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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE ESTATE OF
CHRISTOPHER G.L. WALLACE,
by and through its Personal
Representatives, FAITH EVANS
and VOLETTA WALLACE, et al.,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

CV 02-2929 FMC (Rzx)

**ORDER GRANTING
PLAINTIFFS' MOTION FOR
MISTRIAL AND ATTORNEY'S
FEES**

This matter came on for trial before a jury on June 21, 2005. Several days into the trial, on a Friday afternoon, plaintiffs' counsel disclosed to the Court and opposing counsel that he had received a telephone call from someone claiming to be a former officer of the Los Angeles Police Department. That person provided detailed information about the existence of evidence concerning the Wallace murder. The Court directed plaintiffs' counsel to provide defense counsel with all available information about this development, and directed defense counsel to conduct a thorough investigation. The trial was temporarily adjourned.

That weekend, counsel for the City and representatives of the Los

1 Angeles Police Department conducted a physical search of particular police
2 facilities, as a result of which previously undisclosed evidence was
3 discovered, much of which was in the desk or cabinet of Det. Steven Katz,
4 the lead detective in the Wallace murder investigation. The documents
5 centered around interviews by numerous police officers of an incarcerated
6 informant,¹ who had been Rafael Perez's cellmate for some extended period
7 of time. He reported that Perez had told him about his and Mack's
8 involvement with Death Row Records and their activities at the Peterson
9 Automotive Museum the night of Biggie Smalls' murder. Monday morning,
10 scores of documents were turned over to plaintiffs' counsel and the Court.
11 The Court gave counsel additional time to review the material and
12 authorized the taking of certain depositions in light of the newly discovered
13 information.

14 Over the next few days, more and more documents were turned over
15 for the first time, or their existence was disclosed when plaintiffs' counsel
16 examined the new material.

17 On Tuesday, July 5, 2005, the day the trial was scheduled to resume,
18 plaintiffs moved the Court for an Entry of Default against the defendants or,
19 in the alternative, a Mistrial and an award of attorneys' fees. The Court does
20 not believe that the extreme sanction of striking defendants' answer and
21 entering their default is warranted in this case. The Court does find,
22 however, that no sanction other than a mistrial will alleviate the prejudice to
23 plaintiffs caused by defendants' conduct.

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26 ¹The identity of the inmate will not be disclosed in this Order, although the Court is
27 aware it has been revealed in other papers filed with the Court.

1 Authority

2 _____ Two sources of authority empower a trial court to impose sanctions on
3 parties before it. Fed.R. Civ.P. 37(c)(1) deals with a party’s failure to amend
4 a prior response to discovery, and authorizes the court to award attorney’s
5 fees caused by the discovery violation, and to impose evidentiary or even
6 terminating sanctions, commensurate with the party’s conduct.

7 Additionally, federal courts have inherent power to sanction conduct
8 that abuses the judicial process. This power is necessarily vested in courts to
9 enable them to manage their own affairs and achieve the proper disposition
10 of cases. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-631 (1962).

11 Discussion

12 _____ Rule 37 is clearly implicated in this case. Detective Katz was deposed
13 not once, but three times, as the defendants’ 30(b)(6) witness – the person
14 most knowledgeable about the documents surrounding the investigation of
15 the Wallace murder. In August 2003, he testified that the file provided to the
16 plaintiffs contained, to the best of his knowledge, all of the information
17 developed by the Los Angeles Police Department concerning the case. At
18 that time, he had in his desk or cabinet voluminous materials concerning
19 statements by Perez’s cellmate about the murder. Interrogatories
20 propounded to the defendant seeking information about the involvement of
21 Mack in the murder were answered on May 17, 2004, stating that no such
22 information existed.²

23 In fact, the following items, all of which were subject to discovery,
24

25 _____
26 ²Defendant’s contention, in its Opposition to the Mistrial Motion, that there has
27 been no violation of Rule 37, since defendant corrected the erroneous discovery responses
28 last week, is not worthy of comment.

