

[TENTATIVE] RULING/ORDERS

Pico Neighborhood Association, et al. v. City of Santa Monica,
Case No.: BC616804

Defendant City of Santa Monica's request for issue and evidentiary sanctions is DENIED.

Defendant City of Santa Monica's request for monetary sanctions as against Plaintiffs and their counsel of record, jointly and severally, is GRANTED in the amount of \$21,612.50, on the condition that Mr. Scolnick execute his unsigned declaration filed with the court.

A. Sanctions Generally

It is a commonly stated axiom that discovery sanctions "should be appropriate to the dereliction and should not exceed that which is required to protect the interests of the party..." Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 793; Ghanooni v. Super Shuttle of Los Angeles (1993) 20 Cal.App.4th 256, 262. Discovery sanctions are not to be imposed for punishment, but instead are used to encourage fair disclosure and to prevent unfairness. Electronic Funds Solutions, LLC v. Murphy (2005) 134 Cal.App.4th 1161, 1183; McGinty v. Superior Court (1994) 26 Cal.App.4th 204, 214; Parker v. Wolters Kluwer U.S., Inc. (2007) 149 Cal.App.4th 285, 301.

Before issuing a sanction, a trial court "should consider both the conduct being sanctioned and its effect on the party seeking discovery and, in choosing a sanction, should 'attempt[] to tailor the sanction to the harm caused...'" Doppes v. Bentley Motors, Inc. (2009) 174 Cal.App.4th 967, 992. Discovery sanctions should "put the demanding party in the position in which it would have been had that discovery been entirely favorable." Sauer v. Superior Court (1987) 195 Cal.App.3d 213, 229. Citing Caryl Richards, Inc. v. Superior Court (1961) 188 Cal.App.2d 300, 305 (sanctions for improperly withheld or destroyed discovery should give the requesting party "the benefit of everything which they might have had from the discovery which they sought"). Sanctions should "enable the party seeking discovery to obtain the objects of the discovery sought," but "may not place the party seeking discovery in a better position than it would have been in if the desired

discovery had been provided and had been favorable." In re Marriage of Chakko (2004) 115 Cal.App.4th 104, 109.

B. Issue/Evidentiary Sanctions

"The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses." CCP § 2023.030(b). "The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence." CCP § 2023.030(c).

Issue and/or evidentiary sanctions are not warranted by the conduct at issue and Defendant's requested issue sanction to take as established that the at-large system of elections has not caused Defendant to be unresponsive to Latino voters and their concerns and Defendant's requested evidentiary sanction to preclude Plaintiffs from introducing evidence or testimony concerning various subjects relating to the Pico Neighborhood¹ would be tantamount to a terminating sanction. And such requested sanction would place Defendant in a far superior position than if the discovery at issue had been timely produced or if Plaintiffs had conducted a proper search for the discovery at issue. The Court has been clear that this case will not turn into an analysis of each individual opinion of each or even a cross-section of Latinos residing in Santa Monica.² That the emails may have revealed disagreement with Plaintiffs' tactics or stance on certain issues does not establish Plaintiffs would be unable to prove their case in chief, but Defendant request issue and evidentiary sanctions which essentially prevent Plaintiffs from trying the matter on the merits. The authority Defendant relies upon generally involves disobedience of a court order, or when no court order is involved, the deliberate and willful destruction of evidence or disregard of discovery

¹ Such subjects Defendant seeks to preclude the presentation of evidence are the 10 Freeway, the Expo Line maintenance facility, City Yard service facilities, affordable housing, liquor stores, automobile repair facilities, homeless service centers, and purported methane gas levels at Gandara Park and to strike portions of Maria Loya's trial testimony related to those subjects.

² On Reply, Defendant raises the argument that PNA lacks standing to pursue the lawsuit and other arguments regarding the merits of the case. Reply 4:23-5:5. The Court will not address such arguments.

obligations. New Albertsons v. Superior Court (2008) 168 Cal.App.4th 1403, 1427-28; Karlsson v. Ford Motor Co. (2006) 140 Cal.App.4th 1202, 1214-15.³

Accordingly, Defendant's request for issue and evidentiary sanctions is denied.

