

TENTATIVE RULINGS: CIVIL LAW & MOTION

**Wednesday, April 29, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:

Meeting ID: 160—739—4368

Password: 000169

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWIL3NBeE9LVHU2NVVpQIVRUT09>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

Call: +1 669 900 6833 US (San Jose)

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. **SCV-273623, Alexander Valley Gourmet, LLC v. Industry West Commerce Center, LLC**

Plaintiff’s motion for sanctions for spoliation of evidence is **GRANTED** in part and **DENIED** in part.

Terminating and issue sanctions are **DENIED**.

Evidentiary sanctions are **GRANTED** solely as follows: Defendant shall not be permitted to submit into evidence any of Vincent Rizzo’s text messages that were not turned over to Plaintiff in discovery.

Monetary sanctions are **GRANTED** in the amount of \$32,500.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

This is a commercial landlord-tenant case, with Industry West Commerce Center, LLC ("IWCC") as the landlord/Defendant and Alexander Valley Gourmet, LLC ("AVG") as the tenant/Plaintiff. Vincent Rizzo is the principal of IWCC. IWCC and AVG signed their lease in June 2021, for Suite 103 at 256 Sutton Place, Santa Rosa. AVG then built a pickle factory within Suite 103.

AVG alleges that: (a) IWCC made misrepresentations to AVG during lease negotiations about whether Suite 103 was suitable for food production; (b) IWCC failed to tell AVG certain things during lease negotiations; (c) the roof above Suite 103 is defective, resulting in roof leaks; (d) IWCC harassed AVG about things like odor and noise; and (e) IWCC interfered with AVG's alleged contractual right to lease the next-door space in spring 2023.

Plaintiff now seeks terminating, issue, evidentiary, and monetary sanctions against Defendant because it was discovered at the deposition of Mr. Rizzo that he has his iPhone set to automatically delete text messages after 30 days. Plaintiff contends that Mr. Rizzo intentionally destroyed these text messages after receiving notice of potential litigation. However, neither willful destruction nor intentional concealment is reflected in the record, as will be further explained below.

"Spoliation of evidence means the destruction or significant alteration of evidence or the failure to preserve evidence for another's use in pending or future litigation." (*Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1223.) "While there is no tort cause of action for the intentional destruction of evidence after litigation has commenced, it is a misuse of the discovery process that is subject to a broad range of punishment, including monetary, issue, evidentiary, and terminating sanctions." (*Ibid.*) "A terminating sanction is appropriate in the first instance without a violation of prior court orders in egregious cases of intentional spoliation of evidence." (*Ibid.*)

"Discovery sanctions are intended to remedy discovery abuse, not to punish the offending party." (*Ibid.*) "Accordingly, sanctions should be tailored to serve that remedial purpose, should not put the moving party in a better position than he would otherwise have been had he obtained the requested discovery, and should be proportionate to the offending party's misconduct." (*Ibid.*)

"A decision to order terminating sanctions should not be made lightly. But 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.)

Here, it clear that spoliation of evidence occurred, in that text messages from Mr. Rizzo's phone were deleted. This is not good in light of the plaintiff's notice to preserve evidence prior to the filing of the lawsuit. The evidence reflects, and Defendant admits, that messages were deleted off Mr. Rizzo's phone automatically after 30 days through this litigation and until the day before his deposition when he says he realized the setting was still active. Based on the record before the Court, the Court does not find that such spoliation was willful or an intentional concealment of evidence.

Mr. Rizzo's deposition testimony reflects that having this setting on his phone was a "habit" of his that he had for "quite a while." Mr. Rizzo has submitted a declaration stating that he set his phone to automatically delete text messages after thirty days many years before this litigation; that when he obtained a new phone those settings carried over automatically; and that he did not realize this setting was still active until preparing for his deposition. As he testified at his deposition, he turned the setting off the day before his deposition, which corroborates his declaration that he did not realize it was on until he prepared for his deposition. He then promptly turned it off. He also explains that, to the extent he communicated by text regarding matters at issue in this case, those communications typically involved his property manager, Laurie Wood, whose messages have been preserved and produced. Plaintiff's own motion confirms that Laurie Wood's messages have been produced.

