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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

ESTATE OF STEPHEN E. CRAWLEY,  
NORMA CRAWLEY AND JOHNNY  
CRAWLEY, INDIVIDUALLY AND AS  
PERSONAL REPRESENTATIVES OF  
THE ESTATE OF STEPHEN E.  
CRAWLEY,

Plaintiffs,

v.

DAVE ROBINSON, IN HIS INDIVIDUAL  
AND OFFICIAL CAPACITY AS KINGS  
COUNTY SHERIFF; SHAWN MCRAE,  
INDIVIDUALLY AND IN HIS  
CAPACITY AS SERGEANT FOR KINGS  
COUNTY SHERIFF; MARIUS  
BARSTECEANU, INDIVIDUALLY AND  
IN HIS CAPACITY AS SENIOR DEPUTY  
FOR KINGS COUNTY SHERIFF,

Defendants.

Case No. 1:13-CV-02042-LJO-SAB

**ORDER DENYING MOVANTS' MOTION  
FOR RECONSIDERATION.**

(Docs. 56, 58)

On May 6, 2015, the Magistrate Judge rendered his Order (Doc. 51), granting Plaintiff's motion to compel and ordering sanctions against Defense counsel. Before the Court in the above-styled and numbered cause of action is the City of Lemoore and Lemoore Police Department's Motion for Reconsideration by the District Court of the Magistrate Judge's Ruling, filed May 20, 2015 (Docs. 56 & 58). The matter is appropriate for resolution without oral argument. *See* Local Rule 230(g). Having carefully considered the record in this case, the parties' briefing, and the relevant case law, the Court will deny the motion.

1 **I. BACKGROUND**

2 On April 8, 2015, Plaintiffs The Estate of Stephen E. Crawley, Norma Crawley, and Jonny  
3 Crawley (“Plaintiffs”) filed a motion to compel (Doc. 37), seeking to compel responses to certain  
4 deposition questions and the production of documents from third party witness Michael Kendall  
5 (“Kendall”), a police officer with the Lemoore Police Department. Kendall, the City of Lemoore,  
6 and the Lemoore Police Department filed an opposition on May 1, 2015.

7 On May 6, 2015, the Magistrate Judge rendered his Order granting Plaintiffs’ motion to  
8 compel and issuing sanctions against defense counsel. (Doc. 51).

9 On May 20, 2015, the City of Lemoore and Lemoore Police Department filed their  
10 respective requests for reconsideration of the Magistrate Judge’s Order. (Docs. 56 & 58). Plaintiffs  
11 timely filed an opposition to the request for reconsideration on May 22, 2015 (Doc. 61).

12 The matter is ripe for review.

13 **II. LEGAL STANDARD**

14 Reconsideration motions are committed to the discretion of the trial court. *Rodgers v. Watt*,  
15 722 F.2d 456, 460 (9th Cir. 1983) (en banc); *Combs v. Nick Garin Trucking*, 825 F.2d 437, 441  
16 (D.C.Cir. 1987). A party seeking reconsideration must set forth facts or law of a strongly  
17 convincing nature to induce the court to reverse a prior decision. *See e.g., Kern–Tulare Water Dist.*  
18 *v. City of Bakersfield*, 634 F.Supp. 656, 665 (E.D.Cal. 1986), *aff’d in part and rev’d in part on*  
19 *other grounds*, 828 F.2d 514 (9th Cir. 1987).

20 “A motion for reconsideration should not be granted, absent highly unusual circumstances,  
21 unless the . . . court is presented with newly discovered evidence, committed clear error, or if there  
22 is an intervening change in the controlling law,” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma*  
23 *GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009), and “[a] party seeking reconsideration must show  
24 more than a disagreement with the Court’s decision, and ‘recapitulation . . .’” of that which was  
25 already considered by the court in rendering its decision. *U.S. v. Westlands Water Dist.* , 134  
26 F.Supp.2d 1111, 1131 (E.D.Cal. 2001) (*quoting Birmingham v. Sony Corp. of Am., Inc.*, 820  
27 F.Supp. 834, 856 (D.N.J. 1992)).

