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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

SIRY INVESTMENT, L.P., Plaintiff and Respondent, v. SAEED FARKHONDEHPOUR et al., Defendants and Appellants.	B260560 (Los Angeles County Super. Ct. No. BC372362)

APPEAL from an order of the Superior Court of Los Angeles County. Malcolm H. Mackey, Judge. Affirmed.

Richard L. Knickerbocker for Defendant and Appellant Saeed Farkhondehpour.

Fisher & Wolfe, David R. Fisher and Jeffrey R. Klein for Defendant and Appellant Morad Neman.

Wilson, Elser, Moskowitz, Edelman & Dicker, Gregory D. Hagen and Robert Cooper for Plaintiff and Respondent.

* * * * * *

A defendant in this civil case has filed 26,652 words of briefing and 5,172 pages of record in this appeal, which is aimed solely at overturning a $10,000 discovery sanctions award. We conclude that the trial court did not abuse its discretion in issuing this award, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Underlying Lawsuit

Plaintiff Siry Investment, L.P. (plaintiff) and several others, including defendant Saeed Farkhondehpour (defendant), formed a limited partnership to develop a parcel of commercial real estate in downtown Los Angeles. Plaintiff, a limited partner, came to suspect defendant and other partners were diverting the limited partnership's funds to themselves, and sued. In the operative third amended complaint, plaintiff alleges claims for (1) breach of contract, (2) breach of fiduciary duty, as well as aiding and abetting such a breach, (3) fraud, and (4) an accounting.

II. Discovery

A. Plaintiff's First Discovery Request

In October 2013, plaintiff propounded six requests for the production of documents, two of which were directed to defendant—one in his individual capacity and another as trustee for his family's trust (plaintiff's first discovery request). Defendant did not respond by the statutorily prescribed due date, which was in November 2013.

In mid-January 2014, plaintiff filed a motion to deem defendant's lack of response as a waiver of all objections to disclosure and to compel responses. Plaintiff noticed the motion for a hearing on February 14, 2014.

Eight days before the scheduled hearing, defendant (1) lodged an untimely 396-page "response" to plaintiff's first discovery request, and (2) filed a motion for relief from the waiver of all objections on the ground that defendant's prior counsel (his fifth) had withdrawn. At the same time, defendant also filed two requests for judicial notice totaling 1,753 pages. None of these 2,169 pages of paper contained a single document responsive to plaintiff's first discovery request.

At the February 14, 2014 hearing, the trial court ordered defendant to produce documents responsive to plaintiff's first discovery request by March 17, 2014. The court also appointed a discovery referee for future discovery disputes.

The trial court heard defendant's still-pending motion for relief from waiver of objections on April 4, 2014. The court was tentatively inclined to grant the motion, based solely on its mistaken belief that plaintiff had not filed an opposition. When plaintiff at the hearing pointed out that an opposition was on file, the court took the matter under submission. The court subsequently denied the motion for relief, noting that its February 14 order had "require[d] documents to be produced and responses to be without objections."[1] The court nevertheless granted defendant a second opportunity to comply by giving him until April 23, 2014, to produce documents responsive to plaintiff's first discovery request.

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1 The minute order reflecting the denial of defendant's motion also contained the trial court's tentative ruling to grant the motion, making the minute order seem inconsistent on its face. Read in context, however, the court's intent to deny the motion is clear, and its failure to delete its tentative ruling from the minute order is a clerical mistake.

The new deadline came and went without the production of any documents. Instead, five days before the deadline, defendant filed more objections.

At a July 15, 2014 hearing, the trial court reaffirmed that defendant had been ordered to produce documents responsive to plaintiff's first discovery request, and to do so without objection. By that time, defendant had still not produced a single responsive document.

