2022 WL 21769762
Only the Westlaw citation is currently available.
United States District Court, N.D. California.

Armida RUELAS, et al., Plaintiffs,
v.
ALAMEDA COUNTY, et al., Defendants.

Case No. 19-cv-07637-JST (SK)
|
Signed November 1, 2022

Attorneys and Law Firms

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REPORT AND RECOMMENDATION REGARDING TERMINATING SANCTIONS

Regarding Docket No. 139

SALLIE KIM, United States Magistrate Judge

***1** On September 16, 2022, Defendants Aramark Correctional Services, LLC ("Aramark"); and County of Alameda (the "County") and Gregory J. Ahern, Sheriff (all collectively, "Defendants") filed a motion for discovery sanctions against named plaintiffs Joseph Mebrahtu and Luis Nunez-Romero (collectively, "Plaintiffs"). Defendants seek terminating sanctions against Mebrahtu and Nunez-Romero based on their failure to appear for properly noticed depositions and failure to comply with Court orders compelling their appearance.

BACKGROUND

Plaintiffs, along with several other people, filed this suit on November 20, 2019. (Dkt. No. 1.) Plaintiffs allege that the County of Alameda contracted with Aramark to allow Aramark to employ persons imprisoned at Santa Rita Jail, a facility that the County operates. (Dkt. No. 48 (First Amended Complaint).) Plaintiffs allege that Aramark employs the inmates without paying them. (*Id.*) Specifically, inmates prepare food, package the food, and clean the kitchen, and Aramark then sells the food to third parties. (*Id.*) All named plaintiffs allege that they worked under this system for no pay. (*Id.*)

Plaintiffs allege that they and other inmates who work under this system do so under threats from the County's Sheriff's deputies, who tell inmates that, if the inmates refuse to work, the inmates will receive longer sentences or be sent to solitary confinement. (*Id.*) Nunez-Romero is named as a plaintiff and a proposed class representative for all detainees awaiting immigration proceedings who are incarcerated at Santa Rita Jail and who worked for Aramark in the kitchen. Mebrahtu is named as a proposed representative for pretrial detainees. The named plaintiffs as a group are "pre-trial detainees, detainees facing deportation [and] federal detainees" confined at Santa Rita Jail. (Dkt. No. 48, ¶ 1.) Their current claims are based on violations of the Thirteenth Amendment, the Trafficking Victims Protection Reauthorization Act ("TVPRA"), the due process clause and the equal protection clause of the Fourteenth Amendment, the California Labor Code, California's Unfair Competition Law ("UCL"), and California's Bane Act.

On August 13, 2021, Plaintiffs' counsel served responses to interrogatories on behalf of Mebrahtu and Nunez-Romero, but neither of them verified those responses, and neither Mebrahtu nor Nunez-Romero produced any documents. (Dkt. No. 139-1 (Chaput Decl. ¶ 6, Exs. 3, 4).)

On April 29, 2022, the parties entered into a stipulation in which they represented to the District Court that "it is necessary for defendants to take the [named plaintiffs'] depositions in order to fully brief their opposition to plaintiffs' anticipated motion for class certification." (Dkt. No. 111.) The Court entered an order which echoed that sentiment. (Dkt. No. 112.)

On June 8, 2022, the parties filed a discovery letter brief in which Defendants sought an order compelling the deposition of Mebrahtu. (Dkt. No. 113.) In the letter brief, Defendants explained in detail their unsuccessful attempts to take the deposition, and Defendants explained the need for the deposition in light of upcoming motion for class certification. (*Id.*) Plaintiffs' counsel explained that, because Mebrahtu is unhoused and does not have ready access to a phone, Plaintiffs' counsel was unable to contact him. (*Id.*) On July 1, 2022, the Undersigned ordered Mebrahtu to appear for a deposition by July 15, 2022. (Dkt. No. 117.)

***2** On July 1, 2022, Plaintiffs filed their motion for class certification. (Dkt. No. 118.)

On July 8, 2022, the parties submitted a discovery letter brief regarding the deposition of Nunez-Romero. (Dkt. No. 124.) Nunez-Romero was unable to appear for his deposition because of a medical condition, but his counsel did not have permission to share the specific medical condition. (*Id.*) On July 18, 2022, the Undersigned ordered Nunez-Romero to appear for a deposition by July 22, 2022. (Dkt. No. 126.)

Neither Mebrahtu nor Nunez-Romero appeared for deposition by the deadlines set in the Orders. On July 20, 2022, the parties submitted a stipulation to extend the dates of the opposing and reply to the motion for class certification, and the Court granted that extension. (Dkt. Nos. 127, 128.)

