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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES**

Civil Division

Central District, Stanley Mosk Courthouse,
Department 39

20STCV28899

January 14, 2022

SHAHROUZ JAHANSHAH I vs

1:30 PM

COREY EVAN PARKER

Judge: Honorable
Stephen I. Goorvitch

CSR: Carol Lynn Cox #5128
(Remote)

Judicial Assistant:

ERM: None

R. Mendoza

Deputy Sheriff: None

Courtroom Assistant:

K. Ghazarian

APPEARANCES:

For Plaintiff(s): Shahrouz Jahanshahi (Telephonic)

For Defendant(s): John Terence Lupton (Telephonic)

NATURE OF PROCEEDINGS: Hearing on Motion
to Compel Discovery (not "Further Discovery"); Hear-
ing on Motion for Protective Order

Pursuant to Government Code sections 68086, 70044,
and California Rules of Court, rule 2.956, Carol Lynn
Cox, CSR # 5128, certified shorthand reporter is ap-
pointed as an official Court reporter pro tempore in
these proceedings, and is ordered to comply with the
terms of the Court Reporter Agreement. The Order is
signed and filed this date.

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The matters are called for hearing.

After reading and considering all moving documents, hearing argument, and conferring with plaintiff Shahrouz Jahanshahi and counsel for defendant, the court rules as follows:

The Court takes the matters under submission.

The Court, having taken the matters under submission on January 14, 2022, now rules as follows:

The Motion to Compel DEPOSITION OF DEFENDANT COREY EVAN PARKER; TRISHA PARKER, DAVID SULZABACHER; REQUEST FOR IMPOSITION OF MONETARY SANCTION; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF SHAHROUZ JAHANSHAHİ IN SUPP filed by Shahrouz Jahanshahi on 12/20/2021 is Granted in Part.

The Motion for Protective Order filed by Corey Evan Parker on 10/15/2021 is Granted.

Plaintiff Shahrouz Jahanshahi ("Plaintiff"), a self-represented litigant, filed this action against his former attorney, Corey Evan Parker ("Defendant"). Plaintiff alleges that he retained Defendant to appeal an adverse judgment in an unlawful detainer case against Howard and Jean Rosenfeld.

Plaintiff alleges that Defendant "negligently performed services and overbilled [him] by several thousands of dollars for the work performed." Plaintiff alleges that as a result, he lost the appeal, and the

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judgment was confirmed. Now, Plaintiff pursues this malpractice action against Defendant.

Plaintiff moves to compel Defendant to appear for a deposition and seeks \$5,509.92 in sanctions. Defendant opposes the motion and moves for a protective order, but he does not dispute that he is required to appear for a deposition. Rather, the dispute in this case is whether the deposition of Defendant may occur remotely. Simply, Plaintiff wants to take the deposition in-person, and Defendant wants him to take the deposition remotely.

The Court grants Plaintiff's motion to compel Defendant's deposition only insofar as the Court orders Defendant to submit to the deposition. The Court grants Defendant's motion for a protective order and orders that the deposition of Defendant shall proceed remotely. The Court has discretion to order a remote deposition. Defendant provides good cause to order a remote deposition, specifically, that members of his household are at increased risk of infection from COVID-19. Defendant represents that his older child is three years old, and his second child was born on December 13, 2021. (Declaration of Corey Evan Parker, ¶ 2.) Defendant notes that children under five years old cannot be vaccinated for COVID-19, putting them at risk. (Id., ¶ 3.) Defendant also notes that women "who have recently been pregnant are more likely to get severely ill from Covid-19 than people who are not pregnant." (Ibid.) In balancing the competing considerations, the Court prioritizes the health and safety of Defendant's wife and children. Moreover, the Court has

concerns about the seemingly poor working relationship between the parties and believes that a remote deposition would be prudent in this matter.