B. Plaintiff's Second Discovery Request

In mid-December 2013, plaintiff filed a motion pursuant to Civil Code section 3295 seeking the trial court's permission to conduct discovery into defendant's financial condition. Plaintiff argued that defendant's financial condition was relevant to prove (1) plaintiff's underlying claims, which involved defendant's manipulation of its financial documents to conceal his diversion of the limited partnership's funds, and (2) punitive damages on plaintiff's tort causes of action.

The trial court granted the motion on January 9, 2014.

A week later, on January 17, 2014, plaintiff propounded five special interrogatories and five further requests for the production of documents. Two of each type of discovery were directed to defendant—one in his individual capacity and another as trustee (plaintiff's second discovery request). All sought financial documents.

At the February 14, 2014 hearing, plaintiff offered to narrow its request for documents relating to defendant's financial condition to documents previously "presented to third parties" such as "banks and financial institutions." Defendant indicated he was "agreeable" to that narrowing. Following the April 4, 2014 hearing, the trial court ordered defendant "to produce all

financial statements that [it] ha[d] recently submitted to third party institutions on or before April 23, 2014."

The April 23 deadline came and went, and defendant disclosed no financial documents.

At the July 15, 2014 hearing, the trial court reaffirmed its order that defendant produce all responsive documents "without objections." By that time, defendant had not done so.

C. Proceedings Before Referee

The parties stipulated to have a retired California Supreme Court justice serve as the discovery referee.

In mid-June 2014, plaintiff filed a motion with the referee to compel defendant to produce responses to plaintiff's first and second discovery requests because defendant had not done so by the court's April 23 deadline (or since then).

Three days later, defendant filed two motions with the trial court to (1) limit the scope of financial discovery to financial documents presented to third parties, and (2) preclude any discovery until plaintiff filed a pretrial brief regarding damages. The motions totaled 671 pages.

On July 15, 2014, the trial court denied defendant's motions without comment and, as noted above, reaffirmed its prior order that defendant disclose all responsive documents without objection.

On September 3, 2014, the referee issued its "Recommendation and Report." In it, the referee "recommended" that (1) the protective order that the parties signed on August 29, 2014 be approved, and (2) plaintiff's mid-June 2014 motion to compel be granted and defendant be ordered to "produce without objection all responsive documents, including all . . . financial records" by September 15, 2014.

On September 26, 2014, plaintiff asked the trial court to issue sanctions "under Code of Civil Procedure sections 2030, 2031, 128.5 and 177.5" due to defendant's "dilatory tactics."

At an October 9, 2014 hearing, the trial court adopted the discovery referee's recommendations. The court also imposed sanctions on "Defendant Saeed Farkhondepou[r] and his counsel" for $10,000. Invoking Code of Civil Procedure section 2023.030, the court found that "defendants[2] have misused the discovery process without substantial justification." The court also "admonishe[d]" defense counsel that further "failure to comply with the Court's orders may result in further sanctions and possible terminating sanctions."[3]

D. Appellate Review

Defendant petitioned this Court of a writ of mandate overturning the Court's October 9, 2014 sanctions award. We denied the petition. (See *Farkhondehpour et al. v. Superior Court* (order denying petn. for writ of mandate filed Nov. 4, 2014, B259464).)

Defendant also filed a timely notice of appeal.

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2 Plaintiff urges us to ignore the trial court's express language limiting sanctions to defendant and his counsel, and instead to infer from the trial court's subsequent use of the plural "defendants" that the court also imposed sanctions on codefendant Morad Neman. We decline to imply a sanctions award against a party not expressly named by the trial court.

3 As it turns out, the trial court subsequently imposed terminating sanctions against defendant. The propriety of those sanctions is the subject of a separate appeal. (*Siry Investment, L.P. v. Neman* (B279009, app. pending).)

DISCUSSION

Defendant and his counsel appeal the $10,000 sanctions award. We review the imposition of sanctions for an abuse of discretion. (*Van v. LanguageLine Solutions* (2017) 8 Cal.App.5th 73, 80.) A court abuses its discretion when its ruling is arbitrary (*Ellis v. Toshiba America Information Systems, Inc.* (2013) 218 Cal.App.4th 853, 878 (*Ellis*) or when it makes an error of law (*In re Charlisse C.* (2008) 45 Cal.4th 145, 159).

