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United States District Court,
N.D. California.

Mary BULL, et al., Plaintiffs,
v.
CITY AND COUNTY OF SAN FRANCISCO, et al., Defendants.

No. C 03-1840 CRB EMC. | Jan. 5, 2005.

Attorneys and Law Firms

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Opinion

ORDER GRANTING PLAINTIFFS' SECOND MOTION TO COMPEL RESPONSES TO INTERROGATORIES AND REQUEST FOR SANCTIONS

CHEN, Magistrate J.

>Docket No. 179)

***1** Having reviewed the parties' briefs and accompanying submissions and having considered the arguments of counsel, and good cause appearing therefor, the Court hereby GRANTS both Plaintiffs' second motion to compel responses to interrogatories and their request for sanctions.

I. *DISCUSSION*

A. *Motion to Compel*

On April 15, 2004, the Court issued an order requiring Defendants to provide responses to Plaintiffs' Interrogatories Nos. 9 and 10 by April 30, 2004. Plaintiffs bring this current motion to compel because of the alleged inadequacy of the responses provided by Defendants. Plaintiffs argue that this information is needed both for settlement purposes and for trial on the merits.

The Court agrees with Plaintiffs that Defendants' responses are inadequate. First, the chart provided by Defendants at or about the time that their opposition was filed does not in any way address the number of persons who were subjected to pre-arraignment strip searches and *released* instead of being transferred to another jail facility. *See* Reply at 2. Furthermore, Defendants have essentially admitted the inadequacy of their responses by stating that the current responses may be off by as much as 20 percent, implicating a margin of error equivalent to millions of dollars in possible damages. *See id.* Accordingly, the Court orders as follows.

1. Defendants shall provide a sampling to Plaintiffs with respect to the number of persons who were subjected to pre-arraignment strip searches and released instead of being transferred. The sampling shall cover a four-month period, and Plaintiffs shall promptly identify for Defendants which four months should be used. The parties should promptly meet and confer to determine how best to "winnow out" persons who are not covered by the class (*e.g.,* persons arrested for misdemeanors, infractions, minor offenses, or felonies involving drugs, weapons, or violence). Defendants shall then provide to Plaintiffs the arrest cards for the remaining persons who fall within the definition of the class so that Plaintiffs may determine, based on those cards, whether the persons were subjected to pre-arraignment strip searches. Defendants shall have thirty days from the date of this order to produce the arrest cards for inspection to Plaintiffs, or to provide copies thereof to Plaintiffs.

2. Defendants shall have thirty days from the date of this order to come up with accurate responses that address the problem of duplicative records. If Defendants have not resolved the problem by that time, then the parties and their respective computer experts shall meet and confer within the following fifteen days to determine whether they can come up with a solution to the problem of duplicative records. If no solution is found within that time period, then Defendants shall provide a sampling to Plaintiffs within the thirty days following; the sampling shall include information sufficient to permit Plaintiffs to determine the magnitude of the error arising from duplicative records (*e.g.,* by comparing the computer run statistics with those manually compiled). That sampling shall also cover a four-month period, and Plaintiffs shall promptly identify for Defendants which four months should be used.

***2** The purpose of the processes and sampling ordered herein is to give the parties reasonable confidence as to the size of the class and subclasses to facilitate settlement discussions. It does not preclude further production of documents and responses to interrogatories if greater precision is needed for trial and trial preparation.

B. ***Request for Sanctions***

Plaintiffs ask for a total of $2,975 in attorney's fees incurred with respect to their motion to compel. *See* Mot. at 9; Schwarzchild Decl. ¶ 3. Federal Rule of Civil Procedure 37(b) provides that, if a party fails to obey an order to provide or permit discovery, a court shall-in lieu of or in addition to other sanctions-"require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." Fed.R.Civ.P. 37(b); *see also* Fed.R.Civ.P. 37(a)(4) (providing for similar standard if a motion to compel is granted).

As noted above, the Court issued an order an April 15, 2004, compelling Defendants to provide responses to Interrogatories Nos. 9 and 10 by April 30, 2004. Defendants have failed to comply with that order satisfactorily as, even after eight months, they have yet to provide full and complete-or even accurate-responses. Defendants argue that the failure is substantially justified because they "have fully responded to the extent possible on the basis of information they compiled at an expense of hundreds of hours of contractor and staff time."[1] Opp'n at 5. But Defendants do not explain why eight months is not sufficient time to provide full, complete, and accurate responses and how two hundred hours is adequate given the magnitude of the case. Moreover, as noted by Plaintiffs, the two hundred hours of work took place over the course of sixteen months as the interrogatories were served back in August 2003. More important, even as of today, after Defendants supplemented their responses in connection with the instant motion, Defendants have produced no data regarding the number of detainees who were stripped searched and then released. Moreover, the table Defendants compiled has such a degree of uncertainty about its accuracy, it has limited utility for either settlement or litigation. Defendants could have done more in responding to the interrogatories. The Court thus concludes that Defendants' failure to comply with the discovery order is not substantially justified and further finds that there are no other circumstances making an award of fees unjust.

[1] At the hearing, Defendants represented that their computer expert had since spent an additional sixty-seven hours working on this issue.

Having reviewed the materials submitted to the Court, the Court grants Plaintiffs' request for sanctions and orders that Defendants pay Plaintiffs $2,975 in attorney's fees.

II. *CONCLUSION*

For the foregoing reasons, the Court hereby grants Plaintiffs' motion to compel and request for sanctions.

***3** This order disposes of Docket No. 179.

IT IS SO ORDERED.