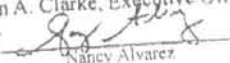


1 **JEFFREY W. COWAN, ESQ., SBN 157474**  
The Cowan Law Firm  
2 1541 Ocean Avenue, Suite 200  
Santa Monica, California 90401  
3 Tel: (310) 394-1420  
Fax: (310) 394-1430  
4

CONFORMED COPY  
ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

SEP 21 2010

Attorneys for **Plaintiff Lucy Messerschmidt**

John A. Clarke, Executive Officer/Clerk  
BY  Deputy  
Nancy Alvarez

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **COUNTY OF LOS ANGELES**

10 Lucy Messerschmidt, individually and on  
11 behalf of all others similarly situated,

12 Plaintiff,

13 vs.

14 VH Property Corporation dba Trump National  
15 Golf Club and DOES 1 through 100,

16 Defendants.

CASE NO. BC 403 087

(Action filed on December 2, 2008;  
Assigned to Hon. Mark V. Mooney)

**Plaintiff Lucy Messerschmidt's CRC  
Rule 3.1345 Separate Statement of  
Items in Dispute re Plaintiff's Motion to  
Compel Defendant VH Property Corp.  
to Produce Documents and Provide  
Further Responses**

Date: October 21, 2010  
Time: 8:30 a.m.  
Dept.: 68

17  
18  
19 **General Objections and Responses In Dispute:**

- 20 1. Defendant objects to the requests to the extent they call for the production of any  
21 document that is protected by the attorney-client privilege, the attorney work product  
22 doctrine or any other privilege or is violative [*sic*] of a right of privacy or calls for the  
23 disclosure of confidential and/or proprietary information or information otherwise  
24 protected as a trade secret. Inadvertent production of any such document shall not  
25 constitute a waiver or any privilege of any privilege or any other ground for objecting to  
26 discovery with respect to such document or any other document, or with respect to the  
27 subject matter thereof, or the information contained therein, nor shall inadvertent  
28

- 1 production waive Defendant's right to object to the use of any such document or the  
2 information contained therein during any subsequent proceeding.
- 3 2. Defendant does not waive: (1) any objections as to the admissibility of evidence,  
4 competency of, relevancy of, materiality of, or privilege attaching to any document  
5 produced; or (2) the right to object to other discovery requests or undertakings involving  
6 or reflecting the subject matter of documents requested herein. No response or production  
7 in response to these requests constitutes or should be construed as an admission respecting  
8 relevancy or admissibility of any document or the truth or accuracy of any statement,  
9 characterization or other information contained in any document. Defendant expressly  
10 does not concede the relevancy or materiality of any of these requests or the subject matter  
11 to which they refer.
- 12 3. Nothing contained herein or produced in response to the request herein consists of or  
13 should be construed as an admission about the existence or non-existence of any  
14 document.
- 15 4. Defendant objects to the purported definitions and instructions set forth in the document  
16 requests on the grounds they are vague, ambiguous, overbroad, burdensome and  
17 oppressive and Defendant undertakes no obligations except as those that may be provided  
18 by the California Code of Civil Procedure.
- 19 5. Defendant objects to producing any document already in the possession of Plaintiff on the  
20 grounds that any such production is overly broad and unduly burdensome.
- 21 6. Defendant objects to each and all of the enumerated requests which seek "all  
22 DOCUMENTS reflecting" and "all DOCUMENTS which refer to, or concern" pursuant  
23 to Calcor Space Facility, Inc. v. Superior Court, 53 Cal. App. 4<sup>th</sup> 216 (1997), on the  
24 grounds that the requests are unlimited in scope, require Defendant to speculate about  
25 what is meant by "reflecting," and "concern" and accordingly are overly broad, unduly  
26 burdensome and seek irrelevant, privileged material. Moreover, Defendant objects to the  
27 entire set of Requests in that it is burdensome and oppressive, particularly given its  
28 subparts and interrogatory nature and as inter-related with other written discovery.

1 7. Defendant objects to the requests to the extent that they call for the production of  
2 documents not within Defendant's possession, custody, or control.

3 8. Plaintiff [*sic*] objects to the requests to the extent that they seek proprietary and/or  
4 confidential information, or information that is otherwise protected as a trade secret.

5 9. Plaintiff [*sic*] incorporates by this reference each and all of the foregoing general  
6 responses and objections into the following enumerated responses.

7 **Reason Further Response Should Be Compelled:**

8 This general objection is improper for multiple reasons. First, Defendant failed to respond  
9 on time, thereby waiving all objections. *See* C.C.P. § 2031.300.