I. Analysis

A trial court may impose monetary sanctions against a party that "engag[es] in the misuse of the discovery process," and against "any attorney advising that conduct," unless the person to be sanctioned "acted with substantial justification" or "other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2023.030, subd. (a).) "Misuses of the discovery process" include "[f]ailing to respond . . . to an authorized method of discovery" and "[d]isobeying a court order to provide discovery." (*Id.*, § 2023.010, subds. (d) & (g).) If the sanction is monetary, the misuse need not be willful. (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1286.)

In this case, the trial court ordered that defendant produce, without objection, documents responsive (1) to plaintiff's first discovery request and (2) to plaintiff's second discovery request, to the extent those documents had been disclosed to third parties. Defendant disobeyed both orders. Defendant's conduct qualifies as "misuse of the discovery process." (*Ellis*, *supra*, 218 Cal.App.4th at pp. 877-878 ["Misuse of the discovery process includes disobeying a court order to provide discovery"].) In sum, the trial court did not abuse its discretion in awarding sanctions.

II. Defendant's Arguments

Defendant argues that the trial court erred in imposing monetary sanctions because (1) he had good reasons for not obeying the court's order to produce documents, and (2) the court's sanctions order is otherwise defective.

A. Objections to Trial Court's Order to Produce Documents

Defendant's objections that he was not required to obey the trial court's order to produce documents fall into three broad categories—namely, (1) objections affecting the order as a whole, (2) objections affecting the order insofar as it requires documents responsive to plaintiff's first discovery request, and (3) objections affecting the order insofar as it requires documents responsive to plaintiff's second discovery request.

1. Objections affecting the order to produce as a whole

Defendant offers four reasons why the trial court's order to produce documents is entirely invalid.

First, he argues that he was excused from complying with the order to produce documents because the trial court effectively vacated that order on July 3, 2014. Defendant is correct that, on July 3, 2014, the trial court issued an order allowing defendant to file objections to plaintiff's first and second discovery requests, which ostensibly overturned the court's earlier April 4, 2014 order requiring responsive documents to be produced "without objections." However, the July 3 order ruled on an ex parte application filed by defendant; plaintiff did not learn of that application until after the court issued that order; and the order was grounded on the fact that "[n]o opposition [had been] filed." What is more, the court reversed its July 3 order 12 days later, on July 15, 2014.

Defendant asserts on appeal that the trial court's July 15, 2014 order reversing the July 3 order is invalid because the July 15 order (1) was, in effect, an untimely motion for reconsideration under Code of Civil Procedure section 1008, and (2) was issued ex parte. These assertions lack merit. To be sure, on July 15, 2014, plaintiff filed an ex parte application asking the trial court to vacate its July 3 order. However, even if we deem plaintiff's application to function as a motion for reconsideration, the trial court's July 15 order was still valid because (1) the 10-day time frame for filing motions for reconsideration runs from "10 days after *service* . . . of written notice of entry of the order" (Code Civ. Proc., § 1008, subd. (a), italics added), and defendant did not serve plaintiff until July 7, 2014, which is less than ten days after July 3; and (2) a trial court retains the inherent authority to reconsider its own orders, even when it exercises that authority in response to a party's suggestion (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1105-1109; *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156-1157). And although plaintiff filed an ex parte application, the trial court did not grant relief on an ex parte basis; to the contrary, defendant filed a written opposition and appeared at a hearing to argue against vacating the July 3 order. (See *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 311 (*Lungren*) [adversarial proceedings are not ex parte proceedings]; *United Farm Workers v. Superior Court* (1975) 14 Cal.3d 902, 906; *St. Paul Fire & Marine Ins. Co. v. Superior Court* (1984) 156 Cal.App.3d 82, 85 [same]; *People v. Moore* (1970) 13 Cal.App.3d 424, 433 (*Moore*) [same]; *Mehrstein v. Mehrstein* (1966) 245 Cal.App.2d 646, 650 [same].)

