

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 03/16/2017

TIME: 09:00:00 AM

DEPT: C-69

JUDICIAL OFFICER PRESIDING: Katherine Bacal

CLERK: Jay Browder

REPORTER/ERM: Not Reported , Not Recorded

BAILIFF/COURT ATTENDANT: Bryan Bagnas

CASE NO: **37-2013-00075418-CU-PO-CTL** CASE INIT.DATE: 11/13/2013

CASE TITLE: **Estate of Rebecca Zahau vs. Shacknai [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Discovery Hearing

EVENT TYPE: Motion Hearing (Civil)

APPEARANCES

Curtis K Greer, counsel, present for Plaintiff(s).

Seth Weisburst, specially appearing for counsel Krista M. Enns, present for Defendant(s).

Bradley Mathews, specially appearing for counsel KIM SCHUMANN, present for Defendant(s).

Kathleen F. McCormick, specially appearing for counsel Mark Vranjes, present for Defendant(s).

Now being the time previously set for hearing (1) Defendant Adam Shacknai's Consolidated Motion to Compel Responses to Written Discovery Against All Plaintiffs; and (2) Defendant Dina Shacknai's Motion for Sanctions for Neil Nalepa's Failure to Appear at Deposition, counsel appear as noted above and the hearing commences.

Appointment of Official Reporter Pro Tempore is signed and filed.

MISCELLANEOUS MINUTES:

Parties agree to meet and confer.

9:40 am The matter is trailed.

10:38 am The Court is again in session with counsel present as noted above.

Attorney Greer states that the parties have a partial agreement. Parties have agreed that plaintiff will provide verified responses by close of business day on 3/27/2017. Defendant wants to keep sanctions on for hearing.

The Court notes that some sanctions are appropriate, the question being how much, but is inclined to allow around \$7,500.

The Court inquires regarding Plaintiff's Motion to Amend and directs parties to meet and confer to see if they can stipulate to the filing of an amended complaint.

Attorney Greer states that plaintiffs will be dismissing defendants Nina and Dina Shacknai.

DISCOVERY MOTIONS:

The Court confirms in part in the tentative ruling (and continues the hearing in part) as follows:

Defendant Dina Shacknai's unopposed motion for sanctions against Neil Nalepa for his failure to attend deposition is denied.

~~The Court declines to rule on the motion to compel further responses to discovery requests, filed by defendant Adam Shacknai, at this time. The Court intends to appoint a discovery referee pursuant to 639(a)(5) and requests the parties to submit up to three nominees for appointment of such referee.~~

Discussion

1. Dina Shacknai's Motion for Sanctions

In February 2016, Nalepa filed a motion to quash and/or limit a third party subpoena that had been served on him. ROA # # 270, 274 (amended motion). Thereafter, Nalepa's counsel appeared for at least one ex parte to discuss the scheduling of his motion and Dina Shacknai's related motion to compel Nalepa's deposition. ROA # 404. By way of subsequent ex partes, the motion to compel was set for hearing in October and the motion for protective order was set for hearing in November. Nalepa did not file an opposition to the motion to compel and on October 21, 2016 the Court granted the motion to compel Nalepa's deposition in Colorado. ROA # 445. Dina noticed the deposition for November 15, 2016. Nalepa failed to appear. Dina seeks \$4,020.61 in sanctions pursuant to Code of Civil Procedure section 2023.030 (a) and (e).

Nalepa resides in Colorado and is not a party to this action. Consequently, the Court could not and did not order Nalepa to appear for deposition in California. See Code Civ. Proc., § 1989; *Toyota Motor Corp. v. Superior Court* (2011) 197 Cal.App.4th 1107, 1118. Instead, the Court granted the unopposed request to compel the deposition pursuant to section 2026.010(c), which authorizes parties to depose non-party witnesses pursuant to the laws of the state where the deposition is taken. As a result, Dina must seek relief in Colorado. See, *Coopman v. Superior Court In and For San Mateo County* (1965) 237 Cal.App.2d 656, 660-661. Thus, the motion for sanctions is denied.

2. Adam's Motion to Compel Further Responses

~~Adam filed an omnibus motion to compel further responses to two sets of form interrogatories, special interrogatories, requests for production of documents, and requests for admissions served on each of~~

the plaintiffs (Rebecca Zahau, Robert Zahau, Pari Zahau, Estate of Rebecca Zahau, Estate of Robert Zahau, and Mary Zahau-Loehner). Some of the issues were resolved when plaintiffs served supplemental responses the day before the motion was filed. Two days before the hearing, Adam filed an amended separate statement. Plaintiffs then served further supplemental responses on March 9, the day before the hearing was scheduled. It appears clear that the parties' needs far exceed the Court's capacity. The Court further notes that the parties have scheduled or appeared at least 6 times for ex parte hearings related to discovery disputes, have another ex parte scheduled and at least one more discovery motion currently calendared. For these reasons, the Court intends to appoint a referee to hear all future discovery disputes pursuant to Code of Civil Procedure section 639(a)(5).

~~Counsel for Adam Shacknai is directed to serve notice on all parties within 2 court days of this ruling. Parties waive notice of ruling.~~

Adam Shacknai's Consolidated Discovery Motion is continued pursuant to stipulation to 03/29/2017 at 08:45AM before Judge Katherine Bacal.



Judge Katherine Bacal