1 were revealed to the plaintiffs within the past ten days.³

2 Tape recordings of interviews with the inmate
3 Tape logs of those interviews
4 Transcripts of Board of Rights testimony by the inmate
5 TEAMS report re David Mack⁴
6 Det. Armas' notes of 11/13/00 interview of inmate
7 Employee Report made after 11/13 interview
8 Documentation of police interview of inmate 12/10/00
9 Summary of 12/19/00 interview of inmate by Armas
10 Employee Report made after 12/19 interview
11 1/14/01 Employee Report to Weber
12 4/3/01 Armas Employee Report re Smalls Murder
13 Transcripts of three additional Board of Rights hearings
14 4/6/01 report of inmate interview
15 11/2/01 interview notes of Cook
16 1/24/01 interview of inmate by Armas
17 Katz chronology of trips to interview inmate
18 Handwritten statements of inmate
19 Det. Bub's notes of interviews with inmate

20 The sheer volume of information attests to the seriousness with which
21 the defendant treated this informant's statements and belies defendants'
22 current position that he is just another jailhouse informant seeking favors.⁵
23 Similarly, the impact of this new information, which links both former
24 LAPD officer David Mack and former LAPD officer Rafael Perez with the
25 Wallace murder, could be of great significance to the plaintiffs.

26 Among the factors the Court is to consider in choosing among possible
27 sanctions is a desire to restore the prejudiced parties to the same position

28 ³Some of the items have not yet been turned over to plaintiffs, but plaintiffs are aware of their existence through information contained in other just-disclosed documents.

⁴The absence of the TEAMS report from Mack's personnel file is significant. The Court is advised that such a report would provide a chronology of all personnel complaint investigations in Mack's file. Now that the report has been turned over, it demonstrates that approximately 15 such investigations are also missing from the file.

⁵Of course, even if the witness were utterly incredible, it would never justify failing to disclose this evidence to the plaintiffs. A party's obligation in responding to discovery is not to pick and choose which items of evidence it believes will be most valuable to the opposing side.

1 they would have been in absent the wrongful concealment of evidence. *Nat'l*
2 *Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 643 (1975). The
3 defense has not suggested, nor has the Court devised, any evidentiary or
4 other sanction which would undo the harm to plaintiffs at this juncture.
5 Plaintiffs made an opening statement and questioned numerous witnesses
6 before this jury, ignorant of the considerable volume of potential evidence
7 being secreted in a detective's desk drawer. The jury has been adjourned for
8 over a week, and plaintiffs have still further discovery to undertake. The
9 possibility of completing the trial within the time estimate originally given
10 to the jurors is now remote.

11 Courts are also instructed, in choosing a sanction, to consider whether
12 the misconduct was purposeful or inadvertent. Although Detective Katz
13 testified in a recent deposition that he forgot that the material was in his
14 desk, the statement is utterly unbelievable. The Detective, acting alone or in
15 concert with others, made a decision to conceal from the plaintiffs in this
16 case information which could have supported their contention that David
17 Mack was responsible for the Wallace murder.

18 The Court is satisfied that no lesser sanction will restore plaintiffs to
19 the position they would have been in had the misconduct not occurred.

20 Attorneys' Fees

21 _____ Plaintiffs are entitled to an award of attorneys' fees and costs as a
22 sanction. The fees to be awarded will reflect fees and costs incurred as a
23 result of defendants' misconduct. The parties are directed to file a Fee
24 Application and Responsive documents concerning the appropriate amount
25 of such award.

1 Conclusion

2 _____ Plaintiffs' Motion for Mistrial is Granted. The matter is restored to
3 pre-trial status. Plaintiffs' Request for Attorneys' Fees as a sanction is
4 granted, subject to proof.

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6 Dated: July 6, 2005

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8 FLORENCE-MARIE COOPER, JUDGE
9 UNITED STATES DISTRICT COURT
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