

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

Scott Hargis v. Pacifica Senior Living Management LLC

Hargis v. Pacifica · No. 2:22-cv-6989-MCS-PDx · Decided March 24, 2025

OPINION

Scott Hargis v. Pacifica Senior Living Management LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 11 SCOTT HARGIS, Case No. 2:22-cv-6989-MCS-PDx 12 Plaintiff/Judgment Creditor,
CERTIFICATION OF FACTS 13

AND ORDER TO SHOW CAUSE

v.

14 WHY DEFENDANT SHOULD

PACIFICA SENIOR LIVING NOT BE HELD IN CONTEMPT

15 MANAGEMENT LLC,

16 Defendant /Judgment Debtor. 17 18 Plaintiff and Judgment Creditor Scott Hargis (“Plaintiff”) has moved for 19 an order finding Defendant and Judgment Debtor Pacifica Senior Living 20 Management, LLC (“Defendant”) in contempt for failing to comply with this 21 Court’s December 19, 2024 Order. 22 23 I. Background 24 On December 19, 2024, the Court conducted an informal discovery 25 conference to address Defendant’s failure on several occasions to produce 26 documents responsive to Plaintiff’s Requests for Production of Documents 27 (“RFPs”). The email attached to the December 19, 2024 order contains the 28 details of Defendant’s multiple failure to produce documents. [See Dkt. No. 1 212-1.] At the December 19, 2024 conference, the Court ordered in pertinent 2 part: 3

1. By December 27, 2024, Defendant will produce the documents

4 identified in Issues One, Two and Three of the email. 5 6 2. By January 3, 2025, the parties will submit a joint status report 7 regarding whether that production was completed. 8

3. If the production was not completed, the parties will appear in

9 person, in Courtroom 580 of the Roybal Federal Courthouse, on 10 January 7, 2025 at 10:00 a.m. for a Discovery Status Conference. 11 Both parties will bring the documents that were produced and 12 will review them in the courtroom. The parties will address 13 specifically which documents were not produced. An employee or 14 agent of Defendant with knowledge of the requested documents 15 must attend the Discovery Status Conference in person. 16 [Dkt. No. 212

at 1-2.] 17 On January 3, 2025, the parties submitted the Joint Status Report. 18 [Dkt. No. 214.] On January 6, 2025, the parties submitted the “Corrected 19 Joint Status Report Re: Document Production.” [Dkt. No. 215-1.] 20 As to the documents identified in Issue One, on December 27, 2024, 21 Defendant updated its response to state that it is not in possession, custody or 22 control of any responsive documents. [Id. at 2.] The documents identified in 23 Issue Two are the September and October 2024 balance sheets, income 24 statements, and general ledgers. [Id.] On December 27, 2024, Defendant 25 produced its September 2024 balance sheet, income statement, and general 26 ledger; on December 27, 2024, Defendant did not produce its October 2024 27 balance sheet, income statement or general ledger. [Id.] Defendant did 28 produce its October 2024 balance sheet, income statement, and general ledger 1 on January 3, 2025. [Id.] As to the documents identified in Issue Three, the

2 November 2024 bank statement, Defendant produced it on December 27,

3 2024. [Id.] 4 Defendant submitted that all issues raised at the December 19, 2024 5 informal discovery conference had been resolved and that there was no need 6 for the in-person hearing on January 7, 2025. [Id. at 5.] Plaintiff requested 7 that the hearing remain on calendar because Defendant had not produced its

8 October 2024 balance sheet, income statement, and general ledger by the

9 December 27, 2024 and because “Defendant’s persistent and unrepentant

10 discovery misconduct needs to be addressed in person.” [Id. at 3.] 11 The Court did not take the hearing off calendar. 12 On January 7, 2025, the Court conducted the in-person discovery status 13 conference. An employee or agent of Defendant with knowledge of the 14 requested documents did not attend. 15 II. Applicable Law 16 “With the exception of circumstances not relevant here, Rule 37 17 authorizes a court to “treat[] as contempt of court the failure to obey any 18 order.” Fed. R. Civ. P. 37(b)(2)(A)(vii). “Civil contempt is appropriate only 19 when a party fails to comply with a court order that is both specific and 20 definite.” *Balla v. Idaho State Bd. Of Corr.*, 869 F.2d 461, 465 (9th Cir. 1989). 21 In the Ninth Circuit, a party alleging that another person should be 22 held in civil contempt must establish by clear and convincing evidence that 23 the alleged contemnor “violated the court order,” “beyond substantial 24 compliance,” “not based on a good faith and reasonable interpretation of the 25 order.” *Labor/Cmty. Strategy Ctr. v. L.A. Cty. Metro. Transp. Auth.*, 564 F.3d 26 1115, 1123 (9th Cir. 2009) (quoting *In re Dual-Deck Video Cassette Recorder 27 Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993)). Clear and convincing 28 evidence is evidence that leaves the factfinder “with a firm belief or conviction 1 that it is highly probable that the factual contentions of the claim or defense 2 are true.” Ninth Cir. Civil Jury Instruction 1.7 Burden of Proof—Clear and 3 Convincing Evidence. 4 Once that prima facie showing is made, the burden shifts to the alleged 5 contemnor to “produce evidence explaining [her] noncompliance.” *United 6 States v. Ayres*, 166 F.3d 991, 994 (9th Cir. 1999) (citing *Chairs v. Burgess*, 7 143 F.3d 1432, 1436 (11th Cir. 1998)). In making a contempt determination, a 8 court may consider “the witness’[s] history of non-compliance and

