

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Cardona v. FCA US, LLC

No. 24-cv-1848-JAH-KSC (S.D. Cal. Feb. 28, 2025) · No. 24-cv-1848-JAH-KSC · Decided February 28, 2025

OPINION

Cardona v. FCA US, LLC

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 TIFFANY CARDONA, Case No.: 24-cv-1848-JAH-KSC 12 Plaintiff,

ORDER DISCHARGING ORDERS

13 v. TO SHOW CAUSE

14 FCA USA, LLC,

15 Defendant. 16

17 Two Orders to Show Cause remain undischarged. Doc. Nos. 11, 18. As the Court 18 will explain, the Orders are hereby discharged and counsel for plaintiff will be sanctioned. 19 I Background 20 On October 15, 2024, the Court issued a Notice and Order setting this case for an 21 Early Neutral Evaluation (“ENE”) and Case Management Conference (“CMC”). Doc. No. 22 5 (the “ENE Order”). The ENE Order required plaintiff and plaintiff’s counsel to engage 23 in specific settlement negotiations with defendant. Id. It also required plaintiff’s counsel to 24 take two actions the week before the ENE: lodge a settlement conference brief, with very 25 specific contents; and email the Court with the contact information for all ENE participants, 26 including the plaintiff. Id. The deadline for taking those pre-conference actions was

27 November 27, 2024. Doc. No. 8. As of December 2, 2024, plaintiff’s counsel had failed to 28 take either action. Doc. No. 10. The Court gave counsel an opportunity to cure the failure. 1 Id. As of December 2, 2024, plaintiff’s counsel had not followed the Court’s orders, despite 2 multiple entries on the docket indicating exactly what needed to be done and by what 3 deadlines. 4 Accordingly, the Court issued an Order to Show Cause for violating the Court’s prior 5 Orders. Doc. No. 11 (the “First OSC”). The First OSC required plaintiff and plaintiff’s 6 counsel to submit declarations and appear at a hearing on December 12, 2024. Id. Plaintiff 7 never submitted a declaration. Plaintiff’s four attorneys of record—Sanam Vaziri, 8 Elizabeth LaRocque, Rabyia Tirmizi, and Tionna Carvalho—submitted declarations. Doc.

