strength of the case, irrelevant discussion about fundraising with third parties held well after the filing of the complaint, and irrelevant, non-admissible discussions with paralegals. "The privilege of confidential communication between client and attorney should be regarded as sacred. It is not to be whittled away by means of specious argument that it has been waived. Least of all should the courts seize upon slight and equivocal circumstances as a technical reason for destroying the privilege." (*Sullivan v. Superior Court* (1972) 29 Cal.App.3d 64, 71 quoting *People* v. *Kor* (1954) 129 Cal.App.2d 436, 447.) Considering the very short delay in responses that substantially complied with the Discovery Act, and the facts supporting excusable neglect and mistake, the court should grant relief from waiver of the objections to the RFPS and SROGS.

DATE: 5/22/2025

Todd T. Cardiff, Esq.
Attorney for Plaintiffs

PROOF OF SERVICE
ABDELRAHMAN V. CITY HEIGHTS COMMUNITY DEVELOPMENT CORPORATION
SD SUP. COURT CASE NOS.
37-2024-00027594-CU-OR-CTL
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I am over the age of 18 and not a party to this case. My business address is 1901 First Avenue, Ste. 219, San Diego, CA 92101. On May 22, 2025, I served the following documents:

REPLY IN SUPPORT OF MOTION FOR RELIEF FROM WAIVER OF OBJECTIONS

by serving the identified parties per the attached service list, in the following manner:

( ) (BY MAIL) By placing envelopes containing the above documents for collection and mailing following our ordinary business practices. I am readily familiar with the ordinary business practice of the Law Office of Todd T. Cardiff, that practice being that in the ordinary course of business correspondence is deposited with the US Postal Service the very same day in a sealed envelope with postage fully prepaid.

(X) (ELECTRONIC SERVICE) By making a PDF copy of the above titled documents and serving the parties/ or interest persons listed below at the email addresses listed below. Electronic copies of the documents were served using the e-service feature provided by OneLegal.com without notice of error.

I declare under penalty of perjury, under the laws of the state of California, that the foregoing is true and correct. Executed this May 22, 2025, in San Diego, California.

TODD T. CARDIFF

SERVICE LIST
ABDELRAHMAN V. CITY HEIGHT COMMUNITY DEVELOPMENT CORPORATION
SD SUP. COURT CASE NOS.
37-2024-00027594-CU-OR-CTL
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