Second, defendant contends that the trial court's July 15 order—even if it is valid—is inconsistent (or, at a minimum,

ambiguous) because the court ordered defendant "to produce the documents, without objections, as ordered" *and* noted that "[d]efendant may make objections before the referee, about said documents, and the referee may determine if the objections are valid or meritorious." We disagree. The order is consistent and unambiguous, because it requires the production of documents "without objections," but allows the referee to entertain objections "about said documents" once they are produced.

Third, defendant asserts that the trial court and referee were each obligated to make written findings with respect to each of the hundreds of objections defendant raised to plaintiff's first and second discovery requests. This assertion is incorrect. To begin, defendant did not respond to either request in a timely fashion, and his failure to do so automatically "waives any objection" unless the trial court subsequently grants relief from that waiver. (Code Civ. Proc., § 2031.300, subd. (a); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 403-404 (*Sinaiko*).) Because the trial court denied relief from the waiver, neither the court nor the referee was required to respond to defendant's multifarious objections. The law does not in any event require a court or referee to respond to every single discovery objection asserted by a party. (See *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 590.)

Fourth, defendant asserts that the referee's order to produce documents is invalid because the referee was purporting to issue orders, not just recommendations, to the trial court. (See generally *Rockwell Internat. Corp. v. Superior Court* (1994) 26 Cal.App.4th 1255, 1270 [court errs in "entering an order on the referee's report as though it were a binding decision of the

court itself"].) This argument is both factually incorrect (because the referee's report contained only "recommend[ations]") and irrelevant (because defendant had already disobeyed the trial court's April 4, 2014 order to produce documents without objection long before the referee got involved).

2. Objections affecting the order to produce, insofar as it relates to documents responsive to plaintiff's first discovery request

Defendant asserts that plaintiff's two motions to compel production of documents responsive to its first discovery request—that is, the one filed with the trial court in mid-January 2014, and the one filed with the referee in mid-June 2014—are procedurally defective. Defendant notes that he filed responses to plaintiff's first request in early February 2014, and reasons that plaintiff was accordingly required to file a motion to compel *further* responses under Code of Civil Procedure section 2031.310 (rather than a motion to compel responses under Code of Civil Procedure section 2031.300). Because, defendant reasons, plaintiff did not comply with the additional procedural requirements attendant to a motion to compel further responses, plaintiff's motions to compel are defective.

Defendant's argument lacks merit. A motion to compel further responses, as its name suggests, is to be filed after the party propounding discovery has "recei[ved] . . . a response" to its discovery demand. (Code Civ. Proc., § 2031.310, subd. (a).) Such a motion must be accompanied by (1) a separate statement of why the responding party's initial discovery "is incomplete," (2) a "meet and confer declaration," and (3) "specific facts showing good cause justifying the discovery sought by the [discovery] demand." (Code Civ. Proc., § 2031.310, subds. (a) & (b); Cal. Rules of Court, rule 3.1345(a)(3).) It must also be filed

"within 45 days of the service of the [responding party's] verified response." (Code Civ. Proc., § 2031.310, subd. (c).) None of these additional requirements applies when the propounding party has *not* received a response to its discovery demand, and is thus filing a motion to compel a response. (*Sinaiko*, *supra*, 148 Cal.App.4th at p. 404 [so noting]; see generally Code Civ. Proc., § 2031.300.)