C. Monetary Sanctions

"The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct...If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." CCP § 2023.030(a).

The Court does find Plaintiffs and their counsel engaged in a misuse of the discovery process such that monetary sanctions are warranted. Plaintiffs provide no coherent explanation for their decision to not search for emails in response to Defendant's discovery requests that defined the terms "DOCUMENT" and "COMMUNICATIONS" in a broad enough manner to include and expressly cover emails. Scolnick Decl.⁴ Exhs. A [Tr. Trans. 524:11-19, 525:14-16, 525:25-526:2]; B-C. Even though Loya acknowledged PNA has its own email account through Gmail and that she has a Gmail and Hotmail account, Loya, for reasons unexplained, did not search any of such accounts at all and only searched announcements PNA sent to its members through its Constant Contact account despite Loya acknowledging that she sent and received emails regarding this litigation through her

³ The Court is concerned about what appears to be Defendant's questionable citation. Defendant quotes Sauer v. Superior Court (1987) 195 Cal.App.3d 213, 229-30 for the proposition that "[b]elated compliance does not preclude the imposition of sanctions." Mot. 14:13. But the correct quotation is "[b]elated compliance with discovery orders does not preclude the imposition of sanctions." Defendant's quotation, which omits the portion stating "with discovery orders" contains no ellipses to indicate the quoted portion has been modified and instead is presented as being a full, complete, direct, and accurate quotation of the cited material. A major point of contention between the parties is whether the Court can impose the requested sanctions absent a court order. While the Court cannot ascertain Defendant's intent and is willing to regard this as a mistake, Defendant is admonished to carefully review all cited materials to ensure Defendant accurately presents any material cited to the Court.

⁴ The Declaration of Kahn Scolnick is unsigned.

Gmail account. Scolnick Decl. Exhs. A [Tr. Trans. 503:18-22, 504:9-18, 508:1-6, 509:15-510:23, 513:26-514:4, 514:17-26, 515:14-23] and G [Loya Dep. 19:20-22]. Loya justifies her lack of diligent search as being based upon the instructions of counsel. Scolnick Decl. Exhs. A [Tr. Trans. 503:8-10, 503:27-504:4, 504:13-18, 508:5-6, 508:15-17, 510:6-7, 515:9-13, 528:12-16]. When Loya searched the Constant Contact account, she only used the search terms of "At-large elections, CVRA." Scolnick Decl. Exhs. A [Tr. Trans. 516:2-8]. It is unclear when Plaintiffs claimed that the discovery requests were overbroad and far reaching, and that Loya and her attorney would respond by conducting such a limited search and disregard searching the Gmail or Hotmail accounts. Whether the requests were overbroad is an issue that should have been raised well before the instant motion.

But the Court finds Defendant's requested monetary sanctions in the amount of \$54,054 to be excessive, unreasonable, and punitive. Scolnick Decl. ¶¶ 18-22, Exhs. Q-R. The Court will not award sanctions for motions beyond the disputed document production. The Court awards sanctions for the fees incurred (1) on July 22, 2018, in the amount of \$4,875 to complete rulings on the motion to compel further discovery responses; (2) on December 21, 2017, in the amount of \$3,737.50 for the time beginning preparation of the rough draft of rulings on document production; (3) on October 18, 2017, in the amount of \$3,737.50 for the cumulative time beginning the preparation of written rulings on motion to compel further responses; (4) on October 16, 2017, in the amount of \$5,687.50 for the cumulative time to go through the original motions filed by Defendant for production of documents and preparing rulings; (5) on October 9, 2017, in the amount of \$2,275 for additional hearing time and preparation for oral argument on the request for production of documents; and (6) on October 9, 2017, in the amount of \$1,300 for the hearing time.

Accordingly, and based on the Court's review of the billing records, Defendant's request for sanctions is granted in the amount of \$21,612.50.

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CLERK TO GIVE NOTICE TO ALL PARTIES.

IT IS SO ORDERED.

YVETTE M. PALAZUELOS
JUDGE OF THE SUPERIOR COURT