

**Dept. 1**

**Civil Law and Motion Tentative Rulings for Friday, May 3, 2024 at 8:30 a.m.**

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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**1. CV65171                      Baumgarten v. Icenogle**  
Hearing on:                      Discovery Motions  
Moving Party:                      Defendant  
Tentative Ruling:                      Granted in Part; Denied in Part

Before the Court this day are three discovery-related motions, filed by defense and triggered in large part by plaintiff’s counsel’s failure to timely inform the defense that plaintiff passed away. The salient facts are as follows:

On 12/03/21, plaintiff Spencer Baumgarten (hereinafter “plaintiff”) purchased from defendant Eric Icenogle (hereinafter “defendant”) a 1974 Ford Bronco for \$119,997.00. According to plaintiff, he made the sizable acquisition based entirely on defendant’s express representations made online (via Ebay Motors) regarding the refurbished condition thereof. There is no indication of there having been any pre-purchase inspection or *caveat emptor*.

On 06/17/22, plaintiff filed suit in Los Angeles County for damages resulting from alleged misrepresentations associated with the aforementioned transaction. According to plaintiff, the vehicle had not been refurbished as promised, and had a variety of mechanical concerns.

On 12/14/22, the Court granted defendant’s motion to transfer venue to Tuolumne County.

On 03/15/23, this Court received the file from Los Angeles County Superior Court.

On 04/05/23, this Court issued to the parties an ex parte order giving notice of the assignment for all purposes, and setting an upcoming CMC.

On 05/08/23, plaintiff died after a lengthy battle with leukemia, though his primary cause of death was listed as heart attack.<sup>1</sup>

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<sup>1</sup> Plaintiff was apparently a renowned agent in the motion picture industry, and head of his own management and production company. His passing was noted in numerous industry publications (and included in the In Memoriam segment during the telecast of the 96th Oscars). There is currently some litigation down south involving his sizable estate and alleged undue influence by a live-in girlfriend. One of the daughters pressing that litigation is the proposed successor in interest here.

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On 06/13/23, counsel for plaintiff filed, on plaintiff's behalf, a CMC Statement (CM-110) indicating that plaintiff was willing to participate in mediation or a settlement conference. Counsel further indicated that the CRC 3.724 meet and confer would be completed shortly.

On 07/11/23, plaintiff's counsel took defendant's deposition.

On 07/28/23, counsel for both sides appeared at the CMC and advised that the case was not ready to be set for trial. This Court set a continued CMC for 10/27/23. At the continued CMC, nobody appeared on behalf of the plaintiff. Nevertheless, the matter was set for trial.

On 11/30/23, defendant caused to be served upon counsel for plaintiff a set of Form Interrogatories and a Request for Admissions.

On 01/02/24, counsel for plaintiff served a responses to both the Form Interrogatories and the Request for Admissions, consisting entirely of unverified objections.

On 01/05/24, defendant caused to be served upon plaintiff's counsel a notice of deposition. The deposition was scheduled to take place on 01/24/24. Objections to the deposition notice were served the day prior, taking the position that plaintiff was "unavailable" for the deposition.

On 02/07/24, counsel for plaintiff reportedly learned for the first time that plaintiff passed away, and relayed the information to defense counsel.

On 02/22/24, defendant caused to be filed and served a motion to compel a "further" response to Form Interrogatories and Request for Admissions.

On 03/22/24, defendant caused to be filed and served a motion for abuse sanctions (CCP §§ 128.5, 128.7) based upon counsel's alleged frivolous litigation tactics.

To begin, since the bad faith tactic statutes do *not* apply to discovery disputes (see §§ 128.5(e) and 128.7(g)), this Court reasonably surmises that counsel intended the request for monetary sanctions to run with the discovery statutes. While this reduces the scope of the permissible award significantly, this is the nature of the statutory scheme.

Defendant is entitled to an order compelling a further response, and award of monetary sanctions, pursuant to CCP §§ 2023.010(e), 2030.240(a), and 2030.300(a)(3) because

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asserting blanket objections to every form interrogatory – including the most benign thereof – represents a clear abuse of the discovery process. To make matters worse, plaintiff inserted the exact same blanket objection to all form interrogatories, inaccurately citing to a variety of incomplete and stale authorities. A review of the responses permits only one conclusion, to wit: plaintiff’s counsel never had any intention of involving plaintiff in the responses, and waited until it was too late to do anything other than “preserve” objections and push defense counsel down the road for the singular purpose of delay. The motion to compel an objection-free substantive response to the Form Interrogatories is GRANTED. Responses are due within 30 days. In terms of sanctions, defendant is entitled to be reimbursed for the fees and costs associated with the motion to compel. A review of the proffered billing summary reflects approximately 3 hours (@ \$400/hour) plus the filing fee (\$60) for a total sanction of \$1,260.00, chargeable to both client and counsel.