10 Second, a party may not assert general objections to the extent they go to individual  
11 requests (as Defendants purport to do here) and then purport to incorporate them into each  
12 individual response. Code of Civil Procedure § 2031.210 make this clear.<sup>1</sup> Not only does the  
13 statute plainly bar these kinds of general objections, but the prohibition serves a compelling  
14 purpose: without it litigants would be forced either to guess as to which request the general  
15

16 \_\_\_\_\_  
17 <sup>1</sup> The statute states in relevant part as follows:

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

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

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

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

26 (b) In the first paragraph of the response immediately below the title of the case, there shall appear  
27 the identity of the responding party, the set number, and the identity of the demanding party.

28 (c) Each statement of compliance, each representation, and each objection in the response shall  
all bear the same number and be in the same sequence as the corresponding item or category in the  
demand, but the text of that item or category need not be repeated.” (emphasis added).

1 objections pertained and for which responsive information was being withheld or always meet  
2 and confer about every item in a document request.

3 Third, some of the “objections” are *prima facie* meritless. The reference to the *Calcor*  
4 appellate decision is a misplaced boilerplate objection because the subject request by Plaintiff  
5 contained none of the instructions and definitions that the *Calcor* court commented on  
6 disapprovingly.

7 Fourth, Trump has not moved for relief from waiver.

8 **Request Number 2:**

9 All WRITINGS that discuss or refer or relate to the termination of Plaintiff’s employment.

10 **Response Given:**

11 Defendant objects to this Request for the additional reason that Plaintiff’s employment was not  
12 terminated. She resigned.

13 **Reason Further Response Should Be Compelled:**

14 The term “termination of employment” does not implicate how the employment  
15 relationship ended. Plaintiff alleges she was fired. Defendant contends that Plaintiff resigned.  
16 Either way, responsive documents that discuss the termination (or end) of the employment  
17 relationship are directly relevant to proving the claims and defenses in this action.

18 Moreover, the failure to assert the attorney-client relationship or work product doctrine to  
19 this specific request means that all documents that “discuss or refer or relate” to the termination  
20 of the employment relationship must be produced. *See Scottsdale Ins. Co. v. Superior Court*, 59  
21 Cal. App. 4th 263, 273-274 (1997) (failure to assert expressly the attorney-client privilege  
22 waives it). And for the reasons discussed above, the boilerplate general objection purportedly  
23 incorporated into the response is void because it violates C.C.P. § 2031.210(a).

24 Finally, the failure to respond on time waived all objections. C.C.P. § 2031.300. Trump  
25 also has not moved for relief from waiver.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Request Number 3:**

All WRITINGS that you sent to or received from Lucy Messerschmidt.

**Response Given:**

Defendant objects to this Request for the reason that it is vague and overbroad and not limited in scope or time. Without waiving its general and specific objections, Defendant produces all “writings” that could be located from Plaintiff to the Club or from the Club to Plaintiff.

**Reason Further Response Should Be Compelled:**

First, the general objections are improper (for the reasons discussed above).

Second, the response fails to state that all responsive documents in Defendant’s “possession, custody or control” will be produced (subject to the asserted privilege objections) as § 2031.220 requires.

Third, the late response waived all objections.

Fourth, “vagueness” objection lacks merit because there is nothing uncertain about the request.

**Request Number 4:**

All WRITINGS that refer to Lucy Messerschmidt.

**Response Given:**

Defendant objects to this Request for the reason that it is hopelessly vague and overbroad and would include writings covered by the attorney-client and attorney work product doctrines. Without waiving its general and specific objections, Defendant produces all Club documents that could be located that “refer” to Plaintiff as Defendant understands the intent and meaning of that word.

**Reason Further Response Should Be Compelled:**

The response fails to state that all responsive documents in Defendant’s “possession, custody or control” will be produced (subject to the asserted privilege objections) as § 2031.220 requires.

1 **Request Number 6:**

2 All WRITINGS that constitute or refer to policies or procedures of yours regarding or relating to  
3 state or federal law regarding age discrimination in the workplace. The scope of this request is  
4 from January 1, 2004 through June 30, 2008.

5 **Response Given:**

6 Copies of the Employee Manuals and the Prohibition Against Harassment Policy, which  
7 Plaintiff signed on October 2, 2006, are served herewith. In addition, the required and  
8 appropriate notices for the DFEH and the EEOC are and were posted on the walls near the time  
9 clock at the Club. They may be reviewed on the website of the California Department of  
10 Industrial Relations at <http://www.dir.ca.gov/wpnadb.html>. In addition, all new hires are given  
11 and asked to acknowledge receipt of documents including the brochure printed by the DFEH. A  
12 copy of these are produced herewith.

