

Cummings v. County of San Luis Obispo, 17CV- 0056

Hearing: Motion for Terminating Sanctions

Date: November 16, 2017

Plaintiff Dana Cummings (“Plaintiff”) brings this action against Defendants County of San Luis Obispo and Daniel Buckshi (“Defendants”) for alleged interference with Plaintiff’s efforts to obtain employment with Stanislaus County. On March 30, 2017, Defendants served, via mail, seventeen special interrogatories and six requests for production on Plaintiff, through his attorney Matthew F. Janowicz (“Janowicz”). Despite receiving five extensions of time to respond, Plaintiff failed to provide any responses to either the special interrogatories or requests for production. On June 20, 2017, Defendants filed a motion to compel responses, which Plaintiff failed to oppose. On August 3, 2017, this Court granted Defendants’ motion to compel and ordered Plaintiff to provide, without objections, written responses to the special interrogatories and requests for production by September 2, 2017.

As of September 2, 2017, no responses were received by Defendants. On September 7, 2017, counsel for Defendants contacted Janowicz regarding the responses, reminding him of the order of this Court. Janowicz was granted another extension of time to respond, to September 14, 2017, and warned that should he fail to provide responses at that time that Defendants would be forced to seek terminating sanctions. On September 13, 2017, Janowicz responded via email stating that the responses would be served no later than the next day. No responses were received by Defendants. On September 25, 2017, Janowicz sent another email to counsel for Defendants, stating that the responses were placed in the mail. To date, Defendants have not received any responses from Plaintiff. Defendants now bring this motion for terminating sanctions or in the alternative issue and evidentiary sanctions, as well as monetary sanctions (“Motion”), based on Plaintiff’s continued failure to comply with the discovery rules and this Court’s discovery order. Plaintiff has not opposed the Motion.

Pursuant to CCP §§2023.010, 2023.030, 2030.290, 2030.300, and 2031.300, the Court has the authority to issue terminating sanctions in the form of a dismissal of the action for a party’s misuse of the discovery process based upon the party’s failure to respond to an authorized method of discovery, and for failure comply with a discovery order. (CCP §2023.030.) Terminating sanctions require a showing that the failure is willful. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 495-496)

Plaintiff’s complete failure to respond to reasonable and proper discovery requests, failure to comply with this Court’s discovery order, and failure to oppose this Motion support the argument that he is willfully abusing the discovery process and disobeying the Court. The Motion for terminating sanctions is granted. The complaint is ordered dismissed with prejudice.

CCP §2023.030(a) allows the Court to issue monetary sanctions in addition to terminating sanctions. In addition to or in lieu of any other sanction, the Court may award reasonable costs and fees incurred as a result of the failure to obey (including fees on the sanctions motion). (CCP §§ 2023.030(a); Weil & Brown, *California Practice Guide, Civil Pro. Before Trial* (The Rutter Group 2017) ¶ 8:2194.)

Defendants' request for monetary sanctions is also granted. Defendants are awarded \$2,722.50 (\$225 x 12.1 hours) in monetary sanctions against Plaintiff, representing the time spent by counsel for Defendants in preparing the Motion.