Defendant is entitled to an order compelling a further response, and award of monetary sanctions, pursuant to CCP §§ 2023.010(e), 2033.230(a), and 2033.290(a)(2) because asserting blanket objections to every RFA represents a clear abuse of the discovery process. To make matters worse, plaintiff inserted the exact same blanket objection to all RFAs, including a reference to “premature disclosure of expert opinions” on matters uniquely within plaintiff’s personal knowledge (and not requiring an expert opinion). A review of the responses permits only one conclusion, to wit: plaintiff’s counsel never had any intention of involving plaintiff in the responses, and waited until it was too late to do anything other than “preserve” objections and push defense counsel down the road for the singular purpose of delay. The motion to compel an objection-free substantive response to the RFAs is GRANTED. Responses as due within 30 days. In terms of sanctions, defendant is entitled to be reimbursed for the fees and costs associated with the motion to compel. A review of the proffered billing summary reflects approximately 3 hours (@ \$400/hour) plus the filing fee (\$60) for a total sanction of \$1,260.00, chargeable to both client and counsel.

Finally, defendant requests additional sanctions relating to other transgressions. Although CCP §§ 128.5 and 128.7 may provide defense counsel a larger recovery than a garden-variety discovery motion, the standard is far more exacting. Bad faith sanctions are only recoverable for behavior which is (1) totally without merit, (2) for the sole purpose of harassment, or (3) solely intended to cause unnecessary delay. In other words, sanctions will only issue if every reasonable attorney would agree that there is no legitimate or cogent basis for the challenged behavior, and only to the extent necessary for future deterrence. This is a relatively high bar. See, e.g., *Marriage of Sahafzadeh-Taeb & Taeb* (2019) 39 Cal.App.5th 124, 135. The only non-discovery transgressions

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mentioned are (1) counsel’s voluntary representation that plaintiff was consulted with for the discovery responses, (2) the filing of CMC Statements seeking trial delays, without discharging the ethical obligation to timely confer with the client (see, *e.g.*, CRPC 3.2, 3.3(a)(1), and 3.4(a)), and (3) representing that the client was “unavailable” for a properly-noticed deposition, when in fact the client was deceased. “An attorney is an officer of the court and owes the court a duty of candor. The duty of candor is not simply an obligation to answer honestly when asked a direct question by the trial court. It includes an affirmative duty to inform the court when a material statement of fact or law has become false or misleading in light of subsequent events.” *Levine v. Berschneider* (2020) 56 Cal.App.5th 916, 921. This Court finds that the constellation of issues herein reflects a pattern that was totally without merit and largely – if not entirely – driven by a desire to delay. A sanction is warranted, but given the limitations of such sanctions, this Court finds that plaintiff’s counsel shall be sanctioned a total of \$800.00.

<b>2. CVL62136</b>	<b>Wahr Financial Group v. Marinovich</b>
Hearing on:	Claim of Exemption
Moving Party:	Debtor
Tentative Ruling:	Continued to 05/31/24 at 8:30 am

This is a collections case in which a judgment was rendered upon defendant’s default. Before the Court this day is the debtor’s claim of exemption.

The California Constitution mandates that the Legislature protect “a certain portion” of debtors' property from forced sale. See Cal. Const. Art. XX, §1.5). The broad purpose is to protect enough property from enforcement to enable judgment debtors to support themselves and their families, and to help shift the cost of social welfare for debtors from the community to judgment creditors. *Coastline JX Holdings LLC v. Bennett* (2022) 80 Cal.App.5th 985, 1004; *Kilker v. Stillman* (2015) 233 Cal.App.4th 320, 329. To this end, exemption laws are liberally construed in the debtor's favor. *Kono v. Meeker* (2011) 196 Cal.App.4th 81, 86; *Ford Motor Credit Co. v. Waters* (2008) 166 Cal.App.4th Supp. 1, 8.

First, there is a statutory cap on garnishment equal to 25% of a debtor’s *disposable* earnings (which are those earnings remaining after deductions for taxes, disability, and retirement benefits). CCP §§ 706.011, 706.050; see also 15 USC §1672-1673. This is an “automatic” exception which need not be affirmatively asserted. *Sourcecorp, Inc. v. Shill* (2012) 206 Cal.App.4th 1054, 1058.

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Next, the court must consider any additional caps vis-à-vis a claim of exemption. Debtors ordinarily claim exemption under CCP §706.051, which protects “the portion of the judgment debtor's earnings which the judgment debtor proves is necessary for the support of the judgment debtor or the judgment debtor's family.” There is no precise definition of what is necessary for the support of a judgment debtor or his or her family. Necessary normally includes housing costs, food, insurance, and automobile costs, but the determination of what is necessary for the support of the judgment debtor or his family has not been subject to a precise definition and differs with each debtor. The court shall take into account all property of the judgment debtor and, to the extent the judgment debtor has a spouse and dependents or family, all property of such spouse and dependents or family, including community property and separate property of the spouse, whether or not such property is subject to enforcement of the money judgment.

Here, the matter cannot be addressed. Although the Legislature made an obvious error by failing to require that the judgment creditor file a copy of the claim of exemption with the motion (see CCP §706.105(e)), it is common practice for creditors to include the Claim of Exemption with the motion. That was not done here.

Hearing continued to 05/31/24. Creditor shall file a copy of the Claim of Exemption at least 5 court days prior thereto.