9 Nos. 13-16. The Court held a hearing on December 12, 2024, but plaintiff failed to appear.

10 Doc. No. 17. Attorney Tionna Carvalho also failed to appear. Id. 11 Given the several failures

to appear at the hearing on the First OSC, the Court 12 continued the hearing on the First OSC and issued another Order to Show Cause for 13 plaintiff and counsel's violations of the First OSC. See Doc. No. 18 ("Second OSC"). The 14 Court ordered plaintiff and her four attorneys to file declarations and appear at the hearing 15 on the Second OSC. Id. Two of plaintiff's four attorneys—Rabiya Tirmizi and Tionna 16 Carvalho—submitted declarations as ordered. Doc. Nos. 19, 20. Plaintiff once again failed 17 to file a declaration, as did attorneys Elizabeth LaRocque and Sanam Vaziri. On December 18 19, 2024, the Court held hearings on the First OSC and the Second OSC. Doc. No. 21. 19 Plaintiff did not appear, but all plaintiff's attorneys appeared. Id. The Court took the matter 20 under submission. Doc. No. 25 at 7. 21 II Whether Plaintiff or Her Attorneys Shall be Sanctioned 22 The Court must now issue orders discharging both OSCs and determining whether 23 plaintiff and her attorneys, singly or in combination, should be sanctioned for repeated 24 violations of the Court's pretrial Orders. The Court may generally issue "any just orders" 25 to sanction parties or their attorneys for any failure to obey a pretrial order, including, but 26 not limited to, failing to appear at a pretrial conference, failing to be prepared for a pretrial 27 conference, or failing to participate in that conference in good faith. See Fed. R. Civ. P. 28 1 16(f). The Court will separately address whether plaintiff and her counsel have shown 2 cause in response to the First and Second OSC. 3 (A) Plaintiff and Counsel's Response to the First OSC 4 The subject of the Court's OSC is whether plaintiff and her counsel should be 5 sanctioned for the failure to file a settlement conference brief and otherwise prepare for the 6 Early Neutral Evaluation as ordered. See Doc. No. 11. Plaintiff did not file a declaration 7 responsive to the First OSC, and the Court's docket reflects that she has never appeared, 8 so the Court has not heard from plaintiff directly. See generally Doc. Nos. 17, 21, 23, 25. 9 Court can resolve the First OSC as to plaintiff based on the information received 10 from plaintiff's attorneys. Rabiya Tirmizi declared that plaintiff's relationship with her 11 attorneys started to break down on or around November 19, 2024, such that Ms. Tirmizi 12 "began to have difficulties reaching [her] client." Doc. No. 16 ¶ 6. By December 2, 2024, 13 plaintiff had told Ms. Tirmizi she no longer wanted to pursue this case. Id. ¶ 7. That same 14 day, Ms. Tirmizi broached the subject of dismissing the matter with defense counsel. Id. 15 ¶ 8. Because she thought the case would be dismissed, Ms. Tirmizi never even sent the 16 First OSC to plaintiff, and she neither informed her client of the need to file a declaration 17 or appear at the December 12, 2024, hearing on the First OSC. See Doc. No. 23 at 5-6. The 18 Court concludes the plaintiff does not bear responsibility for the failure to comply with the 19 Court's ENE Order because, although she was obligated to file the declaration and comply 20 with the Court's Orders, at the time the dates for compliance came and passed, the record 21 supports a finding that plaintiff did not want to pursue the matter anymore and she 22 reasonably could have believed compliance with the ENE Order was unnecessary. 23 The same cannot be said of plaintiff's attorneys. Attorney Rabiya Tirmizi explains 24 her failure to comply with the ENE Order is because her client relationship had broken 25 down and plaintiff decided to dismiss the case. See Doc. No. 16 at 2-3, Doc. No. 23 at 5-6. 26 Indeed, the parties

filed a Joint Motion to Dismiss on December 4, 2024. Doc. No. 12. But the deadline for lodging settlement briefs and providing participant information to the Court was November 27, 2024. Doc. No. 8. Then, the Court gave counsel until December 12, 2024, to comply. Doc. No. 10. Thus, counsel twice missed the deadline before any motion to dismiss was filed. Attorneys have ample options when faced with Court-ordered deadlines that may not be practically met, including the filing of joint motions to amend those deadlines, or even *ex parte* applications when circumstances become exigent. See *Cruz v. Nike Retail Servs., Inc.*, 346 F.R.D. 107, 114 (S.D. Cal. 2024). Disregarding deadlines is not one of the options. See *id.* Here, Ms. Tirmizi concedes she was having trouble with her client weeks before the lodgments were due to be filed. Doc. No. 16 at 2. She had time to seek relief from the Court's deadlines, she failed to do so, and those deadlines passed. She has not, accordingly, shown good cause for her failure to comply with the Court's Notice and Order. Attorney Sanam Vaziri's declaration states her "role and responsibility" at her law firm—Strategic Legal Practices—are limited to drafting and filing complaints in state courts. See Doc. No. 13 at 2. After that, she disclaims any responsibility for this matter. *Id.* But all attorneys who have appeared in the matter are jointly responsible for ensuring compliance with the Court's orders. See, e.g., *Steel v. Stoddard*, 11-cv-2073-H-RBB, 2013 WL 12064545, 2013 U.S. Dist. LEXIS 1199213, at 30 (S.D. Cal. Feb. 15, 2013) (citing *Beck v. Wecht*, 28 Cal. 4th 289, 297-98 (2002)). Here, attorney Vaziri filed this action, and the Court is unaware of any authority holding that its subsequent removal absolves her of her duties to her client and to this Court. Like Ms. Tirmizi, Ms. Vaziri twice blew the deadline to comply with the Court's ENE Order, and she failed to seek relief from the Order based on an alleged inability to comply. Accordingly, Ms. Vaziri has not shown cause to excuse her failure to comply with the Court's ENE Order. Attorney Elizabeth LaRocque declares she participated in the Rule 26(f) conference with defendant's counsel. See Doc. No. 14 at 2. However, she does not offer any explanation why she failed to file a settlement conference statement on behalf of her client. This case was filed in the San Diego Superior Court on September 11, 2024, and True, she declares it was her "understanding" that her colleague later reached an agreement with defense counsel to prepare and file a joint motion to dismiss this action. See *id.* at 2-3. But the deadline for complying with the Court's Notice and Order passed (twice) before any dismissal motion was filed; and even then, counsel was not excused from complying with the Court's Notice and Order unless and until (a) the District Judge acted on the dismissal motion; or (b) the Court issued an Order relieving counsel of the obligation to comply. As co-counsel on this matter, attorney LaRocque bore full responsibility for this matter, notwithstanding internal divisions of labor with her colleagues. *Steel*, 2013 U.S. Dist. LEXIS 1199213, at 30. She has not shown cause for her failure to comply with the Court's Notice and Order. Attorney Tionna Carvalho declared that her sole responsibility in this case was pre-filing review of the initial complaint. See Doc. No. 15 at 2. Moreover, she declares she was on maternity leave when the deadlines for compliance with the Court's ENE Order passed. See *id.*

