

TENTATIVE RULINGS

FOR: May 21, 2021

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. **COURTCALL IS NO LONGER AVAILABLE.**

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom

Join by Video (Preferred)

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Dept. B Zoom

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Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to <http://napacountybar.org/court-reporting-services/> for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Merryvale Vineyards LLC v. V2 Wine Group, LLC, et al.

19CV000482

DEFENDANT’S MOTION TO COMPEL FURTHER RESPONSES TO FIFTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

TENTATIVE RULING: The motion is GRANTED.

I. PROCEDURAL MATTERS

Defendant V2 Wine Group, LLC (V2) moves, pursuant to Code of Civil Procedure sections 2017.010, 2031.210, and 2031.310, for an order compelling Plaintiff Merryvale Vineyards LLC to serve further verified responses, without objections, to V2’s Fifth Set of Requests for Production of Documents, No. 101, and to produce all responsive documents.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 2.9. Moving party/counsel is directed to contact the opposing party/ies forthwith and advise of Local Rule 2.9 and the Court's tentative ruling procedure. Notwithstanding the procedures set forth in Local Rule 2.9, the moving party/counsel shall appear at the hearing, by Zoom, unless it is confirmed that no party requests oral argument.

II. LEGAL ANALYSIS

A civil litigant's right to discovery is broad. "[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action ... if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010; see *Davies v. Super. Ct.* (1984) 36 Cal.3d 291, 301 ["discovery is not limited to admissible evidence"].) "A trial court must be mindful of the Legislature's preference for discovery over trial by surprise, must construe the facts before it liberally in favor of discovery, may not use its discretion to extend the limits on discovery beyond those authorized by the Legislature, and should prefer partial to outright denials of discovery." (*Greyhound Corp. v. Superior Court* (1961) 56 Cal.2d 355, 383.)

"Although the scope of civil discovery is broad, it is not limitless." (*Calcor Space Facility v. Super. Ct.* (1997) 53 Cal.App.4th 216, 223 (*Calcor*).) "In the...context of a request to produce documents, a party who seeks to compel production must show 'good cause' for the request (Code Civ. Proc., § 2031, subd. (l)) – but where...there is no privilege issue or claim of attorney work product, that burden is met simply by a fact-specific showing of relevance." (*Glenfed Development Corp. v. Super. Ct.* (1997) 53 Cal.App.4th 1113, 1117 (*Glenfed*).) "In the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement." (*Ibid.*) A finding of relevance may be supported by the claims or defenses asserted through the pleadings. (*Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) Where such showing cannot be established by reference to the pleadings, the burden on the party seeking discovery is to "produce *evidence* from which the court may determine" that "the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Calcor* at 223, emphasis in original.)

Once good cause is shown, the burden shifts to the party opposing the motion to justify its objection(s). (See *Kirkland v. Super. Ct.*, *supra*, 95 Cal.App.4th at 98.)

A. V2 Shows Good Cause for the Request

The subject request seeks production of "[a]ll loan applications made by [Plaintiff] between 2016 and the present." (Plaintiff's Opposition Separate Statement at 2:12-13 (OSS).)

The Court finds that issues relating to Plaintiff's financial condition at all relevant times are central to Plaintiff's claims in the action. (See, *e.g.*, Second Amended Complaint at 47, 58-59, 63, 74, and 82 (SAC).) V2 argues that "[i]nformation contained in loan applications would constitute contemporaneous representations prepared for and relied on by lenders, rather than documents prepared by Merryvale or its expert(s) for purposes of litigation. As such, it is

reasonable to believe that the requested items may offer the best evidence as to Merryvale's financial health at specific points in time.” (Support Memo at 6:23-7:1.) The Court finds that the subject documents might reasonably assist V2 evaluate its case, prepare for trial, or facilitate a settlement. (See *Glenfed*, *supra*, 53 Cal.App.4th at 1117.) V2 has, therefore, made a showing of good cause for the production. (See *ibid.*; see also Code Civ. Proc., § 2031, subd. (I), *Kirkland v. Super. Ct.*, *supra*, 95 Cal.App.4th at 98.)

