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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AUGUSTA MILLENDER, BRENDA
MILLENDER, WILLIAM JOHNSON,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, ET
AL.,

Defendants.

) Case No. CV 05-2298 DDP (RZx)

) **ORDER DENYING DEFENDANTS'**
) **OBJECTIONS TO MAGISTRATE**
) **ZAREFSKY'S DISCOVERY ORDER AND**
) **MOTION FOR REVIEW**

) [Motion filed on August 30, 2006]

This matter comes before the Court on Defendants' Objections to Magistrate Zarefsky's Discovery Order and Motion for Review pursuant to Federal Rule of Civil Procedure 72(a) and Local Rule 72-2.1. After reviewing the papers submitted by the Parties, and considering the arguments contained therein, the Court adopts the following order.

BACKGROUND

The following facts are alleged by Plaintiffs in their Local Rule 37-2 Stipulation ("Mot. to Compel"):

Augusta Millender, Brenda Millender and William Johnson

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1 (collectively referred to as "Plaintiffs") live at 2234 E. 120th
2 Street in Los Angeles, California. (Mot. to Compel, p. 1).
3 Augusta Millender ("Mrs. Millender") is the 74 year-old matriarch of
4 the family. (Id.) Brenda and William are, respectively, her
5 daughter and grandson. (Id.) This is an action for damages
6 against the County of Los Angeles, the Los Angeles County Sheriff's
7 department, Sheriff Baca, and 27 Los Angeles County deputies¹
8 (collectively referred to as "Defendants"). (Id.)

9 Mrs. Millender and her late husband built the home at 2234 E.
10 120th Street, and she and her family have resided there for over
11 fifty years. (Id.) Mrs. Millender had a foster son, Jerry Bowen,
12 who last resided with her when he was between the ages of 13 and 18
13 or 20. (Id.) Bowen is now 36 years old. (Id.) Mrs. Millender
14 allowed Bowen to stay at her home temporarily in the early part of
15 2003. (Id.)

16 In October 2003, Bowen assaulted his girlfriend, Shelly Kelly.
17 (Id.) Kelly reported the assault to the police, and the detective
18 in charge of the investigation was Defendant Messerschmidt. (Id.)
19 When Messerschmidt interviewed Kelly, she told him that Bowen might
20 be found at his former foster mother's house. (Id.) Specifically,
21 she said, "[i]f I'm not mistaken, that might be where he's hiding
22 out." (Id.)

23 In the days before the search, several deputies staked out the
24 Millender home. (Id.) According to Plaintiffs, the deputies came
25

26 ¹ While, at one time, there were 27 individual deputy
27 Defendants, 16 of them have been terminated from the Complaint.
28 Therefore, the following 11 individual deputy Defendants remain:
Demello, Lawrence, Messerschmidt, Nichiporuk, O'Sullivan, Rector,
Ritenour, Schlegel, Stade, Stella, and Walker.

1 onto the property, spoke with Plaintiffs, and searched Brenda
2 Millender's car. (Id. at 2). Messerschmidt got a warrant. (Id.)
3 At 5:00 a.m. on November 6, 2003, deputies broke into the Millender
4 home, requiring them to leave their home and go outside. (Id.)
5 They did not find Bowen, but did arrest one of Mrs. Millender's
6 sons, Willie Millender, who was living in a separate house on the
7 property, on a drug charge. (Id.) A state court judge ultimately
8 threw out the case against Willie Millender, finding that the
9 affidavit did not justify a reasonable belief that Bowen would be
10 found at the Millender home. (Id.)

11 According to Plaintiffs, the deputies made virtually no
12 announcement and did not give anyone time to open the door before
13 they broke in by smashing through a living room window. (Id.)

14 Plaintiffs' complaint includes three causes of action under 42
15 U.S.C. § 1983 for violations of the Fourth and Fourteenth
16 Amendments and for conspiracy to deprive them of their civil rights
17 based on their race. It also includes supplemental claims for:
18 violations of the California Constitution; violation of civil
19 rights under *California Civil Code* §§ 52.1 & 51.7; negligence;
20 conspiracy; *Monell* claims against the County of Los Angeles and the
21 Sheriff's Department; and supervisorial liability claims against
22 Sheriff Baca in his official and individual capacities.

