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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

17 CUC LE, an individual,
18
19 Plaintiff,
20
21 v.
22 SF SAN DIEGO, INC. dba SF
23 SUPERMARKET and DOES 1 TO 50,
24
25 Defendants.

26) **UNLIMITED CIVIL CASE**
27) Case No.: 37-2019-00019958-CU-PO-CTL
28) **PLAINTIFF CUC LE’S REPLY BRIEF IN**
SUPPORT OF MOTION TO COMPEL
SURVEILLANCE VIDEOS AND
SANCTIONS

Date: March 20, 2020
Time: 11:00 a.m.
Dept. C-69

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27 /./././.

1 Unlike federal law, California does not have a statute that provides for the demand for
2 preservation of evidence before a lawsuit is filed. The issue in this instant motion to compel the
3 production of the surveillance video is:

4 Whether the Court should compel SF San Diego Inc. to produce the surveillance
5 videos when SF San Diego's response stated d it will produce the videos and did not
6 represent an inability to comply.

7
8 **A. SF San Diego, Inc.'s responses to Demand for Production of Surveillance Video**
9 **stated it will comply.**

10
11 Code of Civ. Procedure §2031.210 states:

12
13 (a) The party to whom a demand for inspection, copying, testing, or sampling has
14 been directed shall respond separately to each item or category of item by any of
the following:

15 (1) A statement that the party will comply with the particular demand for
16 inspection, copying, testing, or sampling by the date set for the inspection,
17 copying, testing, or sampling pursuant to paragraph (2) of subdivision (c)
of Section 2031.030 and any related activities.

18 (2) A representation that the party lacks the ability to comply with the
19 demand for inspection, copying, testing, or sampling of a particular item
or category of item.

20 (3) An objection to the particular demand for inspection, copying, testing,
21 or sampling.

22
23 Code of Civ. Procedure §2031.230 states,

24 A representation of inability to comply with the particular demand for
25 inspection, copying, testing, or sampling shall affirm that a diligent search
26 and a reasonable inquiry has been made in an effort to comply with that
27 demand. This statement shall also specify whether the inability to comply
28 is because the particular item or category has never existed, has been
destroyed, has been lost, misplaced, or stolen, or has never been, or is no

1 longer, in the possession, custody, or control of the responding party. The
2 statement shall set forth the name and address of any natural person or
3 organization known or believed by that party to have possession, custody,
4 or control of that item or category of item.

5 Here, defendant SF San Diego, Inc.’s – asserted objections – then stated:

6 **“After a reasonable and diligent search, Responding Party shall**
7 **produce all responsive documents within its custody or control.”**

8 SF San Diego, Inc. did not state an inability to comply, which was necessary under CCP
9 §§2031.210 if it could not comply. Additionally, if SF San Diego, Inc. were to respond with an
10 inability to comply with the demand, it shall also state:

- 11 • That a diligent search and reasonable inquiry has been made in an effort to
12 locate the item demanded; and
- 13 • The reason the party is unable to comply: e.g., the document:
 - 14 - never existed; or
 - 15 - has been lost or stolen; or was inadvertently destroyed; or
 - 16 - is not in the possession, custody or control of the responding party ... in
17 which case, the response must state the name and address of anyone
18 believed to have the document. [CCP §2031.230]

19
20 SF San Diego, Inc. did not state any of these things. All declarations submitted by SF San Diego
21 Inc.’s counsel and Margie Wong in support of the opposition to this motion are not part of
22 discovery responses and not verified as required by CCP §2031.250 (a), (“The party to whom the
23 demand for inspection, copying, testing, or sampling is directed shall sign the response under
24 oath unless the response contains only objections.) The court should compel SF San Diego, Inc.
25 to produce the surveillance videos.
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2 **B. MONEY SANCTIONS IS WARRANTED BECAUSE DEFENSE COUNSEL**
3 **REFUSED NEW PLAINTIFF'S COUNSEL AN EXTENSION TO MOVE TO**
4 **COMPEL AND DEFENDANT DID NOT PRODUCE THE VIDEOS.**
5

6 SF San Diego, Inc.'s opposition argues that Mr. Nakase refused to meet and confer
7 before filing this motion. The written records show Mr. Nakase urged defense counsel to provide
8 more time to meet and confer. Upon filing the substitution of attorney as Cuc Le's counsel, Mr.
9 Nakase had 15 days to review the file and moved to compel; Mr. Nakase asked for an extension
10 for a motion to compel, but defense counsel refused.

11 Plaintiff Cuc Le's counsel, Brad Nakase, filed with this court a supplemental declaration
12 in support of this motion on December 2, 2019. (Court's Register of Actions, No. 49) Mr.
13 Nakase's declaration attached exhibits consisting of:

- 14 - Proof of Service – SF San Diego, Inc.'s responses to request for production of
15 documents and tangible things, Set One, Propounded by Plaintiff Cuc Kim Le. (Decl.
16 Nakase, Exhibit 9)
17 - Meet and confer letter asking for extension for file a motion to compel so that the
18 parties may resolve the issue. (Decl. Nakase, Exhibit 7)
19

20 According to the defendant SF San Diego's responses to Cuc Le's propounded discovery,
21 its responses were served on September 27, 2019. Therefore, the deadline for plaintiff Cuc Le to
22 move to compel discovery was Monday, November 11, 2019. On October 24, 2019, attorney
23 Brad Nakase, substituted as plaintiff's counsel of record in this case. The court filing is under
24 Court's Register of Actions number 18. On October 28, 2019, Mr. Nakase met and conferred
25 with defenses counsel on discovery pertinent to this motion to compel. (Decl. Nakase Exhibit 7.)
26 On November 1, 2019, Mr. Nakase invited defense counsel to stipulate to extend plaintiff Cuc
27 Le's motion to compel discovery.
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2 “Please, will you stipulate to extend the date for Cuc Le’s motion to compel
3 (“MTC”) discovery?

4 I am sure we can resolve discovery without the court’s intervention. My MTC
5 deadline is next week and I need to start drafting the motion now if you won’t
6 stipulate.

7 May we agree to Cuc Le’s MTC deadline for defendant’s supplemental responses
8 to SROG, RPOD, and FROG, to December 15, 2019? Thanks Matt.”

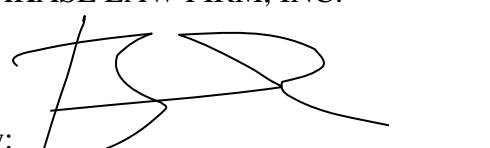
9
10 (decl. Nakase, Exhibit 10) That same day, defense counsel Alex Giannetto replied:

11 “Brad, we will not agree to push it out. As I thought you agreed, there is no basis
12 (or reason) for the MTC. I am traveling today and out all next week but you and
13 Matt need to get on the phone to discuss and resolve.”

14 On Friday, November 7, 2019, Mr. Nakase was forced to file this motion to compel – four days
15 before the deadline to move to compel which was Monday, November 11, 2019. The opposition
16 double talk that Mr. Nakase refused to meet and confer and yet defense counsel refused to give
17 Mr. Nakase an extension to move to compel. The court should sanction defendants for failure to
18 comply with their discovery obligations.

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20 Dated: March 11, 2020

21 Respectfully submitted,
22 NAKASE LAW FIRM, INC.

23 By: 
24 Brad Nakase, Esq.,
25 Attorney for Plaintiff CUC LE
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