

Tentative Rulings for November 3, 2021
Department 502

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 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: ***Avila v. Ygrene Energy Fund, Inc.***
Superior Court Case No. 19CECG02943

Hearing Date: November 3, 2021 (Dept. 502)

Motion: by Defendant to Compel Initial Responses, from each Plaintiff to Form Interrogatories, Special Interrogatories, and Request for Production of Documents (All Set One), for Monetary Sanctions, and Evidence Sanctions

Tentative Ruling:

To grant Defendant Ygrene Energy Fund Inc's motions to compel Plaintiffs Jose Avila and Silvina Estrada to provide verified responses to form interrogatories, set one, special interrogatories, set one, and request for production of documents, set one. (Code Civ. Proc. §§ 2030.290(b), 2031.300(b).) Plaintiffs are ordered to serve complete verified responses to all discovery set forth above, without objection, on or before November 23, 2021.

To impose monetary sanctions the total amount of \$1,260 in favor of Defendant Ygrene Energy Fund, Inc., and against Plaintiffs and their attorney Patrick L. Fortune, jointly and severally, payable within 20 days of the date of this order, with time to run from the service of this minute order by the clerk. (Code Civ. Proc. §§ 2023.010(g) and 2023.030(a).)

To deny the motion for evidence sanctions at this time. In the event plaintiffs fail to serve responses consistent with this order, defendant may file a declaration so stating and an order incorporating paragraphs (4), (5), and (6) of the proposed order filed on October 7, 2021 granting the evidence sanctions described therein.

Explanation:

Disobeying a court order to provide discovery is a misuse of the discovery process. (Code Civ. Proc. §2023.010(g).) The trial court has broad discretion with regard to imposing discovery sanctions. (Code Civ. Proc. §2023.030; *Lee v. Lee* (2009) 175 Cal.App.4th 1553, 1559; *Miranda v. 21st Century Ins. Co.* (2004) 117 Cal.App.4th 913, 928-929.)

In the case at bench, defendant has requested a second order compelling responses to discovery from each plaintiff, further monetary sanctions for having to bring this motion, and evidence sanctions.

Order Compelling Responses

The form interrogatories, special interrogatories and requests for production were served by defendant on each of the plaintiffs on October 30, 2020. Verified responses,

without objections were ordered by this court on June 3, 2021. Per the notice of no opposition filed October 27, 2021 defendant has not yet received discovery responses in response to this motion.

As such, Plaintiffs are ordered to provide responses to form interrogatories, special interrogatories and requests for production (all set one) on or before November 23, 2021. (Code Civ. Proc. §§ 2030.290(a) and 2031.300(a).)

Attorney's Fees

Defendant is seeking additional monetary sanctions for the time spent drafting the motions, including the separate statements, in the amount of \$3,000 and an additional \$180 in filing fees for the three motions against each of the two plaintiffs. Code of Civil Procedure section 2030.030(a) authorizes the court to impose monetary sanctions for misuse of the discovery process. Counsel does not provide an hourly rate or the number of hours spent in her declaration, only a representation that the amount represents half the fees incurred bringing the motion. (Bolan Decl. ¶ 16.) In light of the missing information in the declaration, a fair estimation is three hours of time for both motions at a reasonable, local hourly rate of \$300 per hour in addition to the \$360 in filing fees for the motions for a total amount of \$1,260 awarded in favor of defendant and against plaintiffs and their counsel, jointly and severally. (Code Civ. Proc. § 2030.030(a).)

Evidence sanctions

Evidentiary sanctions are appropriate where there has been a willful failure to comply with a court order compelling discovery. (*Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1545.) Code of Civil Procedure section 2030.030(b) authorizes the court to impose issue sanctions ordering that designated facts shall be taken as established in the action or prohibiting any party who engages in the misuse of the discovery process from introducing designated matters in evidence. Code of Civil Procedure section 2030.030(c) authorizes the court to impose evidence sanctions prohibiting any party who engages in the misuse of the discovery process from supporting or opposing designated claims or defenses.