At the hearing, Plaintiff argued that COVID-19 is not a threat to people who are vaccinated. This does not address Defendant's point that his children cannot be vaccinated, and that his wife is more vulnerable to COVID-19, regardless of her vaccination status. Plaintiff, who appeared remotely, argued that he could see various people in the courtroom on the screen sitting closely together and not wearing masks. Those individuals were not in the courtroom. Rather, Plaintiff was identifying attorneys, who were appearing remotely, waiting to appear on the next matter.

At the hearing, Plaintiff argued that he cannot take a remote deposition. The Court is not persuaded by that argument because Plaintiff has been appearing remotely – with a video camera – at each court appearance. This demonstrates that he can use a computer with a microphone and video camera and can take a deposition via Zoom or another platform.

Plaintiff focuses on the additional costs of a remote deposition, but Defendant has stipulated to pay those additional costs. Plaintiff argues that such a stipulation is unlawful and the Court has no authority to grant it because the Code of Civil Procedure requires each party to bear their own costs. In fact, the Court has authority to grant such stipulations based upon its inherent authority.

Plaintiff also seeks to compel the depositions of David Sulzbacher and Trisha Parker. The Court denies the motion in this respect. In order to compel a deposition, the movant first must notice the deposition. (Code Civ. Proc., § 2025.450(a).) Plaintiff concedes that he did not notice the deposition of David Sulzbacher. (Declaration of Shahrouz Jahanshahi, ¶ 5.) As for the deposition of Trisha Parker, Plaintiff represents that she was noticed. (Id., ¶ 4.) Defendant's counsel represents that she was noticed but Plaintiff took the deposition off-calendar. (Declaration of John T. Lupton, ¶ 11.) Plaintiffs declaration does not refute Defendant's counsel's declaration. Therefore, the Court denies the motion with respect to these additional witnesses. This order is without prejudice to Plaintiff noticing these depositions for future dates.

Plaintiff seeks sanctions "for the sum of \$5,509.92 against the defendant Corey Evan Parker and his counsel of record Mr. John T. Lupton, for their continuous failure, and refusal to submit to propounded notice of deposition." (Plaintiffs Notice of Motion, p. 2:6-9.) The Court finds no willful violation of a court order that would support an award of sanctions. To the extent Plaintiff is seeking sanctions under Code of Civil Procedure section 2025.450, the Court denies the request because there was no substantial justification for this motion. Defendant never objected to appearing for a deposition, and the dispute was over whether the deposition should occur remotely or in-person. The Court denied Plaintiffs motion on this issue. The Court also denied Plaintiffs motion to compel the remaining

depositions. Therefore, the Court finds no basis to award sanctions to Plaintiff.

Plaintiff has accused Defendant and his counsel of misconduct. Plaintiff alleges that "Parker has been sandbagging, delaying, and adding costs to this litigation from day one." Plaintiff also argues that "Parker filed a frivolous, sham answer, and after lengthy meet-and-confer with Jahanshahi, forced him to file a demurrer and motion to strike." The Court previously ruled as follows:

First, Plaintiff argues that Defendant did not properly meet-and-confer before amending his answer. Plaintiffs demurrer outlines the parties' meet-and-confer efforts. (Plaintiffs Demurrer to Defendant's Answer, pp. 7-8.) The Court finds these efforts to be sufficient, and it is clear that no resolution could have been achieved between the parties.

Second, Plaintiff argues that the answer is a "sham" pleading. However, the reply brief does not explain why the answer is a sham pleading. The Court's review of the original answer and the amended answer suggests that Plaintiff alleged facts in support of affirmative defenses for which he would bear the burden of proof at trial. None of these additional facts contradict any of Defendant's original allegations, so the amended answer is not, in fact, a sham pleading. Rather, the amended answer seeks to cure the defects raised in Plaintiff's demurrer and motion to strike. Indeed, had the Court sustained Plaintiff's demurrer to the original answer, it would have been required to afford leave

to amend, allowing Defendant to file the amended answer.

