

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 10/03/23      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV1902637

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: Q. ROARY

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PLAINTIFF:      INTERNATIONAL  
CONCEPTS IN CABINETRY, INC.

vs.

DEFENDANT:      ANO, INC., ET AL

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NATURE OF PROCEEDINGS: MOTION TO COMPEL – FURTHER RESPONSE AND FOR  
SANCTIONS

**RULING**

The motion of Defendant/Cross-Complainant ANO, Inc. (“ANO”) to compel further responses to Request to Product Documents – Set Two, is **GRANTED**. (Code Civ. Proc., § 2031.310.) ANO is entitled to award of sanctions in an amount to be determined by proof.

***Background***

Plaintiff International Concepts in Cabinetry, Inc. (“ICCI”) is an importer and supplier of stainless-steel kitchen sinks and faucets. On June 15, 2006, ICCI executed a “Distributor Agreement” with Defendant ANO making ANO plaintiff’s exclusive regional distributor of these products sold under the brand name “Eclipse Stainless” in Illinois, Indiana, Wisconsin and Kentucky.

The Complaint filed on July 11, 2019, alleges that as of August 2017 Defendant owed Plaintiff over \$207,000 for product was demanded by and shipped to Defendant; that Defendant diverted Plaintiff’s customers by disparaging Plaintiff’s products and misappropriating Plaintiff’s trade secrets and confidential information to directly compete with Plaintiff, in breach of the Distributor Agreement. The Complaint alleges causes of action for: Breach of Contract; Common Counts; Interference with Prospective Economic Advantage; Misappropriation of Trade Secrets (Civil Code § 3426); and Unfair Competition (Bus. & Prof. Code § 17200).

In its Cross-Complaint, ANO claims Plaintiff breached the Distribution Agreement by changing the former high quality foreign manufacturer of the products to a different foreign factory that produced defective products. The defective products in turn, caused Defendant to incur over \$300,000 in repairs and refunds to its customers because Plaintiff refused to honor its express warranty on these products. These sub-standard products also caused ANO to lose customers. ANO further alleges that Plaintiff terminated the Distribution Agreement without cause, thus

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triggering Plaintiff's contractual obligation (§ 9.3) to pay ANO \$300,000, which sum has gone unpaid. The Cross-Complaint alleges a single cause of action for Breach of Contract.

Plaintiff's First Amended Answer includes affirmative defenses, *videlicet*, failure to state a cause of action; statute of limitations; failure of performance; failure to mitigate damages; estoppel/waiver; and lack of consideration.

ANO served its Request for Production of Documents, Set Two on Plaintiff on April 4, 2023, and Plaintiff responded by objecting to Requests Nos. 40, 48-58. (Decl. of Non-Resolution, Ex. A; Separate Statement.) Following a meeting with Discovery Facilitator Gregory Sheffer, Plaintiff provided code-compliant responses to Nos. 40, 48-50. Plaintiff, however, has refused to provide any documents to the remaining requests. (See Declaration of Non-Resolution Ex. F, Further Responses.) ANO's motion seeks to compel further responses to these remaining requests Nos. 51-58. (Code Civ. Proc., § 2031.310 (a).)

ANO has filed a timely Notice of Non-Resolution as required by our local rules (MCR Civ 2.13H) and it has provided a "meet and confer" declaration pursuant to Code Civ. Proc., § 2016.040. (See Declaration of Non-Resolution ¶s 25-30, Ex. G.)

### *Discussion*

A demanding party may move to compel further responses to document requests when the responding party's statement of compliance is incomplete or the objections in the responses are without merit. (Code Civ. Proc., § 2031.310 (a) (1), (3).)

Requests Nos. 51-58 seek documents in support of ICCI's affirmative defenses raised in its answer to ANO's Cross-Complaint. In its Further Responses to production of these documents, ICCI raised the same objections:

Responding party states that it's [sic] affirmative defenses were asserted in order to preserve its rights pending development of the facts in this case, including substantive responses from propounding party. Accordingly, this contention Request is premature at [t]his juncture and will be complied with prior to the close of discovery following Responding party's review of all available documents and analysis.

(Decl. of Non-Resolution, Ex. F.)

The court finds these objections to be without merit.

"[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Cal. Code Civ. Proc., § 2017.010.) "For discovery purposes, information is relevant if it 'might reasonably assist a party in *evaluating* the case, *preparing* for trial, or *facilitating* settlement.' [Citation.]" (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611; also, *TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.)

It is settled California law that “Discovery may relate to the claim or defense of the party seeking discovery or of any other party to the action.” (Code Civ. Proc., § 2017.020.)

Because ANO is entitled to know the factual bases of Plaintiff’s claims and defenses, it has demonstrated good cause to require production of these responsive documents so that it may defend and respond to Plaintiff’s substantive and procedural claims. (See *Gonzalez v. Superior Court* (1995) 33 Cal.App. 4th 1539, 1546 [good cause is shown if the requested discovery will “reasonably assist a party in *evaluating* the case, *preparing* for trial, or *facilitating* settlement thereof.”].)