23 On July 26, 2006, Plaintiffs filed a Motion to Compel
24 Defendant County of Los Angeles to produce Responses to Requests
25 for Production and Interrogatories and a Request for Sanctions. On
26 August 21, 2006, Magistrate Judge Zarefsky held a hearing on
27 Plaintiffs' Motion to Compel. After hearing the Parties'
28 arguments, Magistrate Judge Zarefsky issued a Minute Order stating

1 that "Plaintiffs' motion to compel is granted in part and denied in
2 part for the reasons stated on the record," and that he would not
3 issue a written order. (Minute Order, Aug. 21, 2006). Pursuant to
4 the Order, Defendants were to respond to Plaintiffs' Request for
5 Production, Set Five, within 14 days. (Id.) Defendants were to
6 provide all other responses within 7 days. (Id.) Finally,
7 Magistrate Judge Zarefsky also ordered Defendants to pay sanctions
8 in the amount of \$4,500 within 30 days.

9 On August 30, 2006, Defendants filed Objections to Magistrate
10 Zarefsky's Discovery Order and a Motion to Review such Order. That
11 Motion is currently before this Court. It should be noted,
12 however, that Defendants and Plaintiffs have also filed Cross
13 Motions for Summary Judgment, which are set for hearing on February
14 26, 2006. Due to the possibility that the outstanding discovery
15 may impact the Motions for Summary Judgment, this Court, on
16 December 14, 2006, issued an Order Requesting Supplemental Briefing
17 regarding Defendants' Motion for Review and the potential impact of
18 any discovery still outstanding on the Motions for Summary
19 Judgment. Therefore, this Court will consider the Motion for
20 Review in light of the supplemental briefing as some of the
21 outstanding discovery has been served since the initial filing.

22 23 DISCUSSION

24 A. Legal Standard on a Motion for Review

25 Federal Rule of Civil Procedure 72(a) ("Rule 72") provides
26 that "[w]ithin 10 days after being served with a copy of [a]
27 magistrate judge's order, a party may serve and file objections to
28 the order. . . ." Fed. R. Civ. P. 72(a). A United States District

1 Court "may reconsider a magistrate judge's determination of non-
2 dispositive pretrial matters if the magistrate's order is 'clearly
3 erroneous or contrary to law.'" Wolpin v. Philip Morris, Inc., 189
4 F.R.D. 418, 422 (C.D. Cal. 1999) (citing Fed. R. Civ. P. 72(a));
5 see also Bhan v. NME Hospitals, Inc., 929 F.2d 1404, 1414 (9th Cir.
6 1991) ("magistrate's decision on a nondispositive issue will be
7 reviewed by the district judge under the clearly erroneous
8 standard"). "Under the clearly erroneous standard of review, the
9 magistrate judge's findings should not be rejected merely because
10 the court would have decided the matter differently." Alpine Bank
11 v. Hubbell, 2007 WL 219948 (D. Colo.) (citing Anderson v. City of
12 Bessemer, 470 U.S. 564, 573 (1985)). Rather, "[t]o conclude that a
13 magistrate judge's decision is clearly erroneous, the [d]istrict
14 [c]ourt must arrive at a definite and firm conviction that a
15 mistake has been committed." Wolpin, 189 F.R.D. at 422 (citation
16 omitted). Pretrial discovery orders are non-dispositive issues to
17 which the "clearly erroneous" standard applies. Green v. Baca, 219
18 F.R.D. 485, 489 n. 17 (C.D. Cal. 2003).

19 **B. Analysis**

20 **1. Request for Production (Set One)**

21 Magistrate Zarefsky ordered Defendants to serve further
22 response to all requests in dispute without objection within seven
23 days. In their Motion for Review, Defendants specifically "agree
24 that the documents requested should be produced." (Objections to
25 Magistrate Zarefsky's Discovery Order and Motion for Review ("Mot.
26 for Rev.") at 4:8-9). Defendants simply object "based on the short
27 time frame (7 days) within which to serve the supplemental
28 response," but offer no reason why they cannot comply within such

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1 time frame. (Id. at 4:11-12). At the time the Motion for Review
2 was filed, the responses were already overdue.² Defendants further
3 stated that they would respond by September 11, 2006.

4 Plaintiffs originally served Request for Production, Set One
5 on September 27, 2005. Thus, Defendants had ten months to respond
6 to this request for documents that they "agree should be produced"
7 before Plaintiffs brought their Motion to Compel. Furthermore,
8 Defendants have offered no reason as to why Magistrate Zarefsky's
9 Order requiring production within seven days was clearly
10 erroneous.³ Notwithstanding the fact that Defendants have given
11 this Court no basis upon which to grant their Motion, the issue is
12 moot. Defendants have now had almost six months to respond and,
13 according to the Parties' supplemental briefing, have in fact
14 responded.⁴ Therefore, this Court denies Defendants' Motion for
15 Review as to Request for Production, Set One.

