

07/25/2023

David W. Slayton, Executive Officer / Clerk of Court

By: R. Arraiga Deputy

FINAL RULINGS/ORDERS RE: MOTION FOR SANCTIONS FOR FAILURE TO COMPLY WITH COURT ORDER

Bolthouse Land Co., LLC et al. v. All Persons Claiming a Right to Extract or Store Groundwater in the Cuyama Valley Groundwater Basin et al., Case No: BCV-21-101927

Motion for Sanctions for Failure to Comply with Court Order **GRANTED** as to Defendant Tim Murphy only.

The Court imposes an evidence sanction that Murphy may not offer any direct or indirect evidence:

1. Regarding the quantity of groundwater extracted from the Basin by that party or its predecessor in interest for each of the previous ten (10) years preceding the filing of the complaint (§ 842(a)(2));
2. Relating to claims for increased or future use of groundwater (§ 842(a)(7));
3. Relating to surface water rights and contracts that the party claims provide the basis for its water right claims (§ 842(a)(9)); or
4. All other facts that tend to prove the party's claimed water right (§ 842(a)(12)).

All other requests for relief are **DENIED**, without prejudice.¹

I.
INTRODUCTION

This is a groundwater rights adjudication. Plaintiffs Bolthouse Land Co., LLC; Wm. Bolthouse Farms, Inc.; Grimmway Enterprises, Inc.; Diamond Farming Co.; Lapis Land Co., LLC; and Ruby Property Holdings, LLC seek a comprehensive adjudication of groundwater rights in the Cuyama Valley Groundwater Basin (Basin) under Code of Civil Procedure §§ 830 et seq.

On August 17, 2021, Plaintiffs filed their complaint in Kern County Superior Court. On November 22, 2021, this action was assigned and transferred to this Court.

¹ Many parties do not have Answers on file.

On March 8, 2022, Plaintiffs filed their first amended complaint (FAC). In the FAC, Plaintiffs assert the following causes of action: (1) comprehensive adjudication and physical solution re: groundwater rights; and (2) quiet title. Plaintiffs also seek a preliminary injunction to provide for management of the Basin.

On March 22, 2022, the Court issued its case management order (CMO).

On June 27, 2023, Plaintiffs filed the pending motion for sanctions for failure to comply with this Court's CMO. On July 5, 2023, Defendant Southern California Gas Company (Defendant) filed its opposition. On July 11, 2023, Plaintiffs filed their reply.

II. DISCUSSION

A. Applicable Law.

A party seeking severe nonmonetary discovery sanctions generally must show: (1) that a party has failed to comply with a discovery order; and (2) that such failure was willful. R.S. Creative, Inc. v. Creative Cotton, Ltd. (1999) 75 Cal.App.4th 486, 496. Nonmonetary sanctions should be appropriate to the magnitude of the failure and should not exceed what is required to protect the interests of the party seeking discovery. Do It Urself Moving & Storage, Inc. v. Brown, Leifer, Slatkin & Berns (1992) 7 Cal.App.4th 27, 35, superseded by statute on other grounds as stated in Union Bank v. Superior Court (1995) 31 Cal.App.4th 573.

As an evidence sanction, a court may prohibit a party disobeying a discovery order "from introducing designated matters in evidence." Code Civ. Proc., § 2023.030(c). Courts may consider the following factors in deciding whether to impose nonmonetary sanctions for disobeying discovery orders:

- The time that has elapsed since the discovery was served;
- Whether the party received extensions of time to answer or respond;
- The number of discovery requests and the burden of replying;
- The importance of the information sought;

- Whether the answering party acted in good faith and with reasonable diligence—i.e., whether he or she was aware of the duty to furnish the requested information and had the ability to do so;
- Whether the answers supplied were evasive or incomplete;
- The number of questions remaining unanswered;
- Whether the unanswered questions sought information that was difficult to obtain;
- The existence of prior court orders compelling discovery and the answering party's compliance with them;
- Whether the party was unable to comply with previous orders re: discovery;
- Whether an order allowing more time to respond would enable the responding party to supply the necessary information; and
- Whether some sanction short of dismissal or default would be appropriate to the dereliction.

Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 796; Manzetti v. Superior Court (1993) 21 Cal.App.4th 373, 379.

Discovery sanctions primarily enable the propounding party to obtain the information sought, while also compensating costs and fees incurred in enforcing discovery. Deyo, 84 Cal.App.3d at 976. However, the propounding party may not receive a windfall—i.e., the sanctions imposed should not give the propounding party more than would have been obtained if the interrogatories had been answered. See, e.g., Caryl Richards, Inc. v. Superior Court in and for Los Angeles County (1961) 188 Cal.App.2d 300, 303–307 (striking party's pleadings because of evasive interrogatory answers is excessive; an order establishing disputed facts against party would better serve purposes of discovery).

Once the moving party shows the failure to obey a discovery order, the burden shifts to the nonmoving party to establish a satisfactory excuse for disobeying the discovery order. Corns v. Miller (1986) 181 Cal.App.3d 195, 201; Williams v. Russ (2008) 167 Cal.App.4th 1215, 1227.

B. An Evidentiary Sanction Is Imposed Against Defendant Tim Murphy.

Code of Civil Procedure § 842(a) provides that parties in a comprehensive groundwater adjudication must serve initial

disclosures on all other parties with six months of their first appearance.

