

Tentative Rulings for March 5, 2025
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Ruling

Re: **Emery v. Cheng**
Superior Court Case No. 23CECG04214

Hearing Date: March 5, 2025 (Dept. 503)

Motion: Cross-Defendant's Demurrer and Motion to Strike the First Amended Cross-Complaint

Tentative Ruling:

To sustain the general demurrer to the seventh and seventeenth causes of action. (Code Civ. Proc. § 430.10, subd. (e).) Leave to amend is limited to the seventeenth cause of action.

To grant the motion to strike. Leave to amend is granted only with respect to punitive damages sought in connection with the seventeenth cause of action.

Cross-complainant shall file the Second Amended Cross-Complaint within 10 days of service of the order by the clerk.

Explanation:

Demurrer to the First Amended Cross-Complaint

Cross-defendant Brandon Emery demurs to the seventh and seventeenth causes of action on the basis that each fails to allege sufficient facts and is uncertain. (Code Civ. Proc. § 430.10, subd. (e), (f).) Although cross-defendant purports to raise both a general demurrer and a special demurrer for uncertainty, . the brief failed to specify exactly how or why the pleading is uncertain, which "will defeat a demurrer based on the grounds of uncertainty." (*Fenton v. Groveland Community Services Dist.* (1982) 135 Cal.App.3d 797, 809, *disapproved on other grounds by Katzberg v. Regents of University of California* (2002) 29 Cal.4th 300.) Thus, only a general demurrer is raised.

Seventh Cause of Action: Violation of the Ralph Civil Rights Act

The Ralph Act, codified in Civil Code section 51.7, provides:

"All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of political affiliation, or on account of any characteristic listed or defined in subdivision (b) or (e) of [Civil Code] section 51, or position in a labor dispute, or because another person perceives them to have one or more of those characteristics. The identification in this subdivision of particular bases of discrimination is illustrative rather than restrictive."

Civil Code section 51, subdivision (b) provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." "Sex" for purposes of the statute also includes a person's gender. (Civ. Code §51, subd. (e)(5).)

Cross-defendant demurs on the basis that cross-complaint fails to allege facts that would support a discriminatory motive based on Cheng's protected status. The statute defines the characteristics intended to be protected and the court has found there are no facts supporting the actions alleged in the cross-complaint were motivated by Cheng's gender¹. In opposition cross-complainant argues the allegations of grooming and the age gap between the parties supports the allegation that the violence was committed against him on the basis of his age. However, age is not among the enumerated protected characteristics in the statute. Cross-complainant has not provided authority to support the argument that age is a protected characteristic under the Ralph Civil Rights Act. The allegation of "grooming" based on the age gap between the parties does not translate to discrimination on the basis of Cheng's sex. The demurrer is sustained without leave to amend.

Seventeenth Cause of Action: Conversion

Conversion is the wrongful exercise of dominion over the property of another. (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) The elements of a conversion claim are: (1) plaintiff's ownership or right to possession of the property; (2) defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. (*Ibid.*)

The First Amended Cross-Complaint alleges a sum of money, "at least \$698,395.00," has been converted by Emery through transfers of money and loans to meet Emery's financial needs. (FACC, ¶¶ 44-45.) The demurrer challenges the sufficiency of the allegations of Cheng's possessory interest in the funds and the equivocal nature of what should be a specific identifiable sum. It does not appear from the allegations of the cross-complaint that all funds paid or transferred to Emery would necessarily be properly the subject of a conversion claim. However, the allegations include a loan to Emery and his refusal to repay the amount and a transfer of money under threat that may be able to be pled as conversion. (FACC ¶¶ 16, 39.) The demurrer is sustained and leave to amend will be granted.

¹ The ruling on the October 10, 2024 Demurrer to the Cross-Complaint did not directly address the arguments that the Ralph Civil Rights Act claim did not allege facts to support the actions were motivated by Cheng's gender, as they were addressed in the discussion of the Cross-Complaint's cause of action alleging Gender Violence. This should not be interpreted that the court previously found the allegations as to the Gender Violence claim were insufficient but the Ralph Civil Rights Act claims premised on the same factual allegations were sufficient to allege discriminatory motive based on Cheng's gender.

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Tentative Ruling

Re: **MCS Mission Village LLC v. Cedars International Group Inc.**
Superior Court Case No. 20CECG02490

Hearing Date: March 5, 2025 (Dept. 503)

Motion: by Plaintiff MCS Mission Village, LLC for Terminating Sanctions

Tentative Ruling:

To deny terminating sanctions, and alternatively evidence and issue sanctions.