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19 ² On August 30, 2006, Defendants filed an *Ex Parte*
20 Application to Stay Magistrate Zarefsky's Discovery Order.
21 However, Magistrate Zarefsky denied that Application on August 31,
2006.

22 ³ In fact, in their Motion, Defendants fail to even set
23 forth the standard that, to be reconsidered by a District Court,
24 the magistrate's order must be clearly erroneous or contrary to
25 law. Furthermore, at no point in the Motion do Defendants make the
26 argument that Magistrate Zarefsky's Order was, in fact, clearly
erroneous. Rather, Defendants seem to rely on the possibility that
this Court will grant their Motion simply because it would have
decided the matter differently. This Court declines to reject
Magistrate Zarefsky's findings on such grounds.

27 ⁴ The exception, here, if still outstanding, is the
28 transcript of the entry tape, which Defendants have agreed to
produce. (Defendants' Opposition to Plaintiffs' Supplemental Brief
at 4:18-19).

1 **2. Augusta Millender's Interrogatories (Set One)**

2 Magistrate Zarefsky ordered Defendants to respond to all
3 interrogatories in dispute, except No. 15, within seven days.
4 These interrogatories were initially served on all named Defendants
5 on September 27, 2005. Defendants object based on the short time
6 frame within which to respond. In support of their argument, they
7 claim that "it is an enormous task to contact all defendants, find
8 out what they know, and then obtain verifications from each
9 individual." (Mot. for Rev. at 4:20-22). Defendants further
10 object on the grounds that "[t]he deputies are not office workers
11 who are easily contacted" and that "[t]hey work in the field and
12 many have shifts that do not comport with normal regular business
13 hours." (Id. at 4:22-24).

14 Once again, Defendants had 11 months from the initial service
15 of the interrogatories to the deadline imposed by Magistrate
16 Zarefsky. This should have been ample time to gather responses
17 from each of the Defendants. Additionally, Defendants indicated in
18 their Motion for Review that they would serve further responses by
19 September 13, 2006. (Id. at 4:25-26). Therefore, this Court finds
20 that this objection is moot, because Defendants have had well
21 beyond that date, almost six additional months, to respond.

22 Defendants further object to Magistrate Zarefsky's Order
23 regarding Interrogatory No. 13 on the grounds that it is overly
24 broad. Interrogatory No. 13 states as follows:

25 If you are a natural person, IDENTIFY each
26 PERSON who has CLAIMED that you engaged in
27 wrongful conduct as a law enforcement officer,
28 including but not limited to wrongful detention

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1 or arrest of any person, or use of excessive
2 force upon any person, racial or religious or
3 ethnic discrimination, or making a false
4 accusation or report, during the last ten years
5 (CLAIM means any oral or written communication
6 including but not limited to a telephone call,
7 letter, note, personnel complaint, Government
8 Code § 910 claim or lawsuit.)
9 (Mot. for Rev., Exh. A at 33). While this interrogatory requested
10 information for a ten-year period, Magistrate Zarefsky reduced it
11 to five years. Nevertheless, Defendants argue that the time period
12 should have been limited to three years. Defendants provide no
13 basis for their distinction between five years and three years and
14 make no argument as to why Magistrate Zarefsky's order was clearly
15 in error. Furthermore, the fact that he cut the responsive time
16 period in half indicates that Magistrate Zarefsky gave
17 consideration to Defendants' argument that the interrogatory was
18 overly broad. Thus, this Court is not left with "a definite and
19 firm conviction that a mistake has been committed." Wolpin, 189
20 F.R.D. at 422. Accordingly, Defendants Motion for Review is denied
21 as to Augusta Millender's Interrogatories, Set One.

22 **3. Augusta Millender's Interrogatories (Set Two)**

23 According to their supplemental briefing, the Parties agree
24 that Defendants have responded to Augusta Millender's
25 Interrogatories, Set Two. (Plaintiffs' Supplemental Brief, 5:28-
26 6:1; see also Defendants' Supplemental Briefing, 6:18-23).
27 Therefore, Defendants objections and Motion for Review in this
28 regard are denied as moot.