A party shall make its initial disclosures based on the information then reasonably available to it. A party is not excused from making its initial disclosures because it has not fully investigated the case, because it challenges the sufficiency of another party's disclosures, or because another party has not made its disclosures.

Code Civ. Proc., § 842(c). Parties also have a continuing obligation to supplement initial disclosures as needed. Code Civ. Proc., § 842(d).

Here, in its CMO, the Court ordered all defendants to serve initial disclosures pursuant to Section 842(a) within three months of appearing in this adjudication. March 22, 2022 CMO, ¶ 2. According to Plaintiffs, the following defendants appearing in this adjudication still have not served their initial disclosures:

Name of Defendant(s)	Answer Filed	Disclosures Due	Service Address	Served with Motion?
Cook, Jason (business partner w/Henry Lopez, served via email 7/15/22)	7/15/2022	10/13/2022		No
Cuyama Christian Academy, Kathleen Ricci (Director)	7/12/2022	10/10/2022		No
Elder, Daniel	7/15/2022	10/13/2022		No
Field, Bobby	6/27/2022	9/27/2022		No
H. Lima Company, Inc. / Hank Lima	9/2/2022	12/1/2022		No
Hogan, Larry	7/14/2022	10/13/2022		No
Hood, Tammy	7/20/2022	10/18/2022	140 San Emidio Maricopa, CA 93252 Tammyrjm@yahoo.com	No
Jacobs, David	7/12/2022	10/10/2022	2419 E Harbor Blvd. #158 Ventura, CA 93001 DavidaJacobs65@gmail.com	No
Kansky, Karen	7/14/2022	10/13/2022		No
Kearney, Lesley	7/13/2022	10/11/2022		No
Kearney, William	7/13/2022	10/11/2022		No

LA Jung To Society	7/20/2022	10/18/2022		No
Maurer, Sean	7/15/2022	10/13/2022		No
Murphy, Tim	8/4/2022	11/2/2022	murtim2002@aol.com	Yes
Peet, Jay	7/15/2022	10/13/2022		No
Rodriguez, Bonnie	7/14/2022	10/12/2022		No
Smith, Kimberly A.	8/11/2022	11/9/2022		No
Specht, Fred and Doris	7/17/2022	10/21/2022		No
Stallings Family Trust; Glenn F and Karen S Trustee	8/10/2022	11/8/2022	2516 Aztec Ct Ventura, CA 93001-1423 jfs1934@aol.com	No
Stallings, Karen S, Trustee	8/10/2022	11/8/2022	2516 Aztec Ct Ventura, CA 93001-1423 jfs1934@aol.com	No
Tremper Trust; Mike and Janis Tremper		10/7/2022		No
Weisfuss, Jonathan	7/15/2022	10/13/2022		No
Zuls, Jeanne	7/18/2022	10/17/2022	247 Occidental Dr Oxnard, CA 93036 mydreamsmanifest@gmail.com	No

Plaintiffs provided no date when "Tremper Trust; Mike and Janis Tremper" filed its Answer or appeared in this case. In reviewing the docket, the Court cannot determine whether "Tremper Trust; Mike and Janis Tremper" has in fact appeared in this adjudication and therefore violated the CMO.

In addition, based on the Court's review of the proof of service, only Tim Murphy from the above table was properly served with Plaintiffs' motion. After reviewing the docket, the Court further notes that several appearing parties were not served with Plaintiffs' motion at the addresses stated in their answers on file (see table). Finally, for the remaining parties in the above table, the Court was not able to locate on the docket a responsive pleading/notice of appearance or service address. If Plaintiffs choose to renew their motion as to these parties, Plaintiffs must provide a copy of the parties' responsive pleading/notice of appearance and proof of service on those parties.

As to Murphy, Plaintiffs have shown that he violated the CMO by failing to make timely initial disclosures. As such, evidence sanctions are warranted. Generally, nonmonetary sanctions such as evidence sanctions require a showing of "willful" disobedience of a court order. However, neither Code

of Civil Procedure §§ 2023.030(b) nor (c) "requires willfulness, much less an express finding of such." Aghaian v. Minassian (2021) 64 Cal.App.5th 603, 620.

III.
CONCLUSION

Based upon the foregoing, the court orders that:

- 1) Motion for Sanctions for Failure to Comply with Court Order GRANTED as to Defendant Tim Murphy only.
- 2) The Court imposes an evidence sanction that Murphy may not offer any direct or indirect evidence:
 1. Regarding the quantity of groundwater extracted from the Basin by that party or its predecessor in interest for each of the previous ten (10) years preceding the filing of the complaint (§ 842(a)(2));
 2. Relating to claims for increased or future use of groundwater (§ 842(a)(7));
 3. Relating to surface water rights and contracts that the party claims provide the basis for its water right claims (§ 842(a)(9)); or
 4. All other facts that tend to prove the party's claimed water right (§ 842(a)(12)).
- 3) All other requests for relief are DENIED, without prejudice.

CLERK TO GIVE NOTICE TO PLAINTIFF. PLAINTIFF TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: July 25, 2023



Yvette M. Palazuelos
YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT
Yvette M. Palazuelos / Judge