Once the moving party has shown good cause, the responding party must justify its objections. (See *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) Plaintiff attempts to excuse its non-performance by asserting that it is entirely proper to wait until the Mandatory Settlement Conference before it conducts an analysis of what documents it can use to support its affirmative defenses. (Oppo. p. 5.) Plaintiff has not sustained its burden to justify its objections.

First, ICCI’s response fails to comply with the requirement that Plaintiff particularly identify the documents falling within the category of the objection. (Code Civ. Proc., § 2031.240(b)(2).) Second, Plaintiff cites no California case law to support its position. This is not surprising since the putative justification for the objection undermines the salutary goals behind the Civil Discovery Act, which is to encourage diligent and timely exchange of relevant evidence in order to preserve evidence for trial; to educate the parties on the strengths and weaknesses of their positions; to promote settlements; to narrow or eliminate issues for trial; and to reduce the “gamesmanship” that often occurs from obstruction and delay. (See *Greyhound Corp. v. Superior Ct.* (1961) 56 Cal. 2d 355, 376.) Plaintiff’s purported justification would turn the comprehensive procedures of the Civil Discovery Act on its head.

Plaintiff cites a non-published federal district court case, *Health Edge Software, Inc. v. Sharp Health Plan* (D. Mass., 2021) (Oppo. p. 4), in support of its position. Plaintiff has not provided the court with a copy of this authority as intended by Cal. Rules of Court, rule 3.1113 (i)(1). In any event, the decision could not be persuasive authority because Plaintiff has made no attempt to show that the Federal Rules of Civil Procedure somehow supplant the Civil Discovery Act’s control of this discovery dispute.

The court finds that Plaintiff has not presented any rational justification for failing to produce these documents within the time worked out between the parties and the Discovery Facilitator. The motion to compel further responses to these document requests is granted. Since Plaintiff has not raised any objections to production based on privilege grounds, **Plaintiff is ordered to serve on ANO all responsive documents to requests Nos. 51-58 within 10 days of the date of this hearing.**

The motion also requests that this court order Plaintiff to provide available dates for the depositions of ICCI principal Brent Cohn, Thomas Mu, and the person most qualified witness for ICCI, as agreed to by the parties during discovery facilitation. (MPA p. 6, Reply p. 5; Decl. of Non-Resolution, p. 3.) Defendant states that on August 18, 2023, ICCI provided the dates of October 10-13 for the depositions. (Decl. of Non-Resolution, p. 4, ¶ 19.) Thus, it appears this dispute has been resolved and this issue is moot.

Defendant's request for sanctions for Plaintiff's abuse of the discovery process, is granted. (Reply p. 5-6.) Defendant has presented ample evidence chronicling the deliberate and persistent efforts by Plaintiff and its counsel: to avoid responding to discovery requests; failing to comply with agreed-upon deadlines to produce discovery; repeatedly missing promised deadlines to conduct meet and confer sessions because defendant did not make himself available to his counsel; and providing evasive or frivolous discovery responses as was done here, which are all statutorily enumerated types of misuse. (See Code Civ. Proc. § 2023.010(d), (e), (i); 6/20/23 - Jacobs Supporting Decl., Exs. C, D, E, F, G; 9/26/23 Decl. of Non-Resolution ¶s 9-30.)

The Discovery Act authorizes the court to impose sanctions on a party and the attorney who misuses the discovery process. (Code Civ. Proc. § 2023.030(a).) The Discovery Act also provides that the court *shall* impose a monetary sanction on any party or attorney who unsuccessfully makes or opposes a motion to compel unless it finds that the party subject to sanctions acted with "substantial justification" or other circumstances make the imposition of a sanction unjust. (See e.g., Code Civ. Proc. § 2031.310(h).)

The court finds an award of sanctions to Defendant is appropriate in this instance and concludes that there is nothing about this matter that would make the imposition of sanctions on Plaintiff or its counsel unjust. In order for sanctions to be awarded, Defendant must make a proper showing of proof at the hearing on this motion, or in a separate noticed motion for monetary discovery sanctions. (*City of Los Angeles v. PricewaterhouseCoopers, LLC*, (2022) 84 Cal. App. 5th 466, 513, 300 ["A motion for monetary discovery sanctions may be filed separately, after the underlying discovery motion allowing for an award of sanctions has been litigated. [Citation.] The better practice may be to include a request for monetary sanctions within a motion to compel discovery, but the discovery statutes do not require it. [Citation.]"].)

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for October, 2023 is as follows:***

***<https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09>***

***Meeting ID: 160 292 5171***

***Passcode: 868745***

***If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: [marin.courts.ca.gov](http://marin.courts.ca.gov)***