

**DEPARTMENT TEN
JUDGE MICHAEL MATTICE
707-207-7310
TENTATIVE RULINGS SCHEDULED FOR
WEDNESDAY, DECEMBER 14, 2016**

**FISHER v. SPCA OF SOLANO COUNTY
Case No. FCS045115**

- (1) Motion by Plaintiff to Quash Deposition Subpoenas for Production of Business Records from Kaiser Permanente Hospital Vacaville, Kaiser Hospital Fairfield & Vacaville Radiology, and Trover Solutions, and Request for Monetary Sanctions; and
- (2) Motion by Plaintiff to Quash Deposition Subpoenas for Production of Business Records From Berkeley Dog and Cat Hospital and VCA All About Pets Animal Hospital, and Request for Monetary Sanctions

TENTATIVE RULING

While no express meet and confer requirement is contained within C.C.P. §1987.1, there is a general obligation on counsels' part to act in good faith to limit discovery to permissible matters, to avoid making unmeritorious objections to discovery, and to refrain from making or opposing without substantial justification a motion to limit discovery. C.C.P. §2023.010.

Under its inherent authority recognized by C.C.P. §187 and other law, this court finds that each side here has taken and maintained an unnecessarily rigid and unjustified position as to some of the matters put at issue by the subject subpoenas, and that further efforts by both sides are appropriate before the court's resolution of these discovery disputes is justified.

Counsel for each side are therefore to personally appear for hearing as scheduled, prepared to meaningfully participate in a further effort to informally resolve these disputes. This meeting and conferring should occur in the manner prescribed by Clement v. Alegre (2009) 177 Cal.App.4th 1277, 1281, 1294.

To aid counsel in this effort, the court offers the following observations:

Particularly as to a plaintiff agreeing to limit any emotional distress claims to those that any reasonable person would have suffered under the circumstances (as Plaintiff here has done), a defendant is not entitled to medical records containing information about mental condition. Edmon, Rylaarsdam & Karnow (Weil & Brown), Civil Procedure Before Trial, §8:305.3, p. 8C-97 [garden variety

personal injury action seeking damages for pain and suffering does not put the plaintiff's mental condition at issue]; California Practice Guide, Personal Injury, §6:36.1 ["allegations of emotional distress associated with general pain and suffering arising from a physical injury do not tender plaintiff's mental condition in issue so as to render postinjury psychotherapeutic records discoverable"].

Furthermore, insofar as this action is not one for personal injuries, but for wrongful discrimination, retaliation and unpaid wages, the only physical condition of Plaintiff put at issue by this action concerns her back injury, reported to Defendant shortly before the termination of Plaintiff's employment. Thus, production of medical records unrelated to Plaintiff's back would not appear warranted here.

As to employment records, a defendant is generally entitled to subpoena a prior employer's payroll records and personnel files, but not other types of documents such as those referring to medical history. California Practice Guide, Employment Litigation, §19:684. Although this source did not fully explain why, it seems reasonable to assume that employment records limited in this manner could generate evidence relevant to a plaintiff employee's lost wages claim, or perhaps to a mitigation of damages affirmative defense (asserted as affirmative defense number 32 in Defendant's answer). In addition, disability discrimination only applies when the disabled employee is able to perform their essential duties with reasonable accommodations. Government Code §12940(a)(1).

Counsel are therefore to discuss in detail and in good faith the appropriate scope and limitations that should be applied to the broad subpoenas at issue here, either prior to or at this hearing, and to advise the court as to what issues if any will require court determination.

HENNIG, ET AL. v. THOMPSON, ET AL.
Case No. FCS047663

Application for Preliminary Injunction

TENTATIVE RULING

Plaintiffs' application for a preliminary injunction is denied. Plaintiffs have not demonstrated that they will suffer actual or threatened irreparable injury if the requested relief is not granted. (*City of Torrance v. Transitional Living Ctr. For Los Angeles* (1982) 30 Cal.3d 516, 526.)