13 **Reason Further Response Should Be Compelled:**

14 No objections were asserted (and they were waived by the late response), yet the Response fails  
15 to state that all responsive documents in Defendant's possession, custody and control will be  
16 produced – as § 2031.220 requires.

17  
18  
19 **Request Number 7:**

20 All WRITINGS that set forth or discuss your document retention policy since January 1, 2004.

21 **Response Given:**

22 Defendant responds that there is no official document retention policy at the Club. However,  
23 most records will be kept for seven years pursuant to general accounting principles.

24 **Reason Further Response Should Be Compelled:**

25 The response violates § 2031.230's requirement of specifying that a diligent search and inquiry  
26 has been conducted and whether responsive documents ever existed.

1 **Request Number 8:**

2 All WRITINGS since January 1, 2004 that set forth or discuss policies you have followed to  
3 backup or otherwise preserve your email communications.

4 **Response Given:**

5 Defendant responds that there is no official back-up policy. However, the Club has a back-up  
6 server that maintains copies of e-mails for approximately one month.

7 **Reason Further Response Should Be Compelled:**

8 The response violates § 2031.230's requirement of specifying that a diligent search and inquiry  
9 has been conducted and whether responsive documents ever existed.

10  
11 **Request Number 14:**

12 All WRITINGS from January 1, 2004 to the present that refer or relate to allegations that you  
13 have violated California law regarding meal breaks.

14 **Response Given:**

15 In addition to the files and records of this case and the Perry case, the only other such  
16 allegation of which Defendant is aware is Plaintiff's Labor Commissioner Claim, a copy of  
17 which is served herewith.

18 **Reason Further Response Should Be Compelled:**

19 No objections were asserted (and they were waived anyway by being late), yet Defendant  
20 has failed to agree that responsive documents from the *Perry* case will be produced. Because  
21 that lawsuit contains similar wage and hour allegations, documents in that lawsuit (*e.g.*, attorney  
22 notes, communications between counsel and Defendant) that refer or relate to the subject  
23 allegations are directly (and highly) relevant to proving the complaint's allegations in this  
24 lawsuit.

25 Equally important, no objection has been asserted regarding the attorney-client privilege or  
26 work product doctrine – thereby waiving such objections as to responsive documents *from this*  
27 *lawsuit*. See § 2031.210(a)(3); *Scottsdale Ins. Co. v. Superior Court*, 59 Cal. App. 4th 263,  
28 273-274 (1997) (failure to assert expressly the attorney-client privilege waives it)

1 Finally, the response violates § 2031.210(a)(1)-(2) by failing to state without qualification  
2 either that Defendant will comply with the request or lacks the ability to do so (with an  
3 explanation as to why).

4  
5 **Request Number 15:**

6 All WRITINGS from January 1, 2004 to the present that refer or relate to allegations that you  
7 have violated California law regarding rest breaks.

8 **Response Given:**

9 Please see Defendant's response to Request No. 14.

10 **Reason Further Response Should Be Compelled:**

11 The analysis is the same as regarding No. 14 above.

12  
13 **Request Number 16:**

14 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or  
15 procedures of yours regarding or relating to California law regarding meal or rest breaks in the  
16 workplace. This request includes WRITINGS intended to ensure that your managers and  
17 supervisors at the Trump National Golf Club properly implemented such policies in compliance  
18 with the law.

19 **Response Given:**

20 Defendant objects to this Request for the reason that it is vague, compound, and ambiguous.  
21 Without waiving its general and specific objections, Defendant serves herewith all its writings  
22 that regard or relate to meal and rest periods.

23 **Reason Further Response Should Be Compelled:**

24 There is no prohibition against compound document requests (such a rule pertains only to  
25 RFAs and special interrogatories), and there is nothing ambiguous about the request.

26 Plus, all objections were waived by the late response.

27 As a result, all responsive documents should be ordered produced.

28

1 **Request Number 17:**

2 All WRITINGS from January 1, 2004 to the present that constitute or refer to policies or  
3 procedures of yours regarding or relating to age discrimination. This request includes  
4 WRITINGS intended to ensure that your managers and supervisors at the Trump National Golf  
5 Club properly implemented such policies in compliance with the law.

