DEPARTMENT FOUR
JUDGE E. BRADLEY NELSON
707-207-7304

CIVIL TENTATIVE RULINGS AND PROBATE PREGRANTS FOR MATTERS SCHEDULED FOR THURSDAY, OCTOBER 1, 2020

EFFECTIVE APRIL 8, 2019
UNTIL FURTHER NOTICE

- **Probate Staff E-Mail**

Due to temporary staffing reductions, the Probate Staff E-Mailbox will be unmonitored until further notice. Emails sent to the Probate Staff E-Mail address will not be read and no response will be sent.

- **Probate Notes – Department 4**

Due to temporary staffing reductions, until further notice, Probate Notes will no longer be posted on the Court's website.

- **Probate Pregrants and Civil Tentative Rulings – Department 4**

The Probate Pregrant and Civil Tentative Ruling procedure remains unchanged. Pregrants and Tentative Rulings will be posted for Department 4 the day before the hearing after 2:00 p.m.

Unless otherwise directed by the court, probate pregrants are not posted for guardianship matters or for ex parte petitions.

PROBATE PREGRANTS AND CIVIL TENTATIVE RULINGS START ON NEXT PAGE

The parties may join this court calendar remotely utilizing the following information:

Join Zoom Meeting
https://us02web.zoom.us/j/86518846112?pwd=MllvOW41eUltRkNZNWw5RTFkUVYyZz09

Meeting ID: 865 1884 6112
Password: 950146
Telephone No.: + 1 669 900 6833 US (San Jose)

9:00 CALENDAR

PEDRO ROA v. MASARU YAMADA
Case No. FCS051419

Motion to Reduce Plaintiff's List of Experts

TENTATIVE RULING

Defendant MASARU YAMADA moves to reduce Plaintiff PEDRO ROA's disclosed list of expert witnesses on the bases that Plaintiff does not properly identify his witnesses and lists an excessive number of witnesses.

A party served with a demand to exchange expert witness information may promptly move for a protective order. (Code Civ. Proc. § 2034.250, subd. (a).) The court may make any order that justice requires to protect a party from unwarranted annoyance, embarrassment, oppression, or undue burden or expense, and such an order may include that a party reduce its list of employed or retained experts. (*Id*. at subd. (b)(6).) Such an order "is not limited to" the directions listed in subdivisions (b)(1) through (b)(6). (*Id*. at subd. (b).) Thus the court is well within its power to order a reduction of Plaintiff's non-retained witnesses. (Ev. Code § 723; *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 906.)

Such a reduction is proper here. An expert witness list must include the name and address of each expert witness. (Code Civ. Proc. § 2034.260, subd. (b)(1).) Plaintiff does not clearly disclose both a full name and address for any of his numerous non-retained expert witnesses. Most of his disclosures lack any address outright and several of them lack full names and titles, instead listing only the like of "Huan, Chiropractic." (Declaration of Matthew Sullivan at ¶ 2, Exhibit A.) Four of the witnesses are listed with full names and addresses but Plaintiff immediately obfuscates to whom he refers by including after the person's name "and/or A Representative [of a health provider]," such as "Steve Lee, M.D. and/or A Representative of Muir Orthopaedic Specialists." (*Ibid*.) Plaintiff's failure to properly and particularly any of identify his treating physicians leaves his expert witness disclosure akin to one simply listing "all past or present examining and/or treating physicians." Such a disclosure does not comply with the letter or spirit of

Code of Civil Procedure section 2034 and the court has discretion to exclude expert testimony by the improperly-designated doctors. (See *Kalaba v. Gray* (2002) 95 Cal.App.4th 1416, 1423 [unspecific list not statutorily satisfactory].) Further, in cases such as this one involving so many potential witnesses that it would be unnecessary and prohibitively expensive to depose every witness, the listing party must designate which of the treating physicians he intends to call as an expert at trial. (*Id*. at p. 1424 [eighteen nonparty physicians on witness list excessive].)

Defendant's motion is granted. Plaintiff is ordered to produce a new expert witness list within 30 days containing the full names and addresses of the specific persons he intends to call at trial.

OAKLAND PRIVACY, et al. v. CITY OF VALLEJO
Case No. FCS054805

Writ of Mandate

TENTATIVE RULING

Petitioners OAKLAND PRIVACY, SOLANGE ECHEVERRIA, and DANIEL H. RUBINS petition the court for a writ of mandate compelling Respondent CITY OF VALLEJO to refrain from operating any cellular-communications technology, as defined in Government Code section 53166, until the Vallejo City Council adopts a resolution or ordinance authorizing a usage and privacy policy per that statute at a publicly-noticed regularly scheduled meeting that accepts commentary from members of the public and features public voting on a manifest proposed policy. Respondent argues it needs only authorize its chief of police to create a policy, as it did in this case, rather than authorize any particular policy.

