

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL COURTHOUSE

TENTATIVE RULINGS - August 07, 2025

HEARING DATE: 8/8/25

HEARING TIME: 9:00am

DEPT.: 60

JUDICIAL OFFICER:

CASE NO.:37-2023-00012828-CU-OE-CTL

CASE TITLE: Figueroa vs Fletcher [IMAGED]

CASE TYPE: (U)Other Employment

HEARING TYPE:

Defendants San Diego Metropolitan Transit System and Nathan Fletcher's joint motion for terminating sanctions is **GRANTED**.

Although the specific request for a terminating sanction is granted, the court will not award monetary sanctions.

Background

Plaintiff Grecia Figueroa filed this case on March 28, 2023. Before filing, one of her former attorneys, Zachary Schumacher, sent Defendant Fletcher a demand for employment records and a demand for preservation of records on February 17, 2023. (Defendants' Lodgment, Ex. 1.)

Defendant Fletcher then issued a Preservation of Evidence Letter to Plaintiff on April 6, 2023 and Defendant MTS issue one on April 14, 2023. (Defendants' Lodgment, Exs. 33.) After these letters were exchanged, extensive and contentious discovery disputes ensued.

Plaintiff's Discovery Misconduct

Plaintiff's Destruction of the May 12, 2022 Voice Recording to Defendant Fletcher

Defendant Fletcher served his first requests for production of documents on Plaintiff on June 20, 2023, which sought all communications, including voice recordings, between Plaintiff and Defendant Fletcher. (Defendants' Lodgment, Ex. 4.) Plaintiff served verified responses on July 24, 2023, attesting she would comply with the request and produce responsive documents in her possession. (Defendants' Lodgment, Ex. 5.) However, Plaintiff did not produce any audio files between herself and Defendant Fletcher, prompting Defendant Fletcher to bring a motion to compel, which was granted on October 27, 2023. (Defendants' Lodgment, Ex. 6.) Plaintiff and her former counsel (The Pride Law Firm) were sanctioned, and Plaintiff was ordered to produce all communications and all voice recordings between herself and Defendant Fletcher no later than close of business on November 30, 2023. (ROA 110.) But Plaintiff never produced the requested audio files, and a recent forensic examination of Plaintiff's phone confirmed any such voice notes cannot be recovered. (ROA 638, Mulvaney Dec., ¶ 1; ROA 641, Kunkel Dec., ¶ 10.)

Before filing this case, Plaintiff made a screen recording using her phone of all the messages between herself and Defendant Fletcher. (Defendants' Lodgment, Ex. 3 [Plaintiff's Depo. Transcript], at p. 276:7-15.) That screen recording shows the existence of a 23-second audio recording Plaintiff sent to Defendant Fletcher on May 12, 2022, which he contends was an erotic message demonstrating Plaintiff's consent to their interactions. (ROA 639, Fletcher Dec., ¶ 2; Defendants' Lodgment, Ex. 7.) Plaintiff confirmed in her July 24, 2023 discovery responses she would produce all voice recordings in her possession; thus, it is reasonable to infer the audio file existed as of this date, and was not produced. (Defendants' Lodgment, Ex. 5; Mulvaney Dec., ¶ 1.) Defendant Fletcher later requested Plaintiff produce the May 12, 2022 audio file shown in the screen recording, and then in May 2024 moved to compel a response from Plaintiff to that specific request. (Defendants' Lodgment, Ex. 8; ROA 302-306.) It was not until October 7, 2024, that Plaintiff served an amended response indicating the recording no longer exists, as it had been "unsent." (Defendants' Lodgment, Ex. 9, at p. 7.)

Defendant Fletcher also served a Request for Admission regarding the May 12, 2022 audio file, and Plaintiff responded on March 20, 2024, admitting the message had been unsent. (Defendants' Lodgment, Exs. 10-11.) Then on March 28, 2024, Plaintiff confirmed to the court she had deleted the message. (Defendants' Lodgment, Ex. 12, at p. 13:4-10 ["Another thing that I would like to add is that they are saying that I deleted one message, but I was sent a preservation of evidence letter about a week after that even happened."]) Plaintiff confirmed at her deposition the audio file existed on her phone at the time she made the screen recording of the messages, that she was telling Defendant Fletcher how to pronounce the word "papacito" in the audio message, and that she had unsent it because "I didn't like how my voice sounded, so I unsent it." (Defendants' Lodgment, Ex. 13, at p. 623:1-12, 624:14-25.)