The Court finds Mr. Rizzo's representations on this subject to be credible for purposes of this sanctions motion. Plaintiff primarily relies on Mr. Rizzo's deposition testimony to show that the spoliation was willful and intentional. However, that is not reflected in the deposition testimony. Furthermore, the Court finds little prejudice to Plaintiff as a result of the deletion of Mr. Rizzo's text messages. Defendant has produced relevant documents that reflect statements made by Mr. Rizzo regarding roof leaks and regarding his position on Suite 103. The fact that such documents were produced and are in Plaintiff's possession undermines any implication that Defendant intentionally concealed evidence on this subject. There is also a tremendous amount of discovery in this matter. Plaintiff has not stated that it will be unable to support any of the positions that it takes in this litigation through any other means besides text messages from Mr. Rizzo's phone. Rather, the evidence submitted in support of Plaintiff's motion shows otherwise. Finally, text messages are never entirely deleted forever. There are other means by which Plaintiff may obtain the subject text messages if Plaintiff desired. The Court understands that the parties were unable to agree on a forensic examination of the phone; however, a stipulation is not the only means by which Plaintiff could obtain a forensic examination if so desired.

Plaintiff seeks the ultimate sanction of termination. In the alternative, Plaintiff seeks such issue and evidentiary sanctions that would thwart Defendant's entire ability to defend against Plaintiff's claims. These requests ask the Court to ignore the tremendous amount of discovery that already exists in this case and the years of cooperation with discovery. Plaintiff's request for terminating sanctions is unreasonable. Granting such requests would be simply punitive. The purpose of sanctions is to remedy discovery abuses, not to punish. Considering that there is an insufficient record before this Court of willful destruction or intentional concealment, the Court finds that Plaintiff's requested sanctions are inappropriate.

However, the Court finds that Defendant should not be permitted to rely on any evidence that was not produced in discovery. Accordingly, the Court will issue an evidentiary sanction on Defendant that Defendant shall not be permitted to rely on any of Mr. Rizzo's text messages that were not turned over.

The Court further finds that monetary sanctions are appropriate. However, Plaintiff requests \$115,000 in monetary sanctions for this single motion. This request is entirely unreasonable. Plaintiff's counsel, Mr. Turner, represents that his hourly rate is \$1,449 and the hourly rate for Mr. Goodman is \$1,656. He represents that he spent 20 hours drafting the motion and an additional 20 hours investigating the spoliation and attempting to meet and confer. He represents that Mr. Goodman spent 6 hours revising and further preparing the motion. He also represents that they

expect to incur an additional \$50,000 on the reply. However, the declaration in reply does not contain any support for this.

First, Plaintiff's requested hourly rates are disconnected from the realities of the locale in which they are litigating. This Court typically grants hourly rates not exceeding \$650 per hour for very experienced litigators, which is the typical market rate in Sonoma County. As such, the hourly rate for both counsel shall be \$650 per hour.

Furthermore, Plaintiff requests a total of 46 hours of attorney time for preparing the motion and an additional \$50,000 for the reply. Counsel has not supported the additional \$50,000 request with any declaration regarding the actual time spent on the reply. Notwithstanding, the Court finds this amount of time to spend on a motion of this sort to be unreasonable. The Court will grant a total amount of 50 hours for this entire motion considering that several hours were likely spent investigating the extent of the spoliation.

The total monetary sanctions award to Plaintiff is \$32,500.

2. 24CV03861, Looney v. Cocovino LA, LLC

Plaintiff's unopposed motion to appoint receiver to take possession and, if necessary, sell Defendant's liquor license is **GRANTED**.

Plaintiff shall submit a written order consistent with this tentative ruling. Due to the lack of opposition, compliance with Rule 3.1312 is excused.

Judgment was entered against Defendant on October 8, 2024, in the amount of \$3,656.58 to be paid to Plaintiff/Judgment Creditor Gary Looney dba Collectronics of California. Plaintiff has propounded postjudgment discovery on Defendant and has received no response. Plaintiff has attempted several times to contact Defendant via phone and letter to no avail. Plaintiff represents several attempts to enforce the judgment have been unsuccessful. Plaintiff submits that the only attachable asset is the liquor license. Plaintiff has met his burden of proving that the appointment of a receiver is necessary.

The Court approves Landon McPherson as the receiver. Mr. McPherson shall post an undertaking in the amount of \$1,000.00 upon his appointment.

3. 24CV04929, Mancuso v. Gilbraith

Plaintiff's motion for leave to file an amended complaint is **DENIED** without prejudice.

Due to the lack of opposition, the Court's minute order shall constitute the order of the Court.

Plaintiff's motion is procedurally deficient. First, Plaintiff failed to file a proof of service. There is nothing in the record to indicate that Defendant Kathleen Gilbraith has been given notice of this motion.

Second, Plaintiff failed to attach the proposed amended complaint. Cal. Rules of Court, Rule 3.1324(a)(1) provides that “A motion to amend a pleading before trial must: (1) Include a copy of the proposed amendment or amended pleading, which must be serially numbered to differentiate it from previous pleadings or amendments...” Plaintiff has failed to comply with this requirement. The motion is denied as being procedurally deficient.

*****This is the end of the Tentative Rulings*****