A writ of mandate is an extraordinary equitable remedy to which there is no absolute right; the decision whether to grant a writ lies within the sound discretion of the court. (*McDaniel v. San Francisco* (1968) 259 Cal.App.2d 356, 360-361.) One of the chief considerations of the court in the exercise of that discretion is the promotion of the ends of justice. (*Id*. at p. 361.)

This writ concerns the requirements of Government Code section 53166 with regard to the creation of a usage and privacy policy governing a local agency's use of cellular-communications technology. That code section states in most relevant part at subdivision (c)(1): "a local agency shall not acquire cellular communications interception technology unless approved by its legislative body by adoption, at a regularly scheduled public meeting held pursuant to the Ralph M. Brown Act…of a resolution or ordinance authorizing that acquisition and the usage and privacy policy required by this section."

The first step in statutory construction is of course the plain words of the statute; if the words are clear and unambiguous, there is no need for resort to other indicia of legislative intent such as legislative history. (*Hale v. S. Cal. Ipa Medical Group* (2001) 86 Cal.App.4th 919, 924.) Section 53166 commands a legislative body to approve at a

regular public meeting a resolution or ordinance authorizing two things: one, an agency's acquisition of a device, and two, "the usage and privacy policy required by this section." Subdivision (b) describes "the usage and privacy policy required by this section" as one the local agency operating the interception technology must implement "to ensure that the [varied application of the technology] complies with all applicable law and is consistent with respect for an individual's privacy and civil liberties." Subdivision (b)(2) lists further particular minimum requirements for an adequate policy, such as, *inter alia*, descriptions of the job titles of persons permitted to use the technology and the length of time gathered information will be retained.

The reasonable reading of the statute as a whole is that it is the local agency that must implement a privacy policy that the local legislative body authorized. That subdivision (c)(1) requires authorization of "the" policy supports that the local legislative body's task is to submit for commentary and vote upon a particular extant policy. Had our Legislature intended for the local legislative body to simply authorize the creation of "a" policy the statute could easily have been made to read "authorizing the creation of a policy" or the like. The legislative body must authorize something for the local agency to implement, though it does not matter what entity drafted the policy to begin with. This conforms to the normal relationship of legislative and executive arms of the government in the United States. Nonetheless, there is enough ambiguity that it is worth investigating legislative history to clear matters up.

Respondent notes that the first draft of the bill that would enact section 53166 contained the following language that is not present in the final version: "The resolution or ordinance shall set forth the policies of the local agency as to the circumstances when cellular communications interception technology may be employed, and usage and privacy policies, which shall include, but need not be limited to, how data obtained through use of the technology is to be used, protected from unauthorized disclosure, and disposed of once it is no longer needed." (S.B. 741, 2015-2016 Leg. Sess. (Cal. 2015) (introduced 2/27/15).) From this Respondent concludes that the bill actually as enacted did not intend for the resolution to describe the policy to be used. This ignores the clear arc of the bill's development through amendments, chronicled in the dutifully-updated legislative digest.

The legislative digest is relevant to interpreting a statute's meaning because it is reasonable to infer that all members of the Legislature considered it when voting on the proposed statute. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46 at fn. 9.) The digest is printed as a preface to every bill considered by the Legislature, to assist the Legislature in its consideration of pending legislation. (*Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1169.) Digest summaries are "entitled to great weight." (*Id*. at p. 1170.) It is reasonable to presume that amendments are made with the intent and meaning expressed in the Legislative Council's digest. (*Ibid*.)

The first version of S.B. 741 was brief, containing far fewer subdivisions than the final version but still expressing the definition of "cellular communications interception technology" and stating (in separate subdivisions) that a local agency could not use such technology without an authorizing resolution, that the resolution shall be adopted at a regularly scheduled public meeting affording public comment and set forth a privacy

policy including certain minimum features, and that the policy shall be posted on the agency's web site. The May 19, 2015 amendment to S.B. 741 shuffled around the language in new subdivisions, added many new minimum policy features, and provided for civil actions for persons harmed by violations of the proposed statute. (S.B. 741, 2015-2016 Leg. Sess. (Cal. 2015) (introduced 5/19/15).) It created the now-familiar subdivision stating that the local agency shall implement a policy containing certain minimum features and edited the statement that there must be a resolution setting forth a policy to read that the policy shall be "as required by [the new descriptive section]." The next amendment, on June 24, 2015, adjusted the minimum requirements and removed the subdivision containing the exact language that the resolution "shall set forth the policies." (S.B. 741, 2015-2016 Leg. Sess. (Cal. 2015) (introduced 6/24/15).) This language was instead compressed into the first form of another now-familiar subdivision, stating as then amended that there must be "adoption, at a regularly scheduled public meeting with an opportunity for public comment, of a resolution or ordinance authorizing that acquisition or use [of technology] and the usage and privacy policy required by this section." It is fair to say that the policy-setting language was compressed and retained, rather than discarded as Respondent argues, because the removed subdivision also contained the public meeting requirement that the Legislature very obviously did not intend to delete. The May version had one subdivision for the requirement that use be authorized by resolution and one subdivision for the requirement that the resolution set forth policy. The June version had one subdivision make both provisions. Subsequent amendments only added a reference to the Ralph M. Brown Act and an exception for county sheriffs. (S.B. 741, 2015-2016 Leg. Sess. (Cal. 2015) (introduced 8/17/15 and 8/31/15).)