On August 26, 2022, each Defendant filed an opposition to the motion for class certification. (Dkt. Nos. 130, 131.) Defendants, citing specific testimony, argued that deposition testimony from the named plaintiffs refuted the allegations of the First Amended Complaint. (*Id.*) For example, Defendants cited the deposition testimony of some of the named plaintiffs who denied that they were forced to work in the kitchen against their will or that anyone threatened or punished them as alleged in the First Amended Complaint. (Dkt. No. 130.) Defendants also noted that Defendants were unable to take the depositions of Mebrahtu and Nunez-Romero. (*Id.*)

On September 16, 2022, Plaintiffs' counsel informed Defendants that Mebrahtu was in Santa Rita Jail and able to appear for his deposition after September 20, 2022. (Dkt. No. 139-1, ¶ 20; Dkt. No. 142.) At the hearing on this matter on October 31, 2022, the parties agreed that Defendants did not take his deposition and that no party asked the Court to extend the briefing schedule for the motion for class certification. The hearing for the motion for class certification is currently scheduled for November 17, 2022. (Dkt. No. 128.)

ANALYSIS

"Federal courts have the authority to sanction litigants for discovery abuses both under Federal Rules of Civil Procedure and pursuant to the court's inherent power to prevent abuse of the judicial process." *Network Appliance, Inc. v. Bluearc Corp.*, 2005 WL 1513099, at *2 (N.D. Cal. June 27, 2005) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991) and *In re Matter of Yagman,* 796 F.2d 1165, 1187 (9th Cir. 1986)). Where a party fails to comply with a discovery order, Federal Rule of Civil Procedure 37(b)(2) authorizes the court to impose a range of sanctions, including taking facts as established, prohibiting the disobedient party from supporting or opposing claims or introducing certain evidence, or dismissing the action in whole or in part. Fed. R. Civ. P. 37(b)(2).

While most sanctions for failure to comply with a discovery order are discretionary, awarding attorney's fees is mandatory if the Court imposes sanctions under Rule 37(b) unless the failure to comply was substantially justified or it would be unjust:

> Instead of or in addition to [imposing other sanctions], the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

***3** Fed. R. Civ. P. 37(b)(2)(C).

Under their inherent authority, federal courts may impose sanctions for misconduct, including attorney's fees

against attorneys and parties who "acted in bad faith, vexatiously, wantonly, or for oppressive reasons" or acted in "willful disobedience" of a court order. *Chambers*, 501 U.S. at 43; *see also Unigard Sec. Ins. v. Lakewood Engineering & Mfg. Corp.*, 982 F.2d 363, 368 (9th Cir. 1992) ("Courts are invested with inherent powers that are governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.") (internal quotation marks and citation omitted).

Under both Rule 26 and Rule 37, the standard for sanctionable misconduct is generally one of objective reasonableness. *Oregon RSA No. 6, Inc. v. Castle Rock Cellular of Or. Ltd. P'ship*, 76 F.3d 1003, 1007 (9th Cir. 1996) (discussing Rule 26(g)); *Marquis v. Chrysler Corp.*, 577 F.2d 624, 642 (9th Cir. 1978) (discussing Rule 37). In contrast, bad faith is required to impose sanctions under the court's inherent power. *See Chambers,* 501 U.S. at 50; *Zambrano v. City of Tustin*, 885 F.2d 1473, 1478 (9th Cir. 1989). Furthermore, "when there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court ordinarily should rely on the Rules rather than [its] inherent power." *Chambers*, 501 U.S. at 50. Whether to impose sanctions lies within the sound discretion of the district court. *Lasar v. Ford Motor Co.,* 399 F.3d 1101, 1109 (9th Cir. 2005); *Payne v. Exxon Corp.,* 121 F.3d 503, 510 (9th Cir. 1997).

In determining appropriate sanctions:

> the Court should consider a sanction designed to: (1) penalize those whose conduct may be deemed to warrant such a sanction; (2) deter parties from engaging in the sanctioned conduct; (3) place the risk of an erroneous judgment on the party who wrongfully created the risk; and (4) restore a prejudiced party to the same position he or she would have been in absent the wrongdoing. *See Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1976); *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983).

Operating Engineers' Health & Welfare Tr. Fund for N. California v. Cent. Valley Constr., 2019 WL 6700093, at *3 (N.D. Cal. Dec. 9, 2019).