Plaintiff's Failure to Produce Relevant Text Messages Between Herself and Danielle Radin

Defendant Fletcher served a second set of Requests for Production of Documents on August 17, 2023, which sought all communications between Plaintiff and anyone other than her attorneys that related to Defendant Fletcher. (Defendants' Lodgment, Ex. 18.) Plaintiff served responses to the requests on October 4, 2023, and agreed to produce all responsive non-privileged documents in her possession. (Defendants' Lodgment, Ex. 19.) However, Plaintiff failed to produce hundreds of messages about Defendant Fletcher she exchanged with her close friend, Danielle Radin. (Mulvaney Dec., ¶ 3.) Defendant Fletcher confirmed the messages were missing by comparing Plaintiff's production with a partial production Ms. Radin, and concluded Plaintiff had produced only a curated selection of communications. (Id. ["Plaintiff failed to produce communications between herself and Ms. Radin from 12/24/21, 1/28/22, 2/16/22, 2/28/22, 3/7/22, 3/8/22, 3/10/22, 3/11/22, 4/7/22, 4/14/22, 4/25/22, 5/5/22, 5/16/22, 5/17/22, 5/19/22, 5/20/22, 5/26/22, 6/6/22, 6/12/22, 6/13/22, 6/26/22, 7/13/22, 7/14/22, 7/16/22, 7/21/22, 7/31/22, 9/2/22, 11/21/22. Plaintiff has not produced any messages between herself and Ms. Radin between March/April of 2023 through March/April of 2024."])

On February 14, 2025, Plaintiff produced an additional 434 pages of text messages between herself and Ms. Radin, without providing an explanation for the delay in producing them. (Mulvaney Dec. ¶ 14.) Moreover, following extensive meet and confer efforts, motions to compel, and forensic examinations of Plaintiff's phone and Ms. Radin's phone, Defendant Fletcher has confirmed that no messages between Plaintiff and Ms. Radin for the period of January 2023 through March 23, 2023, have been produced or recovered, and that no messages between the two prior to March 27, 2023, are recoverable. (Kunkel Dec. ¶ 8.)

Plaintiff Selectively Deleted Messages Before Producing Them

First, a comparison of the screen recording of Plaintiff's direct messages with Defendant Fletcher to the download of their chat history (produced by Plaintiff and dated February 16, 2023) reveals that Plaintiff selectively deleted certain messages before making the screen recording. For example, the downloaded chat history contains the message from Plaintiff: "Con 'ganas de comerte,'" which is a sexually charged phrase directly translated as "wanting to eat you," and responded to Defendant Fletcher asking her how she is on December 8, 2022. (Defendant's Lodgment, Ex. 14.) This message is absent from the screen recorded version of those messages created by Plaintiff in March 2023. (Defendant's Lodgment, Ex. 15.) The only reasonable inference to draw from this comparison is that Plaintiff deleted it from the chat history between February 2023 and March 2023. Similarly, Plaintiff must have also deleted a message from herself to Defendant Fletcher on December 31, 2022, in which she initiated the communication by saying, "Happy birthday, Campeón," as that message is also absent from the March 2023 screen capture. (Defendant's Lodgment, Exs. 16-17.)

Second, a comparison of the document productions made by Plaintiff, compared to the same messages produced by Ms. Radin, reveals that Plaintiff altered at least four communications before producing them in this case. The first is a comparison of FIGUEROA-00080 with the same message produced by Ms. Radin. (Defendant's Lodgment, Ex. 22, at pp. 5-6.) That exchange shows that, in Plaintiff's production, she deleted or omitted a message from Ms. Radin to Plaintiff saying, "You're not a hoe you [sic] didn't even do anything lol [sic]," which was in response to the deleted or omitted message from Plaintiff stating, "This is my fault. For being a lil hoe...For being a fucken lil hoe." (Id.)

The second is a message missing from Plaintiff's production in which she tells Ms. Radin, "I have receipts." (Defendant's Lodgment, Ex. 22, at pp. 7-8.) The third message (FIGUEROA – 00082) is from Ms. Radin to Plaintiff, in which she states, "You had a crush on him for years, it was exciting to have some flirtation, you got validation that it wasn't all in your head he felt it too, it was exciting, like there was a time..." (Id.) Finally, Plaintiff also deleted or omitted her "heart" reaction to the message from Ms. Radin regarding Plaintiff's crush on Defendant Fletcher.

After Filing Her Lawsuit, Plaintiff Knowingly Allowed Her Messages to Be Auto-Deleted

In a declaration dated October 29, 2024, Plaintiff admitted she had auto-delete enabled on her phone. (Defendant's Lodgment, Ex. 24, at ¶ 6.) She also admitted that when she searched for relevant documents in this case in May 2023, she was only looking for text messages that "reflected how Defendant Fletcher's actions impacted my mental state, which I found in some message exchanges between myself and Ms. Danielle Radin." (Id. at ¶ 7.) Plaintiff was necessarily aware in May 2023 that auto-delete was enabled on her phone, because she "no longer had access to messages with Ms. Radin prior to May 2022, as my phone's settings had automatically cleared them after one year." (Defendant's Lodgment, Ex. 24, at ¶ 7.) But Plaintiff nonetheless knowingly kept the auto-delete function enabled on her phone, and did not disable it until March or April of 2024. (Defendant's Lodgment, Ex. 13, at pp. 338:2-25, 339:1-5, 350:11-25, 351:1-3.)