Which of the various available sanctions may be granted for disobedience of court orders, and whether sanctions will be granted at all, lies entirely within the court's sound discretion. (See *Pember v. Superior Court* (1967) 66 Cal.2d 601, 604.) "Only two facts are absolutely prerequisite to imposition of the sanction: (1) there must be a failure to comply ... and (2) the failure must be wilful." (*Liberty Mut. Fire Ins. Co. v. LcL Administrators, Inc.* (2008) 163 Cal.App.4th 1093, 1102 (internal quotes omitted).) "A willful failure does not necessarily include a wrongful intention to disobey discovery rules. A conscious or intentional failure to act, as distinguished from accidental or involuntary noncompliance, is sufficient to invoke a penalty. [Citation]." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 787–788.) Discovery sanctions should be appropriate to the dereliction, and should not exceed that which is required to protect interests of party entitled to but denied discovery. (*Vallbona v. Springer, supra*, 43 Cal.App.4th at p. 1545.)

Defendant is seeking an order prohibiting plaintiffs from supporting their first and second claims and/or opposing defendant's defenses. (Code Civ. Proc. § 2023.030(b).) Plaintiffs have failed to answer Form Interrogatories 7.1-7.3 and 9.1-9.2 regarding their claimed damages, 14.1-14.2 regarding alleged laws violated and 50.1-50.6 regarding the agreement at issue between the parties. Special Interrogatories Nos. 2 and 4 seek identification of facts in support of the first and second causes of action. Requests for Production of Documents No. 5 seeks documents regarding the agreement at issue in the plaintiff's complaint. These requests are seeking information plaintiffs have that would support the claims made in the complaint and the failure to respond to discovery has prevented defendant from knowing what defenses are necessary. As such, the sanction sought is sufficiently tailored to the discovery violation.

Additionally, Defendant is seeking an order that plaintiffs not be allowed to introduce witnesses or documents in support of their first and second claims in evidence due to their failure to identify witnesses and evidence in response to multiple discovery requests seeking this information. (Code Civ. Proc. § 2023.030(c).) Form Interrogatories 12.1-12.7, Special Interrogatories Nos. 3 and 5, and Request for Production Nos. 8, 9, 10 and 11 seek information regarding witnesses and documents to support the claims in the complaint and remain unanswered. The sanction sought is sufficiently tailored to the discovery violation.

The final evidentiary sanction sought by defendant is an order that the court will presume, and any jury will be instructed, that plaintiffs willfully withheld all documents sought in these discovery responses because they are favorable to Ygrene's defenses and detrimental to plaintiff's claims. (*Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 605, citing *Kuhns v. State of California* (1992) 8 Cal.App.4th 982, 987-990.) The contract relationship in this case was between plaintiffs and The Solar Group, Inc. (now dismissed from this action). Defendant sought documents and communications between plaintiffs and The Solar Group, Inc. in addition to documents regarding the proposal attached to the complaint as Exhibit A by way of Requests for Production Nos. 1 and 5. As with all other discovery requests, no responses and or documents were received. Defendant now seeks to have the court and jury be instructed to infer that those documents would be detrimental to plaintiff's position and favorable to defendant's position. The other document categories sought include those that would support plaintiffs' two causes of action in their complaint and by this order would be inferred to be detrimental to plaintiff's position and supportive of Ygrene's defenses. Considering the importance of the documents sought in supporting or refuting the existence of a contract between The Solar Group, Inc. and plaintiffs and their failure to respond to the requests in violation of the court's June 3, 2021 order, the sanction is sufficiently tailored to the discovery violation.

Plaintiffs have failed to participate in the lawsuit they filed. Plaintiffs are being given a second chance to respond to discovery before the evidentiary sanctions requested are imposed. Plaintiffs are to serve verified responses, without objections, to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, on or before November 23, 2021. In the event they fail to do so, plaintiffs will have apparently willfully failed to comply with two court orders compelling responses. Defendant may then file a declaration advising the court that responses were

not served along with an order incorporating paragraphs (4), (5), and (6) of the proposed order in the instant motion granting the evidence sanctions described therein.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: RTM **on** 11/2/2021.
(Judge's initials) (Date)