Third, Plaintiff argues that the opposition was untimely because it was due on November 24, 2021, but he did not receive it until November 26, 2021, at 9:28 a.m. (See Declaration of Shahrouz Jahanshahi, Exh. A.) "All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days . . . before the hearing." (Code Civ. Proc., § 1005(b).) In this case, the opposition was filed on November 24, 2021, which was nine court days before the hearing. The proof of service states that it was served on that same date via Federal Express. This is sufficient under the Code of Civil Procedure. Regardless, Plaintiff waived the right to raise this objection by responding to Defendant's opposition on the merits. Had Plaintiff wished to raise this objection, he should have filed an objection and requested a continuance of the hearing date to have sufficient time to draft a reply brief, which the Court would have granted.

Finally, the substance of Plaintiff's reply brief indicates that he was not prejudiced by the fact that he received the opposition on November 26, 2021, at 9:28 a.m. Fourth, Plaintiff argues that the Court should sanction Defendant's counsel for over six unspecified alleged violations of the Rules of Court and applicable law. As a procedural matter, the Court cannot order sanctions based upon Plaintiff's arguments in a reply brief, as Defendant has not had a substantive opportunity to respond. Any request for sanctions requires notice and an opportunity to be heard. Regardless, the

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Court finds no violation based upon the allegations raised in connection with Plaintiff's demurrer and motion to strike.

(Court's Minute Order, dated December 9, 2021.) The Court still finds no misconduct and no violation of any rule of professional responsibility by Defendant or his counsel based upon this record. Plaintiff's allegations lack merit.

Plaintiff requests a statement of decision, per California Rules of Court, rule 3.1590 Plaintiff is not entitled to a statement of decision on these motions because the Court decided no question of fact. Nevertheless, this order explains the Court's decision sufficiently to allow meaningful appellate review, if necessary.

CONCLUSION AND ORDER

The Court orders as follows:

1. The Court grants in part Plaintiffs motion to compel the deposition of Defendant Corey Evan Parker. The Court also grants Defendant's motion for a protective order. The Court orders that the deposition of Defendant Corey Evan Parker shall occur as follows:
 - a. The deposition shall occur within 45 days, unless the parties stipulate to a different date.
 - b. The deposition shall occur remotely.
 - c. Pursuant to his stipulation, Defendant shall pay any additional costs incurred because the deposition is being conducted remotely versus in-person.

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2. Plaintiffs motion to compel is denied in all other respects.
3. Plaintiffs request for sanctions is denied.
4. If the deposition scheduled does not afford Plaintiff sufficient time to prepare an opposition to Defendant's motion for summary judgment, the parties shall meet-and-confer to discuss a continuance of the hearing date. If Defendant will not stipulate to a continuance, Plaintiff is free to file an ex parte application to continue that date.
4. The Court's clerk shall provide notice.

Certificate of Mailing is attached.

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IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

SHAHROUZ JAHANSHAH,	B319161
Petitioner,	(Super. Ct.
v.	L.A. County No.
THE SUPERIOR COURT	20STCV28899)
OF THE COUNTY OF	(STEPHEN I.
LOS ANGELES,	GOORVICH, Judge)
Respondent;	<u>ORDER</u>
COREY EVAN PARKER,	(Filed Mar. 30, 2022)
Real Party in Interest.	

THE COURT*:

The petition for writ of mandate, filed March 18, 2022, has been read and considered.

The petition is denied.

<u>/s/ P. Rothschild</u>	<u>/s/ Chaney</u>	<u>/s/ Bendix</u>
*ROTHSCHILD, P. J.	CHANEY, J.	BENDIX, J.

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S273877

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SHAHROUZ JAHANSHAH, Petitioner,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY,
Respondent;

COREY EVAN PARKER, Real Party in Interest.

(Filed Apr. 20, 2022)

The petition for writ of mandate and application
for stay are denied.

CANTIL-SAKAUYE

Chief Justice