Plaintiff appropriately filed motions to compel responses (rather than a motion to compel further responses). Plaintiff's first motion to compel was filed in mid-January 2014, three weeks before defendant lodged his 396-page catalogue of objections to plaintiff's first discovery request. A party's untimely lodging of objections does not retroactively convert an appropriately styled motion to compel into a procedurally defective motion to compel further responses. Plaintiff's second motion to compel was filed with the referee in mid-June 2014. Although defendant's objections had been lodged by that time, the trial court had subsequently (on April 4, 2014) ordered defendant to produce responsive documents "without objections," and defendant had responded with nothing but more objections. A party's lodging of objections specifically invalidated by a court order does not convert an appropriately styled motion to compel into a procedurally defective motion to compel further responses.

3. Objections affecting the order to produce, insofar as it relates to documents responsive to plaintiff's second discovery request

Defendant offers three reasons why the trial court's order to produce documents is invalid insofar as it relates to plaintiff's second discovery request for documents relating to defendant's financial condition.

First, defendant contends that the trial court's January 9, 2014 order authorizing discovery into defendant's financial

condition contains an error that infects all subsequent discovery orders regarding his financial condition. In addition to authorizing discovery, the January 9 order also purports to require defendant to return responses by February 15, 2014, even though plaintiff had not by that time propounded any discovery requests aimed at defendant's financial condition. Although the language in the January 9 order setting a due date for responses appears to be a mistake, it is an error that is irrelevant to the court's eventual imposition of sanctions. The court's sanctions order rests upon defendant's refusal to obey the court's subsequent April 4, 2014 and July 15, 2014 orders to disclose financial documents presented to third parties; the sanctions order has nothing to do with the January 9 order. (*Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1196-1197 [courts must disregard errors that are not prejudicial]; see generally Code Civ. Proc., § 475.)

Second, defendant asserts that the trial court's orders compelling the production of documents relating to his financial condition are legally invalid because (1) Civil Code section 3295 is narrow, and only allows civil discovery regarding a party's financial condition if that discovery is relevant to a claim for punitive damages, (2) plaintiff did not meet Civil Code section 3295's requirements, and (3) defendant's financial documents are protected by the right to privacy enshrined in the California Constitution and may therefore be produced only in service of a compelling interest and only if there are no less intrusive means of obtaining the information contained in those documents (such as through a stipulation).

We reject these arguments. As an initial matter, defendant's attack on the validity of the court's order to produce

documents is procedurally improper in this appeal. "[A] party may not defend against enforcement of a court order by contending merely that the order is legally erroneous." (*Wanke, Industrial, Commercial, Residential, Inc. v. Keck* (2012) 209 Cal.App.4th 1151, 1172.) Instead, the party's duty is to obey the court order, even if it is legally incorrect. (*Espinoza v. Classic Pizza, Inc.* (2003) 114 Cal.App.4th 968, 975-976.) Consequently, a party cannot challenge a sanctions award based upon its disobedience of a court order on the ground that the underlying court order was wrong. (*Ellis*, *supra*, 218 Cal.App.4th at pp. 877-880; *In re Marriage of Niklas* (1989) 211 Cal.App.3d 28, 35-36.) Admittedly, this bar does not apply if the underlying court order was "unconstitutional or otherwise in excess of the court's jurisdiction." (*In re Marriage of Niklas*, at p. 36.) However, defendant's argument that the court's order is unconstitutional is, as we discuss below, without merit. And the court's order to produce documents was not in excess of its jurisdiction because the parties and their dispute were properly before the court, and plaintiff had made a prima facie case for the relief embodied in the orders to produce. (*Signal Oil & Gas Co. v. Ashland Oil & Refining Co.* (1958) 49 Cal.2d 764, 775-776 [defining "in excess of . . . jurisdiction" for these purposes].)

Even if we moved beyond the procedural impropriety, defendant's arguments are also without merit. To begin, Civil Code section 3295 does not limit discovery of a party's financial condition to punitive damages claims. Although Civil Code section 3295 authorizes "pretrial discovery" regarding "[t]he financial condition of the defendant" when sought to prove "damages" (Civ. Code, § 3295, subds. (a)(1) & (c)), the statute has never been read to preclude pretrial discovery of financial

documents when those documents "'go[] to the heart of the cause of action itself.'" (*Rawnsley v. Superior Court* (1986) 183 Cal.App.3d 86, 91.) Indeed, courts have suggested that Civil Code section 3295's requirements do not apply at all when the financial information is sought to prove liability rather than punitive damages. (*Id.* at pp. 91-92.)