6 **Response Given:**

7 Please see Defendant's Response to Request No. 6, above. In addition, Defendant complies  
8 with the State requirements of AB 1825 Training for Managers.

9 **Reason Further Response Should Be Compelled:**


10 The analysis is the same as for Item No. 6.  
11  
12

13 Respectfully submitted,

14 **THE COWAN LAW FIRM**

15 DATED: September 21, 2010

16 By:

17   
18 Jeffrey W. Cowan  
19 Attorney for **Plaintiff Lucy**  
20 **Messerschmidt**  
21  
22  
23  
24  
25  
26  
27  
28

JEFFREY W. COWAN, ESQ.  
825 Wilshire Boulevard, #336  
Santa Monica, California 90401  
(310) 395-2267

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to this action; my business address is 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401.

On September 21, 2010 I served **Plaintiff's CRC Rule 3.1345 Separate Statement re Motion to Compel Documents and Further Responses** on the interested parties in said action as indicated below:

**Anthony J. Orshansky, Esq.**  
**Orshansky & Yeremian LLP**  
**16133 Ventura Blvd.**  
**Suite 1245**  
**Encino, CA 91436**  
*[Attorney for Plaintiff Dave S. Perry]*

**[BY MAIL]** by placing a copy of said document for collection and mailing on the date indicated above, in a sealed envelope(s), addressed as set forth above, pursuant to ordinary business practices. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service at Santa Monica, California on that same day in the ordinary course of business.

**[BY FACSIMILE]** by transmitting a true copy by facsimile transmission at the time indicated on the transmission report from facsimile telephone number (310) 394-1430 to a facsimile machine maintained by the party on whom it was served, at the facsimile machine telephone number indicated on the attached service list. The transmission was reported as complete and without error. The transmission report which was properly issued by the transmitting facsimile machine is attached to the file copy of this document.

**[BY PERSONAL SERVICE]** By delivering by hand the foregoing document to the addressee while he was at my place of business/office.

**[BY OVERNIGHT COURIER]** I caused to be delivered to and served by an *Overnight Courier* on all interested parties in said action, the above named document(s) by placing true copies thereof in enclosed sealed envelopes, delivery fees paid or provided for, and addressed as set forth above.

**[STATE]** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 22, 2010, at Santa Monica, California.

  
Jeffrey W. Cowan

JEFFREY W. COWAN, ESQ.  
825 Wilshire Boulevard, #336  
Santa Monica, California 90401  
(310) 395-2267

**PROOF OF SERVICE**

I am over the age of eighteen years and not a party to this action; my business address is 1541 Ocean Avenue, Suite 200, Santa Monica, California 90401.

On September 22, 2010 I served **Plaintiff's CRC Rule 3.1345 Separate Statement re Motion to Compel Documents and Further Responses** on the interested parties in said action as indicated below:

**Glenn L. Briggs, Esq.  
Hodel Briggs Winter LLP  
8105 Irvine Center Drive  
Suite 1400  
Irvine, CA 92618  
[Attorneys for Defendants]**

**[BY MAIL]** by placing a copy of said document for collection and mailing on the date indicated above, in a sealed envelope(s), addressed as set forth above, pursuant to ordinary business practices. I am "readily familiar" with this firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service at Santa Monica, California on that same day in the ordinary course of business.

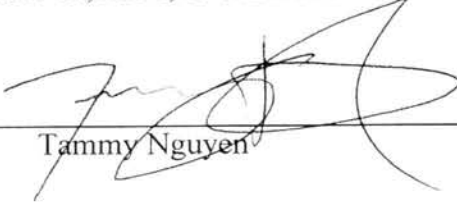
**[BY FACSIMILE]** by transmitting a true copy by facsimile transmission at the time indicated on the transmission report from facsimile telephone number (310) 394-1430 to a facsimile machine maintained by the party on whom it was served, at the facsimile machine telephone number indicated on the attached service list. The transmission was reported as complete and without error. The transmission report which was properly issued by the transmitting facsimile machine is attached to the file copy of this document.

**[BY PERSONAL SERVICE]** By delivering by hand the foregoing document to the addressee while he was at my place of business/office.

**[BY OVERNIGHT COURIER]** I caused to be delivered to and served by an *Overnight Courier* on all interested parties in said action, the above named document(s) by placing true copies thereof in enclosed sealed envelopes, delivery fees paid or provided for, and addressed as set forth above.

**[STATE]** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 22, 2010, at Santa Monica, California.

  
\_\_\_\_\_  
Tammy Nguyen