1 **4. Request for Production (Set Three)**

2 Magistrate Zarefsky ordered Defendants to respond to the
3 request for production within seven days. Defendants object to the
4 order regarding Request Nos. 3 to 15 on the grounds that the
5 request is overly broad and too burdensome to comply with in time
6 to satisfy the Court's Order. Specifically, Defendants contend
7 that the documents have to be hand searched and read to determine
8 if they are applicable, which they cannot do in a timely fashion.
9 Thus, Defendants request that the documents sought be limited to
10 three years before the incident and that they be allowed more time
11 to respond. Defendants make similar arguments regarding Magistrate
12 Zarefsky's Order regarding Request No. 16, requesting claims,
13 settlement documents, lawsuits, etc.. Specifically, they ask that
14 they be allowed to provide a list of claims and lawsuits and then
15 give "plaintiffs' counsel access to the location where they are
16 filed, so that they may read through them and copy whichever claims
17 they see fit." (Mot. for Rev. at 6:8-20). Additionally, they
18 argue that it would be impossible to obtain all the settlement
19 documents and that "[a]ny potential benefit to plaintiffs is
20 greatly outweighed by the burdensome nature of the request." (Id.
21 at 6:22-27).

22 Plaintiffs initially served Request for Production, Set Three
23 on April 10, 2006. Defendants admit that, due to an oversight,
24 they never responded. Thus, in their Motion before Magistrate
25 Zarefsky, Plaintiffs correctly argued that failure to respond
26 waives all objections. Magistrate Zarefsky did not issue a
27 detailed written order. However, in his Minute Order, he stated
28 that Plaintiffs' Motion to Compel was "granted in part and denied

1 in part for the reasons stated on the record." (Minute Order,
2 August 21, 2006). Nevertheless, Defendants apparently did not see
3 the need to provide this Court with a copy of the record. As a
4 result, this Court does not have access to Magistrate Zarefsky's
5 reasoning and is limited to the papers submitted in support of the
6 Motion for Review.

7 In the Rule 37-2 Stipulation, Defendants acknowledge, in
8 response to Request Nos. 3 through 16, that they failed to respond
9 to these requests. Specifically, Defendants state as follows:

10 Defendants' failure to respond was a mistake.
11 Once the mistake was called to counsel's
12 attention, he attempted to obtain the responsive
13 documents. In hindsight, he should have provided
14 a response right away, however, he believed that
15 he could obtain the responsive documents before
16 this motion to compel was filed.

17 (Mot. to Compel at 47:25-48:1). Defendants further stated that
18 they would provide a response without objections. (Id. at 48:2).
19 Thus, as far as this Court can see, Defendants never made the
20 requests that Magistrate Zarefsky shorten the time frame or allow a
21 list in lieu of actual documents, or the argument that it would be
22 too burdensome for Defendants to obtain any or all of these
23 documents. In fact, Plaintiffs state in their Opposition to
24 Defendants' Motion that no argument regarding time frame was made
25 at the hearing on the Motion to Compel. (Plaintiffs' Opposition to
26 Defendants' Objections and Motion to Reconsider Magistrate Judge's
27 Discovery Ruling, 5:5-7). Because, to this Court's knowledge,
28 these objections were not raised before Magistrate Zarefsky, they

1 are not properly before this Court. Alternatively, even if these
2 arguments were made below, there is no evidence that Magistrate
3 Zarefsky's Order was erroneous. Accordingly, Defendants' Motion is
4 denied as to Request for Production, Set Three.

5 **5. Request for Production (Set Five)**

6 Magistrate Zarefsky ordered that responses to Request for
7 Production, Set Five be served within 14 days. In the requests at
8 issue, Plaintiffs sought government tort claims and lawsuits filed
9 between five years prior to the incident and the time of
10 production. In response to Plaintiffs' Motion to Compel,
11 Defendants argued that the requests were overly broad and not
12 reasonably limited in time. Specifically, they argued that the
13 documents would have to be hand-searched and read. In their Motion
14 to Review, Defendants again ask that they be allowed "to provide a
15 list of tort claims against the Sheriff's Department that appear to
16 involve entry and search issues, give plaintiffs' counsel access to
17 the location where the claims are filed and then they can read
18 through them and copy whichever claims they see fit." (Mot. for
19 Rev. at 7:8-11).

20 In considering Defendants' arguments, Magistrate Zarefsky
21 limited the time frame for response to three years before the
22 incident through the time of production. Additionally, the Parties
23 agree that Magistrate Zarefsky ruled that, as to the lawsuits only,
24 a list of case numbers, rather than actual files, would be
25 sufficient. Therefore, it appears to this Court that Magistrate
26 Zarefsky clearly considered each of Defendants' arguments and
27 responded accordingly. Defendants make no argument whatsoever as to
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1 why this ruling was in error. As a result, Defendants Motion to
2 Review is denied as it relates to Request for Production, Set Five.

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4 **CONCLUSION**

5 For all the foregoing reasons, the Court denies Defendants'
6 Objections to Magistrate Zarefsky's Discovery Order and Motion for
7 Review.

8
9 IT IS SO ORDERED.

10 Dated: 2-14-07



DEAN D. PREGERSON
United States District Judge

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