Although the Court is sympathetic to the fact that Ms. Carvalho was on maternity leave, she nonetheless remains responsible for all the cases on which she appears as counsel of record. While she is free to “review” complaints bearing her name and then delegate responsibility for those cases after they are filed, she does so at her peril in the eventuality that, as happened here, the junior attorneys at her firm fail to comply with court rules and orders. Attorneys taking leave for various reasons may notify the Court and opposing counsel by withdrawing from matters or filing “notices of unavailability” during planned leaves, thereby alerting others that their case involvement is limited during a set period. Ms. Carvalho’s failure to follow such best practices means she remained active in this case, and she has not shown cause for her failure to comply with the Court’s ENE Order. (B) Plaintiff and Counsel’s Response to the Second OSC The Second OSC differs in scope from the First OSC. Plaintiff and her attorneys were all ordered to show cause for plaintiff’s failure to appear at the December 12, 2024, hearing on the First OSC. See Doc. No. 18 at 2. Plaintiff received a second chance to show cause for her failure to comply with the ENE Order. *Id.* Plaintiff’s attorneys were also ordered to show cause for attorney Carvalho’s failure to appear at the first OSC hearing. 2 *Id.* Plaintiff did not provide the required declarations or appear at the hearing on December 3, 2024. Although plaintiff has not provided a declaration, the Court concludes plaintiff has good cause for failure to attend the hearing on December 12, 2024, because her attorneys completely failed to tell her about it. See Doc. No. 23 at 5-6. Attorney Rabiya Tirmizi stated at the hearing that she provided notice of the hearing on the Second OSC to her client. See Doc. No. 25 at 6. Her sworn declaration provides more specific detail, as Ms. Tirmizi declares she unsuccessfully tried to reach plaintiff by phone and sent “a Notice of Ruling with the Court’s Minute Order attached” at unspecified times between December 10, 2024, and December 17, 2024. Doc. No. 19 ¶¶ 14-17. The Court notes Ms. Tirmizi did not say she provided plaintiff with a copy of the Second OSC, and she also has not claimed to have advised her client of the obligations imposed by the Second OSC. None of plaintiff’s other attorneys have stepped up to say they appropriately advised their client. 14 The ordinary rule is that a party is bound by the attorney’s errors, even when it leads to prejudice. *Wei v. Hawaii*, 763 F.2d 370, 372 (9th Cir. 1985). At the same time, a Court should not sanction a blameless party when attorneys fail to comply with pretrial scheduling orders. See *Martin Family Trust v. NECO/Nostalgia Enters. Co.*, 186 F.R.D. 18 601, 604 n.4 (E.D. Cal. 1999). The Court concludes plaintiff did not receive adequate information from her counsel to understand and respond to the Second OSC, a matter that was within counsel’s responsibility to control. Thus, because her attorneys failed to advise plaintiff of the December 12, 2024, hearing, and the also failed to appropriately advise her of her obligation to show cause for failing to attend that hearing, there is good cause for plaintiff’s failures to comply with the Court’s First OSC Order. 24 Attorneys LaRocque and Vaziri both failed to submit declarations responsive to the Second OSC. During the hearing, they both claimed they did not understand the Second OSC as requiring them to submit further declarations. See *id.* at 5-6.

