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

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

22 **UNLIMITED CIVIL CASE**
23 Case No.: 37-2019-00019958-CU-PO-CTL
24 **PLAINTIFF CUC LE'S OPPOSITION TO**
25 **DEFENDANT'S EX PARTE;**
26 **DECLARATION OF BRAD NAKASE**

27 Date: March 12, 2020
28 Time: 8:45 a.m.
Dept. C-69

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/12/2020 at 08:19:00 AM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

1 **A. DEFENDANT’S EX PARTE NOTICE DID NOT STATE THE SPECIFICITY**
2 **THE NATURE OF THE RELIEF TO BE REQUESTED.**

3 CRC, Rule 3.1204(a) requires that, “When notice of an ex parte application is given, the
4 person giving notice must: (1) State with specificity the nature of the relief to be requested and
5 the date, time, and place for the presentation of the application; and (2) Attempt to determine
6 whether the opposing party will appear to oppose the application.

7 Here, the ex parte notice in a conclusory manner states, “apply for a Motion for
8 Evidentiary and Issue Sanctions.” There is no specificity as to the relief nature of the relief
9 requested; there is no specificity as to *what* “evidentiary and issue sanction” that the defendant is
10 seeking. Further, the notice did not state that the defendant seeks an order shortening time.

11 Additionally, the ex parte did not make an application for order shortening time. Also, the
12 application did not state specifically the relief sought except in a conclusory manner that it is for
13 evidentiary and issue sanction. Therefore, the ex parte notice and application are deficient and
14 defective, and the court should deny the application.

15
16 **B. SCOTT HOY’S DECLARATION DID NOT GIVE PROPER NOTICE OF THE**
17 **SPECIFICITY THE NATURE OF THE RELIEF TO BE REQUESTED.**

18
19 Under, CRC, Rule 3.1204(b), “An ex parte application must be accompanied by a
20 declaration regarding notice stating: (1) The notice given, including the date, time, manner, and
21 name of the party informed, the relief sought, any response, and whether opposition is expected
22 and that, within the applicable time under rule 3.1203, the applicant informed the opposing party
23 where and when the application would be made.”

24 Here, defense counsel's declaration concerning ex parte notice states, "The purpose of the
25 hearing will be to seek an order shortening time in which to hear SF San Diego's Motion for
26 Evidentiary and Issue Sanctions." He did not give specificity of relief sought for an evidentiary
27 and issue sanctions. Therefore, defense counsel's attempt to provide ex parte notice is deficient.
28

1 **C. THERE IS NO GOOD CAUSE FOR ORDER SHORTENING TIME FOR AN**
2 **EVIDENTIARY AND ISSUE MOTION**

3 Code Civ. Proc. § 1005 prescribes the times for written notice of motions and for the
4 service and filing of supporting and opposing papers. Code Civ. Proc. § 1005(b), however,
5 provides that "[t]he court, or a judge thereof, may prescribe a shorter time" than otherwise
6 prescribed in § 1005. California Rules of Court, rule 3.1300(b) states: The court, on its own
7 motion or on application for an order shortening time supported by a declaration showing good
8 cause, may prescribe shorter times for the filing and service of papers than the time specified in
9 Code of Civil Procedure section 1005.

10 An application for an order shortening time must be supported by a declaration showing
11 "good cause" for the order. Mere lack of time for statutory notice is not a sufficient showing.
12 [See CRC 3.1202(c); Eliceche v. Federal Land Bank Ass'n (2002) 103 CA4th 1349,
13 1369, Here, assuming the ex parte notice and application was adequate, there is no showing for
14 good cause to shorten time for motion hearing.

15
16 **1. The ex parte application is not supported by any evidence of irreparable harm.**

17 "An applicant must make an affirmative factual showing in a declaration containing
18 competent testimony based on personal knowledge of irreparable harm, immediate danger, or
19 any other statutory basis for granting relief ex parte." CRC, Rule 3.1202(c).

20 Here, Scott Hoy is the only declarant for this ex parte application. Plaintiff objects to
21 each and every paragraph in Hoy's declaration on the basis of hearsay, lack foundation, and
22 lacks personal knowledge. Although Hoy's entire declaration consists of double and triple
23 hearsay, there is not a single sentence stating what the irreparable harm would be if the ex parte
24 is not granted. Therefore, the ex parte application should be denied.

25
26 **2. Defense Counsel Scott Hoy Lacks Personal Knowledge.**

27 Here, defense counsel's declaration supporting this ex parte is full of double and triple
28 hearsay (See Hoy's declaration ¶¶ 1 through 10). Scott Hoy Scott served and filed with the court

1 a Notice of Change of Handling Attorney on December 5, 2019. Plaintiff requests court take take
2 judicial notice of its Register of Actions, No. 60 12/05/2019 - Notice of Change in Handling
3 Attorney filed by SF San Diego Inc. Scott Hoy provides no foundation as to his purported
4 personal knowledge to any of the purported facts before December 5, 2019.