The clear reach of the amendments is to clarify the minimum requirements for an acceptable privacy policy and refining and rephrasing language. The Legislature transferred the minimum policy requirements descriptors out of the same paragraph as the setting requirement and updated the setting requirement to reference the new location while combining it with acquisition authorization for brevity. At no point during any of these amendments did the digest, which was dutifully amended to align with the changes, ever remove the statement that the bill "would require that the resolution or ordinance set forth the policies." Most significantly, in the course of the June amendment that ostensibly removed the policy-setting requirement that quoted digest sentence was also amended – but only to change the words "agency as described above in (1), (2), and (3)" to "agency" in keeping with shuffled definitions. (S.B. 741, 2015-2016 Leg. Sess. (Cal. 2015) (introduced 6/24/15).) There was clearly no intent to change the nature of the sentence, and the policy-setting requirement sentence that was present in the final version of the digest. (S.B. 741, 2015-2016 Leg. Sess. (Cal. 2015) (introduced 10/8/15).)

Respondent had a duty to obey section 53166 by passing a resolution or ordinance specifically approving a particular privacy policy governing the usage of the Stingray device it purchased. Respondent breached that duty by simply delegating creation of a privacy policy to its police department.

The exact requirements of Respondent's currently existing privacy policy are not relevant as it is illegitimate on the basis of not having been approved by resolution or ordinance at a regularly scheduled public meeting pursuant to the Ralph M. Brown Act.

The petition is granted. A writ of mandate shall issue prohibiting Respondent and its officers, agents, and employees from operating any cellular-communications technology, as defined in Government Code section 53166, unless and until the Vallejo City Council adopts a resolution or ordinance authorizing a specific usage and privacy policy regarding that technology and meeting the requirements of that statute at a publicly-noticed regularly scheduled meeting that accepts commentary from members of the public and features public voting by council members on a proposed privacy policy.

BUNK v. MOLNAR
Case No. FCS051336

Continued Hearing on Motion to Compel Further Discovery Responses and for Sanctions filed by Plaintiffs and Supplemental Motion to Compel Further Discover Responses and for Sanctions filed by Plaintiffs

TENTATIVE RULING

There have been orders and findings made by another judge earlier on these motions, as to matters such as the untimeliness of the responses served by Defendant BEN MOLNAR ("BEN") to the subject form interrogatories and requests for production, and restricting the scope of the document requests to the timeframe of Defendants' work on the subject property.

With this in mind, the court orders as follows:

BEN shall serve full and complete further responses without objections to Form Interrogatories 314.7, 321.2, and 324.1. C.C.P. §2030.220 requires a party responding to interrogatories to answer as fully as possible. The court finds that the initial and supplemental responses are evasive and incomplete, insofar as they fail to identify with specificity basic information as to other persons performing labor on the subject property; the scope of work performed by BEN, his wife LEAH, and that of other laborers; and what facts, witnesses and documents support each material denial and/or affirmative defense BEN has asserted to Plaintiffs' complaint.

As to the requests for production, under C.C.P. §2031.220, a responding party must state whether production will be allowed, and if so, confirm that all responsive documents within its possession, custody or control will be produced. BEN's responses simply claim to attach responsive documents, without unequivocally confirming that all responsive documents within his possession, custody or control are being produced.

Thus, the court hereby orders BEN to serve full and complete responses without objections, and to produce all responsive documents, as to document requests 3, 4, 5, 6, 8, 9, 10, 11, 14, 15, 16, 18, 20, 22, 26, 28, 30, 31, 33, 35, 38, 39, 40, 43, 44, 81, 83, 109,

134, 139, 140, 145, 153, 158 and 167, subject to Judge Mattice's earlier limitation that "Only documents related to the period in which plaintiffs' home was constructed are discoverable" [Minute order, June 13, 2019 hearing].

The court also orders BEN to serve full and complete responses to document requests 141 and 143, which on their face and by their nature are clearly not subject to this time limitation.

The court declines to compel a further response as to requests 165 and 166, insofar as any responsive documents would appear to be subject to work product privileges.

BEN is also ordered to comply with Judge Mattice's earlier order as announced at the June 13, 2019 hearing, to ensure that the documents earlier produced, are "produced in compliance with CCP §2031.280(a)". This directive shall also apply to any new production BEN makes in response to this court's order being announced at this time. Thus, for each document already produced, or later produced to comply with the current order, BEN is to identify to which request or requests it is being produced.

The court imposes monetary sanctions in the total amount of $2,300.00, jointly and severally on Defendant BEN MOLNAR, and his counsel of record Alfonso Poire of the law firm Reynolds Law, LLP.

Compliance with all of the terms of this order is to occur within 30 days of service of this order.