To grant monetary sanctions against defendants Cedars International Group, Inc. and Wajih Ajib, jointly and severally, in the amount of \$4,215.00, to be paid within 20 calendar days from the date of service of the minute order by the clerk. (Code Civ. Proc., § 2030.290, subd. (c).)

Explanation:

Late Opposition

Considering the severity of an imposition of terminating sanctions, the court will exercise its discretion to consider the late filed opposition and subsequently late filed reply. There is a strong policy of the law favoring the disposition of a case on its merits, even in the face of a late filed opposition. (*Juarez v. Wash Depot Holdings, Inc.* (2018) 24 Cal.App.5th 1197, 1202, citing *Au-Yang v. Barton* (1999) 21 Cal.4th 958, 963.)

Judicial Notice

Plaintiff MCS Mission Village, LLC ("plaintiff") has requested judicial notice of 15 items under Evidence Code sections 452 and 453. However, pursuant to California Rules of Court, rule 5.115, "[a] party requesting judicial notice of material under Evidence Code section 452 or 453 must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the matter is being heard, the party must specify in writing the part of the court file sought to be judicially noticed and make arrangements with the clerk to have the file in the courtroom at the time of the hearing."

Here, the items sought to be judicially noticed were not provided to the court with the request, and plaintiff did not specify that these documents would be provided. The court declines to take judicial notice of the requested items.

Legal Standard

Code of Civil Procedure section 2023.010, subdivision (g) makes "[d]isobeying a court order to provide discovery" a "misuse of the discovery process," but sanctions are only authorized to the extent permitted by each discovery procedure. Once a motion

to compel answers is granted, continued failure to respond or inadequate answers may result in more severe sanctions, including evidence, issue or terminating sanctions, or further monetary sanctions. (Code Civ. Proc. §§ 2030.290, subd. (c); 2031.300, subd. (c).)

Sanctions for failure to comply with a court order are allowed only where the failure was willful. (*Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.) If there has been a willful failure to comply with a discovery order, the court may strike out the offending party's pleadings or parts thereof, stay further proceedings by that party until the order is obeyed, dismiss that party's action, or render default judgment against that party. (Code Civ. Proc. § 2023.030, subd. (d).) It is within the broad discretion of the court to impose such sanctions.

Evidence, issue, or terminating sanctions are intended to further a legitimate purpose under the Discovery Act, i.e. to compel disclosure so that the party seeking the discovery can prepare their case, and secondarily to compensate the requesting party for the expenses incurred in enforcing discovery. Sanctions should not constitute a "windfall" to the requesting party; i.e. the choice of sanctions should not give that party more than would have been obtained had the discovery been answered. (Rylaarsdam & Edmon, Cal. Practice Guide: Civ. Proc. Before Trial (TRG 2023) § 8:2216.) "The sanctions the court may impose are such as are suitable and necessary to enable the party seeking discovery to obtain the objects of the discovery he seeks but the court may not impose sanctions which are designed not to accomplish the objects of the discovery but to impose punishment. [Citations.]" (*Caryl Richards, Inc. v. Superior Court* (1961) 188 Cal.App.2d 300, 304.) The imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co.* (1990) 222 Cal.App.3d 1579, 1581.)

Generally, no terminating sanctions will be ordered for failure to pay sanctions. Terminating sanctions for a party's nonpayment of the monetary sanctions would constitute a windfall to the moving party, which is not the goal of discovery sanctions. (*Caryl Richards, Inc. v. Superior Court In and For Los Angeles County*, *supra*, 188 Cal.App.2d at 302; *Rutledge v. Hewlett-Packard Company* (2015) 238 Cal.App.4th 1164, 1194.) Orders for monetary sanctions are enforceable as money judgments.

Terminating Sanctions, and Alternative Evidence and Issue Sanctions

Terminating sanctions in this instance appear to be overly severe. First, plaintiff did not satisfy the element of willfulness in its motion. Contrary to plaintiff's argument that willfulness is only required to establish content, numerous cases hold that severe sanctions (i.e., evidence or terminating sanctions) for failure to comply with a court order are allowed only where the failure was willful. (See *R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496; *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545; *Biles v. Exxon Mobil Corp.* (2004) 124 Cal.App.4th 1315, 1327.)

Secondly, plaintiff's reasons for bringing the present motion appear to be resolved. Plaintiff's bases for this motion were that (1) defendants Cedars International Group, Inc. ["Cedars"] and Wajih Ajib ["Ajib"] had not responded to the propounded form interrogatories, and (2) defendant Cedars had not paid its previously court-ordered monetary sanctions.