The Second OSC was 27 unambiguous in the requirement that “all” plaintiff’s attorneys of record were required to 28 explain the collective failures to comply with the First OSC when plaintiff failed to file a 1 declaration or appear as ordered. See Doc. No. 18 at 2. Thus, Ms. Vaziri and Ms. LaRocque 2 have both failed to show cause for their failures to comply with the First OSC. 3 Ms. Carvalho filed a declaration as ordered by the Second OSC. See Doc. No. 20. 4 However, the declaration includes no explanation for why she did not appear at the First 5 OSC hearing or why she did not secure her client’s compliance with the First OSC. See *id.* 6 Instead, Ms. Carvalho tries to explain how it came to be that she and her colleagues filed a 7 bevy of California Lemon Law cases in the Southern District on behalf of plaintiffs who 8 reside outside California; and who may have purchased, repaired, and driven their vehicles 9 in states other than California. See generally *id.* 10 That is not what Ms. Carvalho has been 11 ordered to show cause for by this Court in this case. During the hearing on the Second 12 OSC, Ms. Carvalho tried to show cause for her failure to appear at the hearing on the First 13 OSC by explaining how she thought she was excused from appearing because she was on 14 maternity leave. See Doc. No. 25 at 8. But, as the Court has already explained, absent any 15 filing to advise the Court of her planned leave, as counsel of record whose name is 16 prominently displayed in filed pleadings, this explanation does not show cause for her 17 failure to attend a court-ordered hearing.³ Accordingly, the Court concludes Ms. Carvalho 18 has not shown good cause for her failure to comply with the First OSC. 19 Ms. Tirmizi’s reason for why she did not secure her client’s appearance at the 20 hearing on the First OSC is straightforward: she did not tell her about the hearing because 21 she believed the client did not want to pursue the case further. See Doc. No. 19 at 2-3; Doc.

22 No. 24 at 6. But Court Orders must be complied with unless the Court excuses compliance. 23 Cruz, 346 F.R.D. at 114. Here, Ms. Tirmizi claimed she had been having communication 24 difficulties with her client since approximately November 19, 2024, long before the Court 25 2 Other judges in this District have taken up that issue. See, e.g., *McPhail v. FCA US, 26 LLC*, 24-cv-1879-WQH-DDL, Doc. No. 7 (S.D. Cal. Jan. 6, 2025); *Fraser v. FCA US, 27 LLC*, 24-cv-1805-JES-DDL, Doc. No. 5 (S.D. Cal. Dec. 16, 2024). This Court has not. 3 Ms. Carvalho could also have sought to be relieved from her obligation to attend the 28 1 issued the First OSC. See Doc. No. 19 at 2. Faced with an Order requiring her client’s 2 appearance, she had options to seek relief. Doing nothing was not among them. 3 Accordingly, she has not shown good cause for failing to secure her client’s compliance 4 with the First OSC. 5 Plaintiff and her attorneys have violated numerous Orders of the Court. Although 6 plaintiff’s failures are excusable, many of the violations have gone unexplained by counsel. 7 What explanations counsel have provided all fall short of establishing good cause for 8 repeated violations of the Court’s Orders. The Court concludes sanctions are appropriate, 9 the only question remains what type of sanction shall be imposed. 10 (C) The Appropriate Sanction 11 The Court has discretion to issue “any just orders” under Rule 16(f), including the 12 full panoply of sanctions enumerated in Federal Rule of Civil Procedure 37(b)(2)(A)(ii)- 13 (vii) and the option to shift fees and costs between the parties. See