5
6 **3. There is no Statute, Factors, or Test for Witnesses Requiring an Interpreter for**
7 **giving deposition.**

8 California has no statute, factors, or test concerning when witnesses may have an
9 interpreter. A witness may request an interpreter for his deposition. Even assuming a witness
10 does not need an interpreter, the witnesses' deposition already took place; therefore, there is not
11 good cause to shorten the time for an issue and evidentiary motion.

12
13 **4. The Attorney-client privilege extends to Cuc Le's communication with her son who**
14 **was assisting former counsel.**

15 "To sum up, [Evidence Code] § 952 means that attorney-client communications in the
16 presence of, or disclosed to, clerks, secretaries, interpreters, physicians, spouses, parents,
17 business associates, or joint clients, when made to further the interest of the client or when
18 reasonably necessary for transmission or accomplishment of the purpose of the consultation,
19 remain privileged." *Zurich American Ins. Co. v. Superior Court*, 155 Cal. App. 4th 1485, 1502.

20 Here, Scott Hoy's ex parte declaration claims that Cuc Le's counsel made improper
21 instructions for Cuc Le not to answer questions concerning her communications with her son to
22 assist her former attorney. (Scott Hoy's declaration ¶¶ 10 – 11) At Cuc Le's deposition, the
23 Plaintiff's counsel properly made objection and instructions not to answer questions concerning
24 the conversation between plaintiff Cuc Le and her son to assist her former counsel. Even
25 assuming the objections to deposition questions and instructions not to answer were improper,
26 there is no good cause to shorten time because Cuc Le's deposition has already occurred. If this
27 ex parte application were to shorten the time for a protective order – which it is not – this
28 application still doesn't show good cause.

1 Moreover, Scott's Hoy's declaration is hearsay because he is declaring what occurred at a
2 deposition which was on the record with the court reporter. Scott Hoys did not provide Cuc Le's
3 deposition transcript.

4
5 **5. Scott Hoy Lacks Personal Knowledge Concerning What occurred at witness Steven**
6 **Quintero's Deposition.**

7 Scott Hoy's declaration in paragraphs 12 through 19 concerns the deposition of Steven
8 Quintero on February 12, 2020. He admits he wasn't at the deposition. Therefore, he lacks
9 personal knowledge and lacks foundation.

10 Second, Hoy's declaration concerns triple hearsay: 1) Brad's Nakase purported statements
11 to Steven Quintero, 2) The court reporter said to attorney Hezlep, and 3) Hezlep's statements to
12 Scott Hoy.

13 Third, what was said to the witness at deposition was on the record. The deposition
14 transcript reveals that the witness was annoyed and intimidated by the defense counsel's caustic
15 tone. The defense counsel tone did not come through on the deposition transcript. Therefore, Mr.
16 Nakase made a record that Mr. Quintero was affected by the defense counsel's tone by asking
17 Quintero if he was intimidated by Ms. Hezlep. There is nothing improper about Mr. Nakase's
18 questions. There is no good cause for an order shortening time for purported issues and
19 evidentiary sanctions. Defense counsel may cross-examine Mr. Quintero at trial about his
20 purported bias and prejudice.

21
22 **6. Cuc Le's counsel Payment of Witness Fee to Steven Quintero is required by Statute.**

23 "Except as otherwise provided by law, witness' fees for each day's actual attendance,
24 when legally required to attend a civil action or proceeding in the superior courts, are thirty-five
25 dollars (\$35) a day and mileage actually traveled, both ways, twenty cents (\$0.20) a mile."

26 Here, witness, Steven Quintero lives in Bonsall, California. Mr. Qintero had to travel to
27 the Nakase Law Firm for deposition; according to Google maps, that is 48 miles one way (96
28 miles round trip); therefore, the \$35 witness fee and mileage totals \$54.2. Additionally, Mr.

1 Quintero was served with a subpoena to attend a trial at Superior Court San Diego, which –
2 according to Google maps – is 50 miles one way; therefore, the witness fee and mileage is \$55.
3 The total required witness fee should be \$109.20. Mr. Nakase paid Steven Quintero his witness
4 fee of \$99.50. (decl. Nakase, Exhibit 1, and Exhibit 2)

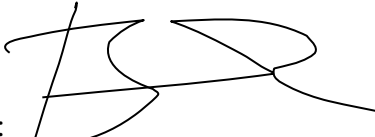
5
6 **7. There is no evidence of irreparable Harm that will occur if ex parte is not granted.**

7 Plaintiff Cuc Le respectfully requests the court to deny the ex parte application to shorten
8 the time and/or for issue/evidentiary sanctions. Defense counsel Scott Hoy is the only declarant
9 for this ex parte. There is no evidence in Hoy’s declaration concerning the irreparable harm that
10 will occur if an order shortening is denied.

11 IN CONCLUSION, Plaintiff Cuc Le respectively request that the ex parte application
12 denied for the above stated reasons.

13
14
15 Dated: March 12, 2020

16 Respectfully submitted,
17 NAKASE LAW FIRM, INC.

18 By: 
19 Brad Nakase, Esq.,
20 Attorney for Plaintiff CUC LE