B. Plaintiff Fails to Justify its Relevance-Based Objection

Plaintiff asserts that the subject documents are irrelevant, arguing first that “Merryvale’s loan applications do not prove or disprove any issue in this case.” (Opposition at 5:21.) Pursuant to the discussion herein above, that is not the standard of the term “relevance” as used in the governing code. (See *Glenfed*, *supra*, 53 Cal.App.4th at 1117.) Based on the standard articulated in *Glenfed*, the Court finds that the subject documents are relevant.

Plaintiff next argues that it will provide the documents that V2 “will need to refute Merryvale’s damages claim...through the production of financial information – balance sheets, revenue and sales figures, etc., which Merryvale has already agreed to produce.” (Support Memo at 5:22-25.) Plaintiff provides no authority suggesting that its willingness to produce certain documents relevant to a material issue defeats requests for other documents relevant to the same issue. The Court is unaware of any.

Finally, Plaintiff argues that, even though the subject documents may contain financial information that is relevant, they also contain information that is not relevant. (See Opposition at 6:11-6.) Again, Plaintiff fails to present authority by which the Court may uphold its relevance objection to the requested production based on the fact that some information contained in the subject documents may be irrelevant.

C. Plaintiff Fails to Justify its Privacy Objection

Plaintiff argues that “it is indisputable that Merryvale has a constitutional right to privacy that entitles it to entry of an order prohibiting the discovery of its loan applications.” (Opposition at 7:17-18.) While Plaintiff presents authority and argument establishing the premise of its argument – that Merryvale has a constitutional right to privacy – it fails to present any discussion or argument relating to the conclusion – that the subject documents are shielded from discovery pursuant to such right.¹ (*Ibid.*; see also OSS at 11:11-12:14.) Because Plaintiff fails to make any showing that the specific documents at issue here are shielded from discovery based on Plaintiff’s constitutional right to privacy, it fails to justify its objection on these grounds.

¹ Plaintiff argues that the type of documents at issue here are sufficiently distinct from those at issue in *Herczeg v. Houston Wire and Cable Co.* (C.D.Cal. 2019) 2019 WL 3064118 (*Herczeg*), relied on by V2, that the Court should disregard the decision in that case. The Court declines to rely on the case for more fundamental reasons. *Herczeg* is a decision of a Federal District Court, and therefore does not constitute authority here. (See *ibid.* at *1.) Moreover, the case’s decision involves the interpretation and application of the Federal Rules of Civil Procedure, and therefore is of questionable relevance to the matters at issue. (See *id.* at *2-3.)

D. Plaintiff Fails to Justify its Trade Secret Objection

In similar fashion, Plaintiff assumes that Defendant, and by extension the Court, *must* understand that the information sought qualifies as a trade secret. “Anyone who has ever completed a loan application or sought commercial financing knows how much data banks demand, including assets, profit, projections, valuations, trade secrets, and key personnel. The notion that a sophisticated entity like Defendant is unaware of this or even disputes is [*sic*] untenable.” (Opposition at 8:7-10.) Perhaps. However, Plaintiff bears the burden of justifying its trade secret objection, not in the abstract, but based on the specific documents requested. (*Kirkland v. Super. Ct.*, *supra*, 95 Cal.App.4th at 98.) Plaintiff fails to do so here.

E. Plaintiff Fails to Justify its Taxpayer Privilege Objection

As V2 notes through its Reply, it is not clear that Plaintiff preserved this objection through its response to request number 101. (See OSS at 2:15-3:1.) Assuming, *arguendo*, that it did, Plaintiff fails to justify it here. Plaintiff argues only that “[p]ortions of the loan applications Defendant seeks may be protected by the taxpayer privilege to the extent they include or incorporate tax returns.” (Opposition at 9:5-6.) The Court agrees that they *may be*. Again, however, in order to defeat Defendant’s motion for an order compelling production based on such objection, Plaintiff bears the burden here to show that they *are*. (*Kirkland v. Super. Ct.*, *supra*, 95 Cal.App.4th at 98.) Plaintiff fails to carry that burden here.

F. Plaintiff Fails to Justify its Objection that the Request is Overbroad

Plaintiff asserts that the request is “patently burdensome, oppressive and overbroad....” (Opposition at 9:20.) Plaintiff only provides a single specific argument in support of this assertion – that Defendants’ request for loan documents made through “the present” is improper as “Merryvale terminated the Sales and Marketing Agreement on March 20, 2019.” (*Id.* at 10:4-5.) On Reply, V2 argues that throughout discovery Plaintiff has raised issues relating to its financial condition from and after March 20, 2019, and even some ten years into the future. (See Reply at 8:7-14.) Unfortunately, even as V2 decries Plaintiff’s failure to produce evidence in support of its arguments, V2 fails to provide the Court with evidence that it cites in support of this assertion. (See *Id.* at 8:6-14.)