After Filing Her Lawsuit, Plaintiff Deleted Audio Files She Exchanged with Ms. Radin

Defendant Fletcher propounded a fifth set of Requests for Production to Plaintiff on August 8, 2024, which included requests for three specific audio messages contained in the screenshotted messages between Plaintiff and Ms. Radin. (Defendant's Lodgment, Ex. 25.) On September 9, 2024, Plaintiff

responded by stating she does not have the requested files in her possession, custody, or control. (Defendant's Lodgment, Ex. 26, at pp. 11:13-28, 12:1.)

During her deposition, Plaintiff confirmed the April 7, 2022 audio file, which was 30 seconds long, was about Defendant Fletcher and had been deleted. (Defendant's Lodgment, Ex. 13, at pp. 636:18-25; 637:1-25; 638:1-17.) Plaintiff also confirmed the two audio files from May 12, 2022 (a 40 second file and a 4 second file) were directly relevant to her interactions with Defendant Fletcher and that they were not in her possession. (Id. at pp. 638:18-25; 639:1-11, 20-21.) Ms. Radin also has indicated she does not have those files in her possession, and because her phone was stolen in 2024, those messages cannot be recovered. (Defendant's Lodgment, Ex. 21.) A forensic examination of Plaintiff's phone has now confirmed no voice memos prior to 2023 can be recovered from Plaintiff's phone. (Kunkel Dec., ¶ 10.)

Plaintiff Engaged in a Pattern of Discovery Obstruction and Delay

On February 7, 2024, Defendant Fletcher served a third set of Requests for Production on Plaintiff, which specifically sought the full chat history that Plaintiff claimed to have downloaded in her text message to Ms. Radin dated September 1, 2022. (Defendant's Lodgment, Ex. 8.) Defendant Fletcher was forced bring a motion to compel (ROA 261-265), which was never heard because Plaintiff provided supplemental responses on October 7, 2024, prior to the October 18, 2024 hearing date. (Defendant's Lodgment, Ex. 9.) Plaintiff then served a second supplemental response on November 1, 2024, in which Plaintiff represented she would produce all documents in her possession, custody, or control. (Defendant's Lodgment, Ex. 27.) Thus, despite having the complete download of the messages in her possession since September 2022, Plaintiff delayed until November 1, 2024 to produce the download, and only after a motion to compel was filed. (Mulvaney Dec., ¶ 7.)

Similarly, during Plaintiff's deposition, she revealed she had communications with Ms. Radin, in her possession, from the period after her lawsuit was filed. (Defendant's Lodgment, Ex. 3, at p. 174:2-11.) But Plaintiff waited until after her deposition to produce the additional text messages between herself and Ms. Radin. (Mulvaney Dec., ¶ 14.)

On March 22, 2024, Defendant Fletcher served a demand for inspection on Plaintiff, seeking the forensic examination of her electronic devices. (Mulvaney Dec., ¶ 8.) Plaintiff served objections on April 22, 2024, and forced the filing (in August 2024) of another motion to compel. (Id. at ¶ 9; ROA 402-410.) After the motion was filed, the parties stipulated to allow the inspection, which initially revealed that nearly all the text messages between Plaintiff and Ms. Radin regarding Defendant Fletcher were no longer present on Plaintiff's device. (Mulvaney Dec., ¶ 11.) The subsequent Full File System Image of Plaintiff's phone revealed that the earliest text messages that could be recovered were from March 27, 2023; no messages between January 2023 and March 27, 2023 have ever been produced, and were unable to be recovered. (Kunkel Dec., ¶ 8.)

Analysis

California discovery law authorizes a range of penalties for conduct amounting to "misuse of the discovery process." (Code Civ. Proc., § 2023.030; *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 12.) Misuses of the discovery process include, but are not limited to, "[f]ailing to respond or to submit to an authorized method of discovery," "[m]aking an evasive response to discovery," and "[d]isobeying a court order to provide discovery." (Code Civ. Proc., § 2023.010, subs. (d), (f), (g).) Spoliation of evidence is a "serious form of discovery abuse," which is "defined as

the destruction or alteration of relevant evidence or the failure to preserve evidence for another party's use in pending or future litigation." (*Victor Valley, supra*, 91 Cal.App.5th at p. 1139.) "Destroying evidence in response to a discovery request after litigation has commenced would surely be a misuse of discovery within the meaning of section 2023, as would such destruction in anticipation of a discovery request." (*Cedars-Sinai Medical Center v. Superior Court* ("Cedars-Sinai") (1998) 18 Cal.4th 1, 12.)