Fed. R. Civ. P. 16(f). 14 Sanctions can be imposed against a party, the party's attorney, or both. See *id.* The 15 sanctions provision of Rule 16 is "broadly remedial," and its purpose is to encourage 16 "forceful judicial management." See *Sherman v. United States*, 801 F.2d 1133, 1135 (9th

17 Cir. 1986). The Court's discretion can even include the imposition so-called "punitive" 18 sanctions that "vindicate the authority of the court by punishing the offending party." See 19 *HM Elecs., Inc. v. R.F. Techs., Inc.*, 171 F. Supp. 3d 1020, 1026-27 (S.D. Cal. 2016); see 20 also *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, n.10 (9th Cir. 1983) 21 (rule-based sanctions, even if not based on the contempt power, "may be imposed to deter 22 and to penalize"); *Media Duplication Servs. v. HDG Software*, 928 F.2d 1228, 1242 (1st

23 Cir. 1991) ("We have no hesitation in endorsing the use of punitive monetary sanctions as 24 a means of deterring neglect of [a Rule 16] obligation."); *Martin Family Trust v. 25 NECO/Nostalgia Enters. Co.*, 186 F.R.D. 601, 604-05 (E.D. Cal. 1999) (sanctioning 26 counsel \$300, payable to the Clerk of Court, for failing to comply with a Scheduling Order). 27 At the same time, the Court's authority to impose sanctions is limited by prudential 28 1 concerns, including restraint from issuing monetary sanctions when "more moderate 2 penalties" would suffice. See *Zambrano v. Tustin*, 885 F.2d 1473, 1480 (9th Cir. 1989). 3 The default Due Process rule for Rule 16(f) sanctions is simply that a party or 4 attorney to be sanctioned receive notice and an opportunity to be heard. See *Ayers v. 5 Richmond*, 895 F.2d 1267, 1270 (9th Cir. 1990); see also *Miranda v. S. Pac. Transp. Co.*, 6 710 F.2d 516, 520-21 (9th Cir. 1983) (upholding the imposition of a \$250 punitive sanction 7 issued pursuant to a local rule on the grounds that it was not a contempt sanction and not 8 inconsistent with the FRCP); *Banks v. Whambo! Enter., LLC*, 2022 U.S. App. LEXIS 9 31400, at *2 (9th Cir. Nov. 14, 2022) (upholding a \$500 punitive sanction imposed under

10 Rule 16(f) after providing notice and an opportunity to be heard). But if the sanction is 11 sufficiently serious, regardless of the authority under which it is imposed, the Court cannot 12 impose any such sanction without "following the procedures applicable to criminal cases, 13 including appointment of an independent prosecutor, proof beyond a reasonable doubt and 14 a jury trial." *Miller v. City of Los Angeles*, 661 F.3d 1024, 1030 (9th Cir. 2011). Although 15 never explicitly resolved at the Circuit level, the Ninth Circuit has endorsed a rough 16 guideline of \$5,000 "in 1989 dollars" as the cutoff for where a trial court must supply 17 criminal safeguards before imposing serious punitive sanctions. See *id.*; accord *Ocwen 18 Loan Servicing, LLC v. Marino*, 577 B.R. 772, (B.A.P. 9th Cir. 2017). This guidance is in 19 accord with the other Circuits that have taken up the question. *Miller*, 661 F.3d at 1030. 20 As to whether a conventional cost-shifting sanction should be imposed on plaintiff's 21 attorneys, the Court does not see the utility in shifting defendant's costs and fees against 22 counsel in this case. After all, the case appears to be essentially over, and defendant has 23 basically prevailed. The only stakeholder who has suffered any substantial prejudice is the 24 plaintiff. Counsel's actions have also required this