A. Terminating Sanctions.

A court can terminate an action under Fed. R. Civ. P. 37(b)(2)(A)(v) for a willful violation of a Court's Order. Since dismissal is such a drastic remedy, it may be ordered only in extreme circumstances, such as where there is willful disobedience or bad faith. *See In re Exxon Valdez*, 102 F.3d 429, 432 (9th Cir. 1996). The only requirement of willfulness is "disobedient conduct not shown to be outside the control of the litigant." *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 948 (9th Cir. 1993). And for purposes of terminating sanctions, a party is bound by the actions of its attorneys, as a court need not find that the client, rather than its only its lawyers, engaged in willful conduct to violate a court's order. *Valley Engineers, Inc. v. Electric Engineering Co.*, 158 F.3d 1051, 1056 (9th Cir. 1998) (citing *Link v. Wabash Railroad Co.*, 30 U.S. 626, 633-34 (1962)).

***4** A court evaluates a motion for terminating sanctions under the following five factors: (1) the public's interest in expeditious resolution of the case, (2) the court's need to manage its docket, (3) the risk of prejudice to the party seeking sanctions, (4) the public policy favoring disposition on the merits, and (5) the availability of less drastic sanctions. *Thompson v. Housing Auth. Of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). Terminating sanctions are appropriate if four of the five factors support it. *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 133 and n. 2 (9th Cir. 1987), or if at least three factors strongly support dismissal. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992). Courts have issued terminating sanctions where a party "engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings." *Anheuser-Busch v. Natural Beverage Distributors*, 69 F.3d 337, 348 (9th Cir. 1995).

Here, three factors support terminating sanctions against Mebrahtu: the public's interest in expeditious resolution of the case, the court's need to manage its docket, and the risk of prejudice to the party seeking sanctions. Two factors do not support terminating sanctions against Mebrahtu: the public policy favoring disposition on the merits and the availability of less drastic sanctions. Because Mebrahtu did not appear for his deposition before Defendants were required to file their oppositions to the motion for class certification, Defendants were prejudiced. They were not able to determine if Mebrahtu, like the other plaintiffs, failed to support the allegations of the First Amended Complaint. Although Mebrahtu did offer to appear for deposition after Defendants had filed

their opposition, the District Court is not required to delay the motion after a party disobeys an order by failing to participate in the process of discovery. The public has an interest in speedy resolution of cases, and further delay is not warranted. Despite these factors, other factors weigh against terminating sanctions. In any situation, public policy favors disposition on the merits, and the District Court can impose less drastic sanctions by denying Mebrahtu the ability to be a class representative and by prohibiting him from providing evidence in support of his claims at trial. The circumstances of this case show that Mebrahtu was not diligent in pursuing his case, but he should be able to remain a member of the class, if one is certified. The Undersigned, thus, RECOMMENDS SANCTIONING Mebrahtu by denying him the ability to participate as a named class representative. The Undersigned also ORDERS Mebrahtu to appear for his deposition by January 13, 2023, and if he fails to do so, Defendants may renew the motion for terminating sanctions.

Nunez-Romero's situation is different. It appears that there is no indication that he is willing to participate in his deposition and there is no explanation – other than an unspecified and undocumented claim of a medical condition – for his earlier violation of the Court's Order requiring him to appear for his deposition. Given his complete failure to appear for deposition, the only remedy against him is terminating sanctions. Therefore, the Court RECOMMENDS DISMISSING Nunez-Romero's individual claims against Defendants with prejudice.

B. Attorneys' Fees.

"Under Rule 37(b)(2)(C), a court that has imposed sanctions pursuant to Rule 37(b)(2)(A) 'must' order the sanctioned party to pay the reasonable expended incurred by the other party due to the noncompliance with a discovery order 'unless the failure was substantially justified or other circumstances make an award of expenses unjust.' " *Sanchez v. Rodriguez*, 298 F.R.D. 460, 473 (C.D. Cal. 2014) (quoting Fed. R. Civ. P. 37(b)(2)). Here, both Mebrahtu and Nunez-Romero are unhoused people who do not even have ready access to telephones. Imposing a sanction of attorneys' fees against them would be unjust under these circumstances. The Undersigned RECOMMENDS that the District Court deny Defendants' request for their reasonable attorneys' fees and costs incurred due to the noncompliance of Mebrahtu and Nunez-Romero.

CONCLUSION

***5** Because the Undersigned finds that terminating sanctions are warranted, the undersigned RECOMMENDS that the District Court issue terminating sanctions against Nunez-Romero and enter judgment in favor of Defendants against him. The Undersigned RECOMMENDS that the District Court rule that Mebrahtu is an unsuitable class representative. The Undersigned FURTHER RECOMMENDS that Defendants' request for attorneys' fees and costs be DENIED. The Undersigned ORDERS Mebrahtu to appear for his deposition by January 13, 2023.

Any party may file objections to this Report and Recommendation with the district court to whom the case is reassigned within fourteen days of being served with a copy. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

IT IS SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2022 WL 21769762