the extent 9 to which the witness failed to comply during the pendency of the motion for 10 contempt.” *Martinez v. City of Avondale*, No. 12-1837, 2013 WL 5705291, at 11 *4 (D. Ariz. Oct. 18, 2013). 12 “Because civil contempt sanctions are viewed as nonpunitive and 13 avoidable, fewer protections for such sanctions have been required.” *Int’l Union v. Bagwell*, 512 U.S. 821, 831 (1994). “Neither a jury trial nor proof 15 beyond a reasonable doubt is required.” *Id.* at 827. Civil contempt “may be 16 imposed in an ordinary civil proceeding upon notice and an opportunity to be heard.” *Id.* Indeed, the Ninth Circuit has held “that finding a party in civil 17 contempt without a full-blown evidentiary hearing does not deny due process 18 of law to a contemnor.” *Ayres*, 166 F.3d at 995 (citations omitted). While the 19 Ninth Circuit has instructed that contempt sanctions ordinarily should not be 20 imposed “solely on the basis of affidavits,” where the contemnor “[does] not 21 present any arguments which create[] any material issue of fact, due process 22 [does] not require an evidentiary hearing prior to a finding of contempt.” *Id.* at 23 995-96 (citations and quotation marks omitted); *RG Abrams Ins. v. Law 24 Offices of C.R. Abrams*, No. 2:21-cv-00194-FLA (MAAx), 2021 WL 5213103, at 25 * 4-5 (C.D. Cal. Nov. 9, 2021). 26 When an act “constitut[ing] a civil contempt” occurs in a discovery- 27 related proceeding, 28 1 [T]he magistrate judge shall forthwith certify the facts to a 2 district judge and may serve or cause to be served, upon any 3 person whose behavior is brought into question under this 4 paragraph, an order requiring such person to appear before a 5 district judge upon a day certain to show cause why that person 6 should not be adjudged in contempt by reason of the facts so 7 certified. The district judge shall thereupon hear the evidence as 8 to the act or conduct complained of and, if it is such as to warrant 9 punishment, punish such person in the same manner and to the 10 same extent as for a contempt committed before a district judge. 11 28 U.S.C. § 636(e)(6)(B)(iii); see also *Assignment of Duties to Magistrate 12 Judges*, C.D. Cal. Gen. Order 05-07 (2005). 13 In certifying the facts under § 636(e), the magistrate judge's role is to 14 determine whether the moving party can assert sufficient evidence to 15 establish a prima facie case of contempt. See *Proctor v. State Gov’t of N.C.*, 16 830 F.2d 514, 521 (4th Cir. 1987); *Aguilar v. City of Azusa*, No. CV14-9183- GW (JPRx), 2016 WL 11755112, at * 2 (C.D. Cal. Jan. 5, 2016). 17 18 III. Certification of Facts 19 Pursuant to 28 U.S.C. § 636(e)(6)(B)(iii), the undersigned certifies the 20 following facts to the district judge assigned to this matter: 21 1. On December 19, 2024, the Court ordered Defendant to produce the 22 documents identified in Issues One, Two and Three of the December 18, 2024 23 email attached to the Order by December 27, 2024. 24 2. The Court ordered that if the production was not completed, the 25 parties were to appear in person in Courtroom 580 of the Roybal Federal 26 Courthouse, on January 7, 2025 at 10:00 a.m. for a Discovery Status 27 Conference. The Court further ordered that an employee or agent of 28 Defendant with knowledge of the requested documents must attend the 1 Discovery Status Conference in person. 2 3. Defendant did not produce the documents identified in Issue Two by 3 December 27, 2024.

4 4. John Cunningham, who is Defendant's Chief Financial Officer, had 5 on his calendar an
appointment for a long-standing business meeting to take 6 place on the morning of January 7,
2025, with people coming in from Ohio. 7 [Dkt. No. 223-1, Declaration of John Cunningham, ¶¶
1, 3.] 8 5. The scheduling conflict with the January 7, 2025 court appearance 9 did not become
apparent to Mr. Cunningham "until the last days leading up to
10 January 7, 2025." [Id. ¶ 4.]

11 6. Due to this conflict, Mr. Cunningham requested that counsel for 12 Pacifica "request for me
to appear remotely, which they did and the Court did 13 not grant." [Id. ¶ 5.] 14 7. On January 6,
2025, at 10:37 p.m., counsel for Defendant sent an 15 email to the Courtroom Deputy Clerk
stating that counsel was informed that 16 the representatives of Defendant would be unable to
appear personally for the hearing and requesting permission to appear remotely, if possible. The
17 Courtroom Deputy Clerk did not respond to the email, and the Court did not 18 grant
Defendant permission to appear remotely. 19

8. An employee or agent of Defendant with knowledge of the requested
20 documents did not attend the Discovery Status Conference on January 7, 21 2025 at 10:00 a.m.
in person. 22 Based on these facts, Plaintiff has shown by clear and convincing 23 evidence that
Defendant failed to comply with a clear and definite court order 24 that an employee or agent of
Defendant with knowledge of the requested 25 documents must attend the Discovery Status
Conference in person. 26 Defendant's Chief Financial Officer John Cunningham had knowledge
of the 27 required in-person hearing and chose to attend a business meeting rather 28 1 | than the
hearing. IV. Order IT IS THEREFORE ORDERED that Defendant shall appear before the 5
Honorable Mark C. Scarsi in Courtroom 7C of the United States Courthouse, ' 350 West First
Street, Seventh Floor, Los Angeles, California, on Monday,
4 April 21, 2025, at 9:00 a.m., to show cause why Defendant should not be
adjudged in contempt by reason of these facts. 19 | DATED: March 24, 2025 SA Livia. LD, pa
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i PATRIGIADONAHUE

12 UNITED STATES MAGISTRATE JUDGE

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