IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

JOHN SMENTEK, et al.,	)	
	)	
Plaintiffs,	)	Case No. 09 C 529
	)	
v.	)	Judge Joan H. Lefkow
	)	
SHERIFF OF COOK COUNTY and COOK COUNTY, ILLINOIS,	)	
	)	
Defendants.	)	

ORDER

Plaintiffs object to two of the magistrate judge's orders. First, they object to the magistrate judge's March 25, 2014 order (dkt. 282) denying discovery of identifying information from the Cook County Jail ("CCJ") database. Second, they object to the magistrate judge's April 8, 2014 order (dkt. 291) quashing their requests for health records under § 8-2001 of the Illinois Code of Civil Procedure, 735 Ill. Comp. Stat. 5/8-2001. For the reasons discussed below, plaintiffs' objections to the magistrate judge's March 25, 2014 order (dkt. 292) are overruled and plaintiffs' objections to the magistrate judge's April 8, 2014 order (dkt. 299) are sustained.

STATEMENT

I. Standard of Review

Federal Rule of Civil Procedure 72(a) governs a district court's review of a magistrate judge's discovery-related decisions. *See* Fed. R. Civ. P. 72(a); *Banks* v. *Enova Fin.*, No. 10 C 4060, 2012 WL 5995729, at *2 (N.D. Ill. Nov. 30, 2012). The district court may modify or set aside a magistrate judge's order on a nondispositive matter if it is "clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A). To sustain an objection to such an order, the district court must be "left with the definite and firm conviction that a mistake has been made." *Weeks* v. *Samsung Heavy Indus. Co.*, 126 F.3d 926, 943 (7th Cir. 1997).

II. Procedural Posture

In an opinion filed concurrently herewith, the court decertifies the (b)(2) class and orders modification of the (b)(3) class definition. The court will assume familiarity with the posture of the case and the facts discussed in the concurrent opinion.

III. Objections to March 25, 2014 Order (Dkt. 292)

Three days before the close of discovery, plaintiffs moved to compel defendants to produce identifying information about detainees at CCJ between 2011 and 2013 (approximately 250,000 individuals). Plaintiffs had filed a similar request limited to 2011 and 2012 detainees earlier in 2013, and the magistrate judge had denied the request without prejudice, finding it overbroad and directing the parties to "engage in further discussions to see if there is a way to provide information about actual class members short of a production that is plainly overinclusive." (Dkt. 157 at 4–5.)

Defendants objected to the renewed request,[1] arguing that it was overbroad and unnecessary to plaintiffs' case. (*See generally* dkt. 240.) Plaintiffs disagreed, contending that the identifying information for the 250,000 detainees is relevant because they intended to "survey a sample of the persons who entered the Jail between July 21, 2011 and December 31, 2013 about responses by the Jail to any health service request complaining about dental pain." (Dkt. 245 at 2.)

The magistrate judge denied plaintiffs' renewed motion to compel, focusing on the fact that the request came three days before the close of discovery. The magistrate judge observed that the "production of more than two years of detainee information in order to initiate and conduct a survey" was "incompatible with the schedule in this case in which fact discovery is closed and the hearing on the motion for preliminary injunction and bench trial on the merits are set for June 2, 2014." (Dkt. 282 at 5.) The magistrate judge also observed that plaintiffs' counsel never updated the discovery request that formed the basis of their motion to compel to include 2013, which further underlines the disorganized and belated nature of plaintiffs' request. (*See id.* at 4.)

The court finds that the magistrate judge's denial of plaintiffs' renewed motion to compel as untimely was not clearly erroneous or contrary to law and thus overrules plaintiffs' objections to the magistrate judge's March 25, 2014 ruling.

IV. Objections to April 8, 2014 Order (Dkt. 299)

The magistrate judge (in rulings sustained by this court) limited the number of detainee medical records plaintiffs could obtain through discovery because production of a large number of records imposed a substantial burden on Cook County. In response, plaintiffs' counsel tried to obtain the records from Cermak Health Services of Cook County ("Cermak") by requesting the medical records in bulk under § 8-2001 of the Illinois Code of Civil Procedure.[2] Cook County moved for a protective order to bar plaintiffs' batch requests. The magistrate judge granted Cook County's request on an interim basis and granted it in part and denied it in part on a final basis.

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[1] Defendants actually produced some limited evidence in response to plaintiffs' motion, including the population of CCJ in 2011, 2012, and 2013, and the average and median length of stay for detainees in 2011 and 2012. (*See* dkt. 240 at 4.) This did not satisfy plaintiffs. (*See* dkt. 245 at 2.)

[2] Using this method, plaintiffs' counsel requested medical records for 78 detainees in one week.