Court to expend substantial time 25 enforcing orders and holding OSC hearings. Shifting defense costs does not remedy that 26 prejudice, and the Court therefore declines to do so. At the same time, the Court concludes 27 the imposition of some sanction is appropriate here. 28 1 Counsel have violated the Court's Orders multiple times, they have had notice and 2 an opportunity to show cause why their failures to follow Court orders should be excused, 3 and they have generally failed to provide any explanation the Court finds satisfactory. As 4 a matter of prudence, the Court finds anything less than a monetary sanction would be 5 insufficient. Accordingly, the Court exercises its discretion under Federal Rule of Civil

6 Procedure 16(f) to impose a sanction of \$500 against each of plaintiff's attorneys, to be 7 paid to the Court, rather than to the opposing party. See *Dwight Banks v. Whambo! Enters., LLC*, 20-cv-1674-LAB-DEB, 2021 WL 2290783, 2021 U.S. Dist. LEXIS 105563, at *23 9 (S.D. Cal. Jun. 4, 2021), *aff'd in part*, *Banks*, 2022 U.S. App. LEXIS 31400. 10 III Counsel's Unprofessional Conduct 11 The Court harbors concerns that counsel's handling of this matter amounts to a 12 breach of professional responsibility. Counsel have generally failed to: (1) follow the 13 Court's Orders; (2) secure the participation of their client in this matter; and (3) properly 14 apprise their client of important developments in the litigation despite not having been 15 relieved as counsel. These failures all speak to a serious lack of attention to the material 16 details of this representation. The professional failings in this case appear to follow a 17 pattern with plaintiff's attorneys. This is not the only case in which plaintiff's counsel 18 declares they have lost contact with a client. See *McPhail v. FCA US, LLC*, 24-cv-1879- 19 WQH-DDL, Doc. No. 6 at 2; Doc. No. 10 at 4 (S.D. Cal. Jan. 6, 2025); *Fraser v. FCA US, LLC*, 24-cv-1805-JES-DDL, Doc. No. 8 at 3 (S.D. Cal. Dec. 27, 2024). 21 In another case pending before this Court, by the same law firm representing plaintiff 22 in this action, which came on for hearing at the same time as this case, despite the client's 23 stated intentions to participate in an Early Neutral Evaluation and pursue resolution, 24 counsel sought and obtained leave to withdraw from representation, citing irreconcilable 25 differences with their client. See Doc. No. 25 at 11-15; *Mason v. FCA*, 22-cv-1848-DMS- 26 KSC, Doc. Nos. 26, 27, 35, 36 (S.D. Cal. Jan. 14, 2025). Although the Court understands 27 that client relationships sometimes break down, losing contact with three clients in three 28 separate lawsuits all filed in the same Court during the same general time, while also 1 || suffering an irreversible breakdown with another is very concerning. Counsel's conduct is 2 the basis for the Court's decision to issue sanctions in this case. The Court makes this 3 observation about counsel's conduct because future lapses in professional conduct may 4 || lead to a disciplinary referral pursuant to Civil Local Rule 2.2.e. 5 IV__ Conclusion 6 The Court's prior Orders to Show Cause are discharged. Attorneys Tionna Carvalho, 7 || Rabiya Tirmizi, Elizabeth LaRocque, and Sanam Vaziri* shall each pay a sanction of \$500 8 ||to Miscellaneous Fines, Penalties and Forfeitures, Not Otherwise Classified, Fund of the 9 || United States Treasury. The sanctions shall be delivered to the Office of the Clerk of Court 10 ||on or before March 10, 2025. 11 Counsel shall file declarations attesting to payment of their sanctions within 48 hours 12 || of

making payment.

13 IT IS SO ORDERED

14 || Dated: February 28, 2025 Jk. Kn 15 Ml Ye □□ 16 Hori. Karen 8S. Crawford United States
Magistrate Judge 17 18 19 20 21 22 23 24 25 27 * Attorney Vaziri filed a “Notice of
Disassociation of Counsel” on January 23, 2025. 28 Doc. No. 30. The filing does not relieve her
of the consequences of this Order, including the imposition of sanctions.