1 This Court reviews a motion to reconsider a Magistrate Judge’s ruling under the “clearly  
2 erroneous or contrary to law” standard set forth in 28 U.S.C. § 636(b)(1)(A) and Fed.R.Civ.P.  
3 72(a). As such, the court may only set aside those portions of a Magistrate Judge’s order that are  
4 either clearly erroneous or contrary to law. Fed.R.Civ.P. 72(a); *see also Grimes v. City and County*  
5 *of San Francisco*, 951 F.2d 236, 240 (9th Cir. 1991) (discovery sanctions are non-dispositive  
6 pretrial matters that are reviewed for clear error under Fed.R.Civ.P. 72(a)).

7 The “‘clearly erroneous’ standard is significantly deferential.” *Concrete Pipe and Products*  
8 *of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602,  
9 623 (1993). A district court may find a magistrate judge’s factual findings “clearly erroneous”  
10 when the court is left with the definite and firm conviction that a mistake has been committed.  
11 *Security Farms v. International Bhd. of Teamsters*, 124 F.3d 999, 1014 (9th Cir. 1997); *Green v.*  
12 *Baca*, 219 F.R.D. 485, 489 (C.D.Cal. 2003). The “contrary to law” standard allows independent,  
13 plenary review of purely legal determinations by the magistrate judge. *See Haines v. Liggett Group,*  
14 *Inc.*, 975 F.2d 81, 91 (3rd Cir. 1992); *Green*, 219 F.R.D. at 489; *see also Osband v. Woodford*, 290  
15 F.3d 1036, 1041 (9th Cir. 2002). “An order is contrary to law when it fails to apply or misapplies  
16 relevant statutes, case law, or rules of procedure.” *Knutson v. Blue Cross & Blue Shield of Minn.*,  
17 254 F.R.D. 553, 556 (D.Minn. 2008); *Rathgaber v. Town of Oyster Bay*, 492 F.Supp.2d 130, 137  
18 (E.D.N.Y. 2007); *Surles v. Air France*, 210 F.Supp.2d 501, 502 (S.D.N.Y. 2001); *see Adolph Coors*  
19 *Co. v. Wallace*, 570 F.Supp. 202, 205 (N.D.Cal. 1983).

20 “Pretrial orders of a magistrate under § 636(b)(1)(A) . . . are not subject to a *de novo*  
21 determination....” *Merritt v. International Bro. of Boilermakers*, 649 F.2d 1013, 1017 (5th Cir.  
22 1981). “The reviewing court may not simply substitute its judgment for that of the deciding court.”  
23 *Grimes*, 951 F.2d at 241; *see Phoenix Engineering & Supply v. Universal Elec.*, 104 F.3d 1137,  
24 1141 (9th Cir. 1997) (“the clearly erroneous standard allows [for] great deference”). A district court  
25 is able to overturn a magistrate judge’s ruling “‘only if the district court is left with the definite and  
26 firm conviction that a mistake has been made.’” *Computer Economics, Inc. v. Gartner Group, Inc.*,  
27 50 F.Supp.2d 980, 983 (S.D.Cal. 1999) (quoting *Weeks v. Samsung Heavy Indus. Co., Ltd.*, 126  
28 F.3d 926, 943 (7th Cir. 1997)). Moreover, “[m]otions for reconsideration are disfavored, however,

1 and are not the place for parties to make new arguments not raised in their original briefs.” *Hendon*  
2 *v. Baroya*, 2012 WL 995757, at \*1 (E.D.Cal. 2012) (citing *Zimmerman v. City of Oakland*, 255  
3 F.3d 734, 740 (9th Cir. 2001).