The final order stated:

> [T]he requests for medical records served by plaintiffs' counsel on Cermak Health Services of Cook County in November and December 2013 are quashed and Cermak is not required to honor those requests or any future batch requests (that is, requests for more than one detainee's records) that include a request for records of any persons listed in plaintiffs' November 7, 2013 request for production of documents. The interim order is lifted in that Cermak is not prohibited from providing records pursuant to [§ 8-2001] with respect to any requests for documents presented by plaintiffs' counsel that comply with the requirements of that Act including a valid authorization and appropriate fees and costs.

(Dkt. 299 at 9.)

Section 8-2001 of the Illinois Code of Civil Procedure requires private and public health care facilities to allow a patient (or an authorized representative of a patient) to examine and copy the patient's records. 735 Ill. Comp. Stat. 5/8-2001(b). If a patient or his representative requests copies of the records, the request must be made in writing to the administrator of the health care facility, and the requester must reimburse the facility for all reasonable expenses, "including the costs of independent copy service companies, incurred in connection with such copying not to exceed a $20 handling charge for processing the request and the actual postage or shipping charge, if any, plus [a fee based on page length]." *Id.* § 5/8-2001(d). The facility must provide the copies within thirty days of the receipt of the written request or provide a written statement of the reasons for delay and the date by which the requested information will be provided. *Id.* § 8/5-2001(f). In any event, the records must be produced within sixty days after the request. *Id.*

The magistrate judge quashed plaintiffs' batch requests under § 8-2001 for two reasons: (1) she believed plaintiffs were attempting to circumvent the discovery rulings in this case; and (2) she did not believe the requests were in keeping with the provisions of § 8-2001.

Her first rationale is foreclosed by *American Bank* v. *City of Menasha*, 627 F.3d 261 (7th Cir. 2010), in which the Seventh Circuit addressed the question of whether a federal court can enjoin a plaintiff "from gaining access to records that a state's public-records law entitles members of the public to see and copy at their own expense." *Id.* at 263. The court concluded that the district court could not enjoin the production of the material pursuant to state law and observed that "[t]he case law uniformly refuses to define requests for access to federal or state public records laws . . . as discovery demands, even when as in this case the request is made for the purpose of obtaining information to aid in a litigation and is worded much like a discovery demand." *Id.* at 265. Under *American Bank*, district courts cannot use their authority over discovery in a federal matter to interfere with a plaintiff's right to gather documents under state law, regardless of whether the plaintiff seeks the documents to further its federal case.[3]

[3] Defendants' attempt to distinguish *American Bank* because it dealt with a statute regarding disclosure of public records rather than a statute providing for disclosure of private and confidential

The magistrate judge's second rationale, although somewhat convincing,[4] is not properly considered in this forum. If Cermak believed that plaintiffs' requests did not adhere to the requirements of § 8-2001, Cermak could either refuse to respond and wait for plaintiffs to attempt to enforce the request in state court as contemplated by the statute, *see* 735 Ill. Comp. Stat. 5/8-2001(g), or seek a declaratory judgment in state court that the requests do not comply with the statute.

To the extent the magistrate judge's April 8, 2014 ruling indicated that it was within her power to restrict the right of a detainee (or a detainee's authorized representative) to obtain his or her medical records under § 8-2001 by quashing plaintiffs' requests, the court sustains plaintiffs' objections. It bears mention, however, that the magistrate judge did not restrict plaintiffs' counsel's ability make future requests for individual records under § 8-2001 as long as they made individual requests in compliance with the statute.

Date: December 22, 2014

U.S. District Judge Joan H. Lefkow

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medical records is unavailing. Both statutes provide for payment of the costs associated with responding to the requests and thus relieve the producing party of the burden of paying for the production. And in either case, if a federal court is allowed to bar information gathering once discovery is initiated in a federal suit, it could lead to the absurd results detailed in *American Bank*. *See American Bank*, 627 F.3d at 261 (considering when an attorney could be forbidden from seeking records otherwise available to him and noting that barring requests for records during a case could simply result in greater pre-suit requests for records).

[4] As the magistrate judge observed, in order to receive records under § 8-2001, the requester must pay the reasonable fees of duplication and must provide authorization from the individual detainee. (Dkt. 291 at 5–6.) Plaintiffs' counsel argues that the magistrate judge was incorrect in assuming that they were required to prepay for the records, citing to a website maintained by the Cook County Health & Hospital System, which states that "detainees shall receive one free copy of medical records for personal use after release from [Cook County Department of Corrections] and shall be charged a reduced rate for any subsequent record requests." (Dkt. 299 (citing CCHHS, Cermak Health Services, Request and Authorization to Copy Health Information, available at http://www.cookcountyhhs.org/patient-services/medical-records/cermak-health-services/).) The website also states "Cermak Health Services does not accept payments, you will be billed for these services." (*Id.*) There is no discussion of whether this policy, which explicitly relates to "personal use" of the medical records, would apply to the requests by plaintiffs' counsel.