NOT FOR PUBLICATION

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WILLIAM ROBERT HERRERA, Individually and on behalf of their minor child N. P. H.; MONA MOLINA HERRERA, Individually and on behalf of their minor child N. P. H.; WILLIAM RYAN HERRERA,

Plaintiffs - Appellants,

and

PALMDALE LODGING, LLC, a California Limited Liability Company,

Plaintiff,

v.

CITY OF PALMDALE, a municipal corporation; COUNTY OF LOS ANGELES, a municipal corporation; BUD DAVIS, individual and official capacity; GEORGE SCHNEIDER, individual and official capacity; ROB BRUCE, individual and official capacity; NARDY LOPEZ, individual and official capacity; MARK DYLER, individual and official capacity; ANNE AMBROSE, individual and official capacity; NOEL JAMES DORAN,

No. 24-4489

D.C. No.
2:16-cv-09453-MWF-MAR

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

individual and official capacity; JAMES PURTEE, individual and official capacity; SARA SHREVES, individual and official capacity; Palmdale Officer RAPOSAS, individual and official capacity; Palmdale Officer BLAKELY, individual and official capacity; Palmdale Officer ANTHONY BONELLI, individual and official capacity; Palmdale Officer MARK MILLER, individual and official capacity; Deputy Sheriff GUSTAVO MUNOZ, individual and official capacity; Deputy Sheriff RICHARD LEON, individual and official capacity; Deputy Sheriff BRANDON JACOBS, individual and official capacity; Deputy Sheriff CHARLES DANA, individual and official capacity; Deputy Sheriff DESHAUN MILES, individual and official capacity; Deputy Sheriff SCOTT SORROW, individual and official capacity; Deputy Sheriff STEVE DIAZ, individual and official capacity; Deputy Sheriff FRANK ARCIDIACONO, individual and official capacity; Deputy Sheriff JOHN GALLAGHER, individual and official capacity; Deputy Sheriff WYATT WALDRON, individual and official capacity,

Defendants - Appellees.

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted October 23, 2025
Pasadena, California

Before: R. NELSON and VANDYKE, Circuit Judges, and COLE, District Judge.[**]

Appellants William Robert Herrera, Mona Molina Herrera, and the Herreras' children (the Herreras), seek review of several district court orders following the district court's entry of final judgment in this case, which stems from the City of Palmdale's closure of the Herreras' Palmdale motel.

1. The district court granted summary judgment to the L.A. County deputy sheriff defendants based on the Herreras' failure to timely respond to their requests for admission, which led the district court to deem those requests admitted. *See* Fed. R. Civ. P. 36(a)(3). Those admissions in turn meant the deputy sheriffs prevailed on the Herreras' claims as a matter of law.

On appeal, the Herreras contend that L.A. County (a former party), rather than the deputy sheriffs, propounded the requests. The Herreras say that means the requests are a "nullity" because Rule 36 permits only a "party" to serve them. Fed. R. Civ. P. 36(a)(1). The argument does not persuade. True, the requests were titled as tendered on behalf of L.A. County, not the L.A. County deputy sheriffs. But L.A. County had long been dismissed by that time, and the same counsel represented both L.A. County and the deputy sheriffs (who remained as parties). So the Herreras' attorney had reasonable notice that the requests were on behalf of the deputy sheriffs.

[**] The Honorable Douglas Russell Cole, United States District Judge for the Southern District of Ohio, sitting by designation.

The Herreras essentially seek to rely on a scrivener's error to justify ignoring claim-dispositive discovery requests. The district court properly refused to condone such gamesmanship. That means the Herreras' failure to respond constituted admissions, Fed. R. Civ. P. 36(a)(3), making summary judgment proper.

2. Turning to their First Amendment retaliation claim, the Herreras needed to show they were retaliated against for engaging in First Amendment protected activity. *O'Brien v. Welty*, 818 F.3d 920, 932–33 (9th Cir. 2016). They point to William Herrera's refusal to permit the Palmdale Defendants to access certain motel records, but they identify no case suggesting that refusing consent to a search constitutes petitioning activity, nor are we aware of any.

3. The district court also properly granted summary judgment on the procedural due process claim, which the Herreras based on the Palmdale Defendants allegedly closing the motel without providing them either a pre-deprivation hearing or an unbiased post-deprivation hearing.