Even if we assume that Civil Code section 3295 applies to discovery sought to prove up plaintiff's underlying causes of action, the statute's requirements have been satisfied. The section conditions pretrial discovery of a defendant's financial condition upon a plaintiff's "produc[ing] evidence of a prima facie case of liability for damages . . . "—that is, a showing of a "substantial probability that the plaintiff will prevail . . . ." (Civ. Code, § 3295, subds. (a) & (c); *Jabro v. Superior Court* (2002) 95 Cal.App.4th 754, 756, 758.) All of the events set forth in this opinion are on remand from an appeal during which we overturned, due to error with the special verdict form, a jury verdict for plaintiff that included a $1.1 million punitive damages award against defendant. (See *Siry Investment, L.P. v. Farkhondehpour* (Dec. 12, 2012, B223100) [nonpub. opn.].) In light of this prior verdict in which a jury actually awarded plaintiff punitive damages against defendant, we have no doubt that there is a "substantial probability" that a jury might do so again.

The trial court's order also does not violate defendant's constitutional right to privacy. The California Constitution grants an "inalienable right[]" to "privacy" (Cal. Const., art. I, § 1); that right "extends to one's confidential financial affairs" (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656); and that right can operate as a defense to discovery in civil

cases (*Hecht, Solberg, Robinson, Goldberg & Bagley LLP v. Superior Court* (2006) 137 Cal.App.4th 579, 593-594; *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516, 525). But that right can be waived. (*Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 483.) Because a party waives its privacy rights as to items voluntarily shared with third parties (e.g., *Garrett v. Young* (2003) 109 Cal.App.4th 1393, 1412 [no expectation of privacy in information shared with third parties]), and because the trial court's order compelling disclosure of financial documents is limited to those financial documents defendant shared with third party institutions, the court's order does not infringe upon defendant's right to privacy.

Third, defendant argues that the trial court's order was invalid because plaintiff never agreed to a protective order regarding the financial documents. This argument ignores that the parties did sign a protective order on August 29, 2014. This was 41 days before the trial court issued sanctions, and yet defendant did not disclose any responsive documents during that window.

B. Objections to Trial Court's Sanctions Order

Defendant levels three categories of objections at the trial court's sanctions order.

First, he argues that the order was granted ex parte, and thus violated his right to due process. This argument is contradicted by the record. After plaintiff requested sanctions, defendant filed two separate filings opposing sanctions, and appeared at the October 9, 2014 hearing to oppose the imposition of sanctions. As noted above, where adversarial proceedings precede an order, the order is not issued ex parte.

(See, e.g., *Lungren*, *supra*, 14 Cal.4th at p. 311; *Moore*, *supra*, 13 Cal.App.3d at p. 433.)

Second, defendant asserts that he did not receive proper notice of the statutory basis for the sanctions award. The Civil Discovery Act requires that any sanctions order be preceded by "notice" and issued "after opportunity for hearing," and that the requisite notice include a "notice of motion" that (1) "identif[ies] every person, party, and attorney against whom the sanction is sought" and (2) "specif[ies] the type of sanction sought." (Code Civ. Proc., §§ 2023.030 & 2023.040.) The notice must also be in writing and "served in accordance with the timeframes set out in section 1005"—that is, at least 16 court days prior to the hearing. (*Parker v. Wolters Kluwer United States, Inc.* (2007) 149 Cal.App.4th 285, 296; Code Civ. Proc. § 1005, subd. (b).)