Ultimately, the Court does not find the request overbroad on its face. Plaintiff fails to carry its burden of showing that it is. However, the Court finds merit in Defendants’ suggestion that, “[i]f Plaintiff is willing to stipulate that its damages ceased as of the March 20, 2019 termination date, V2 would...be willing to limit Request No. 101 to loan applications submitted between 2016 and the termination date.” (Reply at 8:15-18.)

G. Plaintiff Waives All Other Objections

All other objections asserted by Plaintiff through its response to the subject requests are waived as Plaintiff failed to raise and argue their application here, thereby failing to justify each.

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PETITION FOR CHANGE OF NAME

TENTATIVE RULING: Notice has been properly published and no written objections have been filed. The petition is GRANTED without need for appearance.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Estate of Diana Bonnevie Clark

20PR000054

FOURTH PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY (ESTATES <\$166,250)

APPEARANCE REQUIRED. Following a continuance to allow petitioner to file an amended petition and to correct numerous issues, on December 22, 2020, the Court denied without prejudice petitioner's first petition to determine succession to real property. The Court denied without prejudice petitioner's second petition to determine succession to real property as numerous defects remained. For the third petition, petitioner remedied many of the issues identified in previous minute orders. After the hearing on April 30, 2021, instead of including a supplement to the third petition, petitioner filed the current fourth petition. Petitioner has provided noticed to all parties and the petition is at issue.

It is apparent from the court file that this case needs to have a will contest, which is an evidentiary hearing where the parties appear with their witnesses and evidence and argue about lack of due execution, the validity of the holographic will, and testamentary intent. Appearance is required to discuss setting an evidentiary hearing date for the will contest.

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Energy Plus Wholesale Lighting and Design v. Craig Hall, et al.

19CV001739

MOTION TO COMPEL COMPLIANCE

TENTATIVE RULING: Plaintiff Energy Plus Wholesale Lighting and Design, Inc.'s motion to compel compliance as to request for production of documents (set one) numbers 1-13 from cross-defendant Bowman Construction and Development, Inc. is GRANTED.² Cross-

² Plaintiff moved to compel further production of documents responsive to the document requests in the notice of motion. The motion to compel compliance under Code of Civil Procedure section 2031.320 is the more suitable provision under the circumstances due to cross-defendant's agreement to produce all relevant, non-protected, responsive documents in its possession.

defendant did not oppose the motion. Cross-defendant shall produce all non-privileged documents within 10 calendar days from the date of service of notice of entry of order.

Plaintiff's request for monetary sanctions for bringing its motion is DENIED. Plaintiff did not move to compel compliance in its notice of motion and cross-defendant did not oppose the motion, which means monetary sanctions are not authorized. (See Code Civ. Proc., § 2031.320, subd. (b) [providing that monetary sanctions are authorized against any party, person, or attorney who “unsuccessfully . . . opposes a motion to compel . . . ”].) The request also is not code-compliant. Plaintiff did not cite in the notice of motion a specific code section, with the requisite subsection, authorizing sanctions. (*Id.*, §§ 2023.030-2023.040; see Weil & Brown, Cal. Practice Guide: Civil Proc. Before Trial (Rutter Group 2020) at § 8:200 [“The notice of motion must contain a request for sanctions and must: . . . Cite the *authority* for such sanctions.”].) The notice of motion cites to Code of Civil Procedure sections 2023.030, subdivision (a), and 2030.300 as the basis for monetary sanctions. Code of Civil Procedure section 2023.030, subdivision (a), states the Court may impose monetary sanctions if a party misuses the discovery process. This code provision, however, makes clear that the Court's authority to impose sanctions must be authorized by another provision of the Discovery Act, which plaintiff did not properly invoke. The citation to Code of Civil Procedure section 2030.300 in the notice of motion cannot serve as the basis for monetary sanctions as the provision deals with interrogatories, not document requests. Any reference to code sections in the memorandum of points and authorities is a violation of due process.