Start with the latter claim. The Herreras failed to identify in their briefing or argument any evidence of bias in the post-deprivation hearing, nor did they below. So that argument fails.

As for the lack of pre-deprivation hearing, we agree that due process ordinarily mandates one. But that is not so in emergency situations involving public health, safety, and the general welfare. *See, e.g.*, *Hodel v. Va. Surface Min. &*

Reclamation Ass'n, Inc., 452 U.S. 264, 299–300 (1981) (collecting cases). Here, there were 247 code violations, including instances of "severe" structural damage, mold, and unpermitted electrical and plumbing work. Absent evidence that the code violations were pretextual (and the Herreras offer none), those violations suffice to bring this case within the exception for emergency situations. *Cf. Armendariz v. Penman*, 31 F.3d 860, 866 (9th Cir. 1994), *vacated in part on other grounds*, 75 F.3d 1311 (9th Cir. 1996) (pretextual code violations insufficient to invoke emergency exception).

4. Turn to the Herreras' Fifth Amendment Takings Clause and substantive due process claims. The Herreras say that the Palmdale Defendants' shuttering of the motel was a per se physical taking, giving rise to a "categorical duty to compensate" the Herreras. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 322 (2002). Not so. "[T]he government owes a landowner no compensation for requiring him to abate a nuisance on his property, because he never had a right to engage in the nuisance in the first place." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160 (2021). And a California state court had already deemed the motel a nuisance, a determination that binds us under California's collateral estoppel rules. *See Zamarripa v. City of Mesa*, 125 F.3d 792, 793 (9th Cir. 1997). That same nuisance determination also dooms the substantive due process claim, as the Palmdale Defendants' actions bore "a rational relationship to a

legitimate state interest." *Slidewaters LLC v. Wash. State Dep't of Lab. & Indus.*, 4 F.4th 747, 758 (9th Cir. 2021).

The Herreras' invocation of *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964), changes nothing. True, they filed an *England* reservation in the state case. But this does not "enable a litigant to avoid preclusion of issues actually litigated in the state forum." *Los Altos El Granada Invs. v. City of Capitola*, 583 F.3d 674, 686 n.3 (9th Cir. 2009) (cleaned up).

5. Nor did the district court abuse its discretion in ordering terminating sanctions on the Herreras' Fourth Amendment claim. We review terminating sanctions under a balancing test that looks to (1) the public's interest in expeditious resolution, (2) the court's need to manage its dockets, (3) the risk of prejudice, (4) the public policy favoring disposing of cases on their merits, and (5) the availability of less drastic sanctions. *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007). To uphold such sanctions, we also must find either willfulness, bad faith, or fault, on the part of the sanctioned party. *Id.*; *Payne v. Exxon Corp.*, 121 F.3d 503, 507 (9th Cir. 1997) (same) (citation omitted).

Here, factors (1), (2), (3), and (5) favor dismissal. The Herreras' counsel had engaged in dilatory conduct throughout this litigation. That came to a head when the district court briefly reopened discovery for some targeted purposes and counsel

again failed to cooperate in undertaking that limited discovery.[1] And he did so after less drastic measures already had been tried in the form of repeated verbal warnings and monetary sanctions. Counsel's conduct also evidenced willfulness, fault, or bad faith, thus making terminating sanctions appropriate.

6. The magistrate judge did not clearly err or act contrary to law in granting a motion to compel and imposing monetary sanctions on the Herreras for failing to timely respond to the Palmdale Defendants' earlier interrogatories and production requests. The Herreras say that they properly sought to extend the deadline under Rule 6, but that is not so. To request such an extension, they needed to file a motion, and they did not. An objection to the magistrate judge's discovery order denying the extension is not a motion. So the district judge did not clearly err in declining to overturn the magistrate judge's ruling.

AFFIRMED.

[1] The district court likewise re-opened discovery in a related case involving different plaintiffs' claims arising from the same motel closure, in which plaintiffs were represented by the same counsel. *See Huerta, et al. v. City of Palmdale, et al.*, No. 24-5131 (9th Cir.). The district court also entered terminating sanctions in that case based on counsel's failure to cooperate in discovery there.