Defendant cites two deficiencies in the notice of sanctions in this case. Initially, he asserts that he had no advance notice that sanctions might be imposed under Code of Civil Procedure section 2023.030 (the statute the trial court cited) because the plaintiff only requested sanctions under "sections 2030, 2031, 128.5 and 177.5" and because the trial court indicated it was considering sanctions only under section 128.5. However, the Civil Discovery Act's requirement that the notice "specify the type of sanction sought" is satisfied if the party specifies it wants "monetary sanctions." (*Mattco Forge, Inc. v. Arthur Young & Co.* (1990) 223 Cal.App.3d 1429, 1435-1436.) Consequently, plaintiff's request for monetary sanctions was sufficient. Even if more specificity were required, plaintiff's citation to Code of Civil Procedure "sections 2030 [and] 2031" was sufficient to put defendant on notice of sanctions under section 2023.030. Although those two specific provisions have been repealed, they

were reenacted and replaced with multiple sections renumbered as sections 2030.010 et seq. and 2031.010 et seq., respectively. What is more, both the repealed provisions and their renumbered replacements specify that sanctions may be imposed pursuant to now-repealed section 2023 and currently renumbered section 2023.010 et seq., which includes section 2023.030—precisely the section the trial court invoked. Coupled with plaintiff's further explanation that it was seeking sanctions because defendant had "yet to comply with the discovery orders already issued by th[e trial] court," defendant had ample notice of the specific statutory basis for the sanctions that were ultimately imposed.

Further, defendant asserts that the notice contained in plaintiff's request for sanctions in its September 26, 2014 filing was defective because it was not accompanied by a formal notice of motion and not filed at least 16 days before the trial court heard the sanctions motion. Defendant is correct that the notice imparted by plaintiff's request did not meet the specific requirements of the Civil Discovery Act. However, he is not entitled to relief on appeal because "'a party who appears and contests a motion in the court below cannot object on appeal . . . that he had no notice of the motion or that the notice was insufficient or defective.'" (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1288, quoting *Tate v. Superior Court* (1975) 45 Cal.App.3d 925, 930.) Because defendant contested plaintiff's motion through a written opposition and by arguing against it at the October 9, 2014 hearing, he "cannot object" that "the notice was defective."

Finally, defense counsel argues that sanctions should not be imposed against him personally because (1) the trial court did not make express findings regarding his liability, and (2) he

cannot be held liable under the pertinent standards. Defense counsel is wrong. A trial court "is not required to make findings at all" when imposing discovery sanctions under the Civil Discovery Act (*Ghanooni v. Super Shuttle* (1993) 20 Cal.App.4th 256, 261), so the court was not required to make specific findings regarding counsel's liability. Sanctions may be imposed upon a party's attorney only if the "attorney advis[ed] that conduct" (Code Civ. Proc., § 2023.030, subd. (a)), but "the burden [is] on the attorney to prove he or she had *not* advised the client to engage in the conduct resulting in sanctions" (*Ghanooni*, at p. 261; *Corns v. Miller* (1986) 181 Cal.App.3d 195, 200-201). Here, counsel points to nothing in the record proving that defendant was refusing to disclose the documents notwithstanding counsel's advice to disclose.

Counsel argues more generally that he should not be penalized for holding off disclosure until the trial court adopted the referee's recommendations on plaintiff's motion to compel or for engaging in spirited advocacy. Counsel had been ordered by the court on April 4, 2014, to produce documents without objections; the fact that plaintiff in June 2014, asked the discovery referee for a further order that would reaffirm the trial court's earlier order to produce documents did not create uncertainty about what defendant—or his counsel—was required to do. More to the point, what went on here was not spirited advocacy. The trial court specifically told counsel in no uncertain terms that "you're going to have to give those documents, period. . . . Give it up. That's what I'm saying . . . Give it up." Defying such a clear directive is not advocacy; it is contumacious conduct justifying sanctions.

DISPOSITION

The order is affirmed. Plaintiff is entitled to its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
CHAVEZ

_____, J.*
GOODMAN

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* Retired judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.