### 4 **III. ANALYSIS**

5 Distilling their requests for reconsideration, the movants seek reconsideration on the basis  
6 of mere disagreement with the decision on the pretrial order relevant to the witness fees, the  
7 compelled document production and answers to certain deposition questions, and recapitulation of  
8 that which was already considered by the Magistrate Judge. Motions for reconsideration are not  
9 available to dissatisfied litigants as a vehicle for another bite at the apple in front of a different  
10 judge. Plainly, the movants disagree with the Magistrate Judge’s assessment and determination that  
11 Defendant’s discovery response was legally insufficient, their objections not substantially justified,  
12 and their conduct related to drafting the joint statement on the discovery dispute particularly  
13 egregious and in bad faith. But the movants presented their arguments to the Magistrate Judge and  
14 rehashing those arguments provides no basis for reconsideration. *See Miller v. Akanno*, No. 1:12-  
15 CV-01013-LJO, 2014 WL 6612041, at \*2 (E.D. Cal. Nov. 20, 2014) *reconsideration denied*, No.  
16 1:12-CV-01013-LJO-SK, 2015 WL 566304 (E.D. Cal. Jan. 16, 2015); *see also U.S. v. Westlands*  
17 *Water Dist.*, 134 F.Supp.2d 1111, 1131 (E.D.Cal. 2001) (finding that a party seeking  
18 reconsideration must show more than a disagreement with the Court’s decision, and recapitulation  
19 ...” of that which was already considered by the Court in rendering its decision) (internal quotation  
20 marks and citation omitted)).

21 Although a *de novo* review is not required, this Court carefully considered the relevant case  
22 law and the record before it, and finds no error. The requests for reconsideration do not otherwise  
23 raise new facts, circumstances, or change in the law which would warrant reconsideration of the  
24 Magistrate Judge’s May 6, 2015 Order.

#### 25 **A. Witness Fee**

26 First, the witness fee dispute was previously before the Magistrate Judge, and the parties  
27 present the same arguments again.

1 Relative to the witness fees, movants argue that California Government Code Section  
2 68096.1 should control. The contention is incorrect. As this is a federal action, federal law controls.  
3 *See Aceves v. Allstate Ins. Co.*, 68 F.3d 1160, 1167 (9th Cir. 1995) (federal law controls over  
4 conflict law with respect to reimbursement of expert witness fees).

5 Under federal law, reimbursement of witness fees is governed by 28 U.S.C. § 1821, which  
6 states, in pertinent part:

7 (a)(1) Except as otherwise provided by law, a witness in attendance at any court of  
8 the United States, or before a United States Magistrate Judge, or before any person  
9 authorized to take his deposition pursuant to any rule or order of a court of the  
10 United States, shall be paid the fees and allowances provided by this section.

11 . . .

12 (b) A witness shall be paid an attendance fee of \$40 per day for each day's  
13 attendance. A witness shall also be paid the attendance fee for the time necessarily  
14 occupied in going to and returning from the place of attendance at the beginning and  
15 end of such attendance or at any time during such attendance. ...

16 Because the basis for the movants' reconsideration request is, in legal error, based on the  
17 proposed use of California law, the Court declines to reconsider the matter. Even should the Court  
18 entertain the request, there is no dispute that Plaintiffs tendered a check for \$275, but that  
19 Defendants returned it. Reasoning that because Plaintiffs' counsel attempted to tender witness fees  
20 under 28 U.S.C. § 1821, but "Defendants' counsel rejected the tender under the false belief that fees  
21 should be calculated under California law," the Magistrate Judge found that any defect related to  
22 the witness fees was the fault of Defendants' counsel. Doc. 51, at 11. Counsel cannot now complain  
23 about their own legal errors, impute those errors to the Magistrate Judge, or leverage the legal error  
24 to advantage. The Court finds that the Magistrate Judge's conclusion on this issue is not clearly  
25 erroneous or contrary to law.