The trial court has broad discretion in selecting discovery sanctions, subject to reversal only for abuse. (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1293.) A trial court may order a terminating sanction for discovery abuse "after considering the totality of the circumstances: [the] conduct of the party to determine if the actions were willful; the detriment to the propounding party; and the number of formal and informal attempts to obtain the discovery." (*Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1246.) Although a "decision to order terminating sanctions should not be made lightly," where "a violation is willful, preceded by a history of abuse, and the evidence shows that less severe sanctions would not produce compliance with the discovery rules, the trial court is justified in imposing the ultimate sanction." (*Mileikowsky v. Tenet Healthsystem* (2005) 128 Cal.App.4th 262, 279-280.)

The litany of discovery abuses perpetrated by Plaintiff in this case warrant termination of her lawsuit.

First, Plaintiff engaged in rampant and willful spoliation of evidence. "The duty to preserve relevant evidence is triggered when the party is objectively on notice that litigation is reasonably foreseeable, meaning litigation is probable and likely to arise from an incident or dispute and not a mere possibility." (*Victor Valley Union High School Dist. v. Superior Court* ("Victor Valley") (2023) 91 Cal.App.5th 1121, 1133.) As set forth above, Plaintiff engaged in a pattern of preserving only the evidence she believed was helpful to her case, while actively deleting, or knowingly allowing to be deleted, evidence that was likely detrimental to her claims. She engaged in this conduct while under a duty to preserve evidence, which was triggered no later than February 16, 2023 (when her counsel sent Defendant Fletcher a preservation of evidence letter), and arguably was triggered in 2022, when Plaintiff began discussing a potential lawsuit with Ms. Radin.

The court is entirely unpersuaded by Plaintiff's primary argument in opposition, which is that Defendant Fletcher also failed to preserve evidence because he deleted the communications between himself and Plaintiff. The flaws in this argument are twofold. First, Plaintiff engaged in spoliation of evidence even after the lawsuit was filed, by unsending the May 12, 2022 audio file after filing the case, deleting harmful text messages exchanged with Ms. Radin, and knowingly keeping the auto-delete function enabled on her phone. Second, Plaintiff brought the case and was objectively on notice that litigation was reasonably foreseeable well before Defendant Fletcher. Indeed, her decision to screenshot only certain messages and compile evidence she believed was helpful demonstrates she was preparing for litigation. Conversely, Defendant Fletcher was not objectively on notice that litigation was reasonably foreseeable until he received the document demand and preservation of evidence letter on February 16, 2023, and there is absolutely no evidence that even suggests he deleted communications after that date.

Similarly, the assertions of Plaintiff and her counsel that leaving the auto-delete function enabled was nothing more than an innocent mistake are without merit, particularly in light of Plaintiff's substantial credibility issues. For example, at her deposition, Plaintiff testified she signed the October 29, 2024 declaration after first reviewing it, understood the importance of the information being accurate, and ensured everything in the declaration was true before signing it. (Defendant's Lodgment, Ex, 13, at

pp. 340:5-25; 341:1.) In the declaration, Plaintiff attested she took screenshots of messages with Defendant Fletcher but was not certain when she took them. (Defendant's Lodgment, Ex. 24, at ¶ 7.) Yet, Plaintiff's deposition testimony contradicts this statement; Plaintiff admitted the metadata for the screenshots (which includes dates and times) is contained in those screenshots, and thus Plaintiff had that information readily available. (Defendant's Lodgment, Ex. 13, at p. 342:17-20.)

Second, relevant evidence likely helpful to Defendant Fletcher's defense is now permanently lost due to Plaintiff's conduct. (See Kunkel Dec., ¶ 10.) Considering the nature of Plaintiff's claims against Defendant Fletcher, and that the evidence (particularly the audio files) directly addresses whether their relationship was consensual, Plaintiff's mindset regarding their interactions, and her description of their interactions close in time to when they occurred, the lost evidence is highly relevant and constitutes the best and only unimpeachable evidence of what Plaintiff said in those messages. (See *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 173-175.) Third, as set forth above, Plaintiff engaged in a systematic and sustained effort to delay production of evidence and obstruct the discovery process.

Finally, the court notes it continued the original hearing on the motion and requested briefing on reasonable lesser sanctions, and was initially disinclined to issue a terminating sanction. But upon considering the matter further, the court believes such sanctions would effectively offer Plaintiff an underserved opportunity to explain away more than two years of consistent efforts to alter, delay, and destroy the substantial wealth of evidence that undermines her case. Thus, the court concludes the ultimate sanction of termination is warranted.

Accordingly, Defendants' motion for terminating sanctions is granted.

The court orders dismissal of the action, with prejudice. (Code Civ. Proc., § 2023.030, subd. (d)(3).)

If the tentative is confirmed, the minute order is the order of the court.