

**DEPARTMENT SIXTEEN
JUDGE SCOTT L. KAYS
707-207-7316
TENTATIVE RULINGS SCHEDULED FOR
TUESDAY, DECEMBER 13, 2016**

**PORTFOLIO RECOVERY ASSOCIATES, LLC v. BARBARA SPICER et al.
Case No. FCM148941**

Motion For Order That Matters in Request for Admission of Truth of Facts Be Admitted

TENTATIVE RULING

The motion is granted.

Defendant, Barbara Spicer, is deemed to have admitted all requests contained in the requests for admissions, set 1.

**LOGRASSO v. GARCIA
Case No. FCS046770**

Motion for Terminating Sanctions, or in the Alternative, Issue and Evidence Sanctions, and for Monetary Sanctions filed by Plaintiff

TENTATIVE RULING

Plaintiff's motion for monetary, issue, evidence, and/or terminating sanctions against defendant GARCIA is denied in its entirety. Plaintiff has not established that defendant has engaged in a misuse of the discovery process that would warrant sanctions under CCP Section 2023.030, and he has not filed a motion to compel upon which sanctions may be awarded under CCP Section 2025.450.

Plaintiff's motion is based on defendant GARCIA'S objections to the notice of his deposition and his failure to initially comply with the court's previous discovery order. Neither of these grounds are a sufficient basis for the imposition of the sanctions requested.

The court notes that plaintiff did not file a motion to compel the deposition of GARCIA, and therefore, the merits of defendant's objections to the deposition notice are not properly at issue on this motion. Moreover, it appears that GARCIA has offered to proceed with his deposition on a date that is convenient to plaintiff's counsel. (Declaration of attorney Brian Leach, Exhibit A). Plaintiff mentions in his reply that there is a dispute regarding priority in taking the

depositions of plaintiff and GARCIA. The party who served his notice of deposition first usually has priority.

As to defendant's failure to initially comply with the court's discovery order, the court already determined that this issue was moot because plaintiff complied with the order before plaintiff's previous motion to compel compliance was heard.

SCARLA v. McKNIGHT, ET AL.
Case No. FCS047435

Demurrer

TENTATIVE RULING

Defendant McKnight's demurrer to Plaintiff's complaint is sustained with leave to amend. Defendants Karah, Wagner, and Green's demurrer is sustained without leave to amend.

Although Defendants have not provided the Court with a declaration demonstrating timely compliance with the requirement to meet and confer (Code Civ. Proc. § 430.41(a)(3)), the Court will nonetheless consider the substance of the motion. In light of Plaintiff's opposition categorically denying any defect in his pleadings, it is unlikely that compelling compliance with the meet and confer requirement will be fruitful.

As currently alleged, Plaintiff fails to allege that any of the defendants were seriously maintaining an assertion of provably false factual statement about Plaintiff, rather than presenting nonactionable expressions of opinion in the context of attempting to persuade other members of the Yacht Club to reject Plaintiff's application for membership. (*Gregory v. McDonnell Douglas Corp.* (1976) 17 Cal.3d 596, 600-601; *Carver v. Bonds* (2005) 135 Cal.App.4th 328, 344; *Seelig v. Infiniti Broad. Corp.* (2002) 97 Cal.App.4th 798, 809.) Defendant McKnight is alleged to have described Plaintiff as a "moron" and "idiot" and a "person of low moral character" while attempting to deprive Plaintiff of membership in the club. (Complaint, ¶¶ 9-10.) Construed as liberally as possible, Defendant Karah is alleged to have asserted that she would not feel safe if Plaintiff was admitted and that Plaintiff was a person of "low moral character". (Complaint, ¶ 12.) Defendants Wagner and Green are only alleged to have coauthored a note imploring other club members to deny membership that claimed that Plaintiff was "not of good moral character" because he was "rude, and not friendly" at house parties and caused "problems for no good reason". (Complaint, Exh. B.) These are all nonactionable statements of subjective judgment that cannot be reasonably construed as stating provably false facts.

The closest Plaintiff gets to alleging that any of the defendants made some actionable provably false statement is the assertion that Defendant McKnight falsely accused Plaintiff of engaging in "improper conduct regarding KARAH's daughters." (Complaint, ¶ 9.) This vague statement is simply rhetorical and

hyperbolic language that did not charge Plaintiff with any specific crime or depraved conduct and may be deemed “a broad, unfocused and wholly subjective comment.” (*Fletcher v. San Jose Mercury News* (1989) 216 Cal.App.3d 172, 191.)

Plaintiff’s second cause of action for intentional infliction of emotional distress is based on the same facts as his cause of action for defamation. “Liability for intentional infliction of emotional distress does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051, internal quotations and citations omitted.) Therefore, to the extent that Plaintiff has failed to allege a cause of action for defamation against any defendant, Plaintiff has also failed to allege a cause of action for intentional infliction of emotional distress.

Plaintiff has not met his burden of demonstrating that it is reasonably possible to cure the defects by amendment. (*Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1041.) Plaintiff has not made any attempt to show in what manner he can amend his complaint or how the proposed amendment would change the legal effect of his pleading. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349; *Gould v. Md. Sound Indus., Inc.* (1995) 31 Cal.App.4th 1137, 1153; *Cooper v. Equity Gen. Ins.* (1990) 219 Cal.App.3d 1252, 1263-1264; *McMartin v. Childrens’ Inst. Int’l* (1989) 212 Cal.App.3d 1393, 1408.)