### 26 **B. Requests for Production**

27 Central to the parties' discovery dispute is whether Kendall has possession, custody, and  
28 control of the documents requested. The Magistrate Judge in the underlying order granted  
Plaintiffs' motion to compel, finding that the phrase "possession, custody or control" is "in the  
disjunctive, therefore, only one of the numerated requirements need be met." Doc. 51, at 11-12  
(quoting *Soto v. City of Concord*, 162 F.R.D. 603, 619 (N.D. Cal. 1995) (citing *Cumis Ins. Society*,

1 *Inc. v. South-Coast Bank*, 610 F. Supp. 193, 196 (N.D. Ind. 1985))). Considering the term  
2 “control,” the Magistrate Judge correctly acknowledged that its definition includes the “legal right  
3 of the producing party to obtain documents from other sources upon demand.” *Id.* On the record  
4 relevant to the discovery dispute, the Magistrate Judge found that counsel’s claim that Kendall  
5 effectively lacked possession, custody, and control was merely a strategic tactic in order to  
6 withhold relevant documents in discovery. He indicated zero tolerance for such conduct, and stated  
7 that evasive manoeuvres, especially in the busy Eastern District of California, are “unnecessarily  
8 wasteful and only serve to stonewall and cause delayed responses to otherwise valid discovery  
9 requests,” and cited to an analogous case. *See Zackery v. Stockton Police Dep’t*, No. CIV S-05-  
10 2315 MCE DAD P, 2007 WL 1655634 (E.D. Cal. Jun. 7, 2007) (ordering individual police officers  
11 to produce responsive documents where separate subpoena directed at police department “would  
12 unnecessarily consume even more time in dealing with this relatively routine request for  
13 discovery.”). The Magistrate Judge admonished Defendants’ counsel “for wasting public resources  
14 playing unproductive and wasteful games before this Court.” *See* Doc. 51, at 12.

15         The Magistrate Judge found that Plaintiffs satisfied their burden in the motion to compel.  
16 Turning to the party in opposition, the Magistrate Judge concluded that even if Kendall’s access to  
17 the requested documents did not constitute “possession, custody, or control,” it is undisputed that  
18 he shared counsel with the City of Lemoore and the City of Lemoore Police Department – the  
19 source of the requested documents. In other words, the Magistrate Judge concluded that, for all  
20 practical purposes, this effectively constitutes “possession, custody, or control” over the responsive  
21 documents.

22         This Court finds no legal error. There is no dispute that in responding to discovery requests  
23 for production of documents, a party must produce documents which are in their “possession,  
24 custody or control.” Fed.R.Civ.P. 34(a). The movant argues that the Magistrate Judge erred in  
25 finding that access equates control. This he did not do. Rather, he acknowledged that actual  
26 possession, custody or control is not required, and that “[a] party may be ordered to produce a  
27 document in the possession of a non-party entity if that party has a legal right to obtain the  
28 document or has control over the entity who is in possession of the document.” *Soto v. City of*

1 *Concord*, 162 F.R.D. 603, 620 (N.D.Cal. 1995). Moreover, such documents also include documents  
2 under the control of the party's attorney. *Meeks v. Parson*, 2009 U.S. Dist. LEX IS 90283, 2009  
3 WL 3303718 (E.D.Cal. September 18, 2009) (involving a subpoena to the CDCR); *Axler v.*  
4 *Scientific Ecology Group, Inc.*, 196 F.R.D. 210, 212 (D.Mass. 2000) (A "party must produce  
5 otherwise discoverable documents that are in his attorneys' possession, custody or control."); *Gray*  
6 *v. Faulkner*, 148 F.R.D. 220, 223 (N.D.Ill. 1992). Notwithstanding a possible split in the legal  
7 authority, sufficient case law exists which is substantively consistent with the Magistrate Judge's  
8 conclusion such that the Court is not compelled to find it contrary to law or clearly erroneous.

9         Subsequent to the request for reconsideration, the movant filed a notice (Doc. 66) arguing  
10 that the documents requested are relevant only to claims against the former defendants and, as a  
11 result, the motion to compel is moot. Not so. The argument to revisit the relevancy finding is  
12 unpersuasive because dismissal of a certain party does not necessarily impact the underlying factual  
13 dispute. Simply put, the parties may have changed, but the factual dispute surrounding the  
14 standards controlling an officers' training and standards has not. It is on that issue that the  
15 Magistrate Judge has previously evaluated the parties' positions and ordered production. The  
16 discovery may not ultimately be admissible, but it need not be. "Parties may obtain discovery  
17 regarding any matter, not privileged, that is relevant to the claim or defense of any party ....  
18 Relevant information need not be admissible at the trial if the discovery appears reasonably  
19 calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1).

### 20         **C. Sanctions**

21         Counsel asks this Court to reconsider the sanctions ordered by the Magistrate Judge. During  
22 the process of drafting a joint statement, then-Defense counsel deleted Plaintiffs' section on certain  
23 proposed deposition questions, then, only provided revisions in a non-editable PDF format – and  
24 late – ostensibly to frustrate Plaintiffs opportunity to ask unwelcome questions at the deposition.  
25 The Magistrate Judge found then-Defense counsel's conduct egregious and their efforts to draft the  
26 joint statement not performed in good faith. For these reasons, the Magistrate Judge concluded that  
27 counsel's conduct violated Local Rule 251 and issued sanctions in accord with his findings. This  
28 Court likewise looks on such tactics with extreme disfavor. In the absence of clear legal error, the

1 Court will not second guess the Magistrate Judge’s order for sanctions, as it is not contrary to law.  
2 As sanctions stand, the Court leaves to the Magistrate Judge to review the reasonableness of the  
3 Plaintiffs’ relevant fees and expenses.

4 **D. Other Objections**

5 The movant also complains about the Magistrate Judge’s order compelling Kendall’s  
6 answers to certain deposition questions over their objections. The Magistrate considered each of  
7 these contentions and rejected them as not being substantially justified. To the extent that counsel  
8 asks the Court to reconsider, the Court declines. That the Magistrate Judge allowed such discovery  
9 is within his discretion, and his conclusions are not legal error. Indeed, the Court is vested with  
10 broad discretion to manage discovery, *Hunt v. County of Orange*, 672 F.3d 606, 616 (9th Cir.  
11 2012); *Survivor Media, Inc. v. Survivor Productions*, 406 F.3d 625, 635 (9th Cir. 2005); *Hallett v.*  
12 *Morgan*, 296 F.3d 732, 751 (9th Cir. 2002), and “where the discovery request seeks information  
13 which, based on the record, is clearly within the scope of discovery and the objection lacks merit,  
14 the Court may elect to exercise its discretion to reach the merits of the dispute, the moving party’s  
15 initial burden notwithstanding.” *Cooper v. Sely*, No. 1:11-CV-00544-AWI, 2013 WL 146428, at \*2  
16 (E.D. Cal. Jan. 14, 2013); *see, e.g., Marti v. Baires*, No. 1:08-cv-00653-AWI-SKO PC, 2012 WL  
17 2029720, at \*3 (E.D.Cal. Jun.5, 2012); *Williams v. Adams*, No. 1:05-cv-00124-AWI-SMS PC, 2009  
18 WL 1220311, at \*1 (E.D.Cal. May 4, 2009).

19 **IV. CONCLUSION AND ORDER**

20 In sum, Plaintiff has not shown clear error or other meritorious grounds for relief. Distilled,  
21 the movants’ requests for reconsideration are mere disagreement with the Magistrate Judge’s order  
22 issuing sanctions and granting Plaintiff’s motion to compel. For the foregoing reasons, **IT IS**  
23 **HEREBY ORDERED** that the requests for reconsideration (Doc. 56 & 58) are **DENIED**.  
24 **IT IS SO ORDERED.**

25 Dated: June 22, 2015

/s/ Lawrence J. O’Neill  
26 UNITED STATES DISTRICT JUDGE