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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GLORIA AVILA, CHENDA CHE, LITA) Case No. 2:08-CV-02488 JAM-KJN
GALICINAO, MICHELLE LONG, GLEN)
MAGAOAY, JANICE MAGAOAY, JEFFREY) ORDER GRANTING PLAINTIFFS'
ORIGER, LARRY YEPEZ, LYND A) REQUEST FOR RECONSIDERATION
YEPEZ, WAYNE YEPEZ, AND THE) OF MAGISTRATE JUDGE'S RULING
HUMANE SOCIETY OF THE UNITED) AND IMPOSING SANCTIONS BASED
STATES,) ON DEFENDANT'S SPOILIATION OF
) EVIDENCE
)
Plaintiffs,)
)
v.)
)
OLIVERA EGG RANCH, LLC,)
)
Defendant.)
)

Plaintiffs Gloria Avila, Chenda Che, Lita Galicinao, Michelle Long, Glen Magaoay, Janice Magaoay, Jeffrey Origer, Larry Yepez, Lynda Yepez, Wayne Yepez, and the Humane Society of the United States ("Plaintiffs") filed a "Request for Reconsideration by the District Court of the Magistrate Judge's Ruling" (Docket at #61). The request was opposed by Defendant Olivera Egg Ranch, LLC ("Defendant") (Docket at #63). The matter was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g).

1 The Court, having considered all arguments in support of and
2 in opposition to the request, and good cause appearing therefore,
3 IT IS HEREBY ORDERED THAT:

4 1. The Magistrate Judge's Order Denying Plaintiffs' Motion
5 for Sanctions ("MJ Order") (Docket at #59) is clearly erroneous
6 and/or contrary to law and shall be set aside. The MJ Order is
7 contrary to law because it applies the wrong legal standard -
8 whether evidence was destroyed - rather than taking into
9 consideration evidence demonstrating that Defendant altered and
10 failed to preserve relevant evidence by displacing large amounts of
11 manure sludge from the lagoon to dry. Removal or complete
12 destruction of evidence, however, is not necessary for a spoliation
13 determination, but merely one example of spoliation. *Clinton v.*
14 *California Dept. of Corrections*, 2009 WL 1308984 at *8 (E.D. Cal.
15 May 11, 2009). The MJ Order is also clearly erroneous in that
16 sanctions are warranted where the undisputed facts demonstrate that
17 Defendant failed to preserve evidence that it had a duty to
18 preserve and which it knew or should have known was relevant given
19 Plaintiffs' pending discovery requests and which was reasonably
20 calculated to lead to the discovery of admissible evidence (the
21 emissions and odors). Defendant never informed Plaintiffs of the
22 excavation work it was conducting. In addition, defense counsel
23 never communicated with their client regarding its duty to preserve
24 relevant evidence. The duty to preserve relevant evidence cannot
25 be excused away by claiming that "Mr. Olivera is not sophisticated
26 in these matters" (Docket at #60, p. 10, l. 10-11) or that defense
27 counsel was unaware that the spoliation was going on. (*Id.*, p. 10,
28 l. 11-16.) *AmeriPride Services, Inc. v. Valley Indus. Service,*

1 Inc., 2006 WL 2308442 at *7 (E.D. Cal. 2006). (It is irrelevant
2 that "litigation counsel was unaware of the construction schedule
3 and therefore had no way of knowing that the destruction of
4 evidence was occurring.") As Plaintiffs correctly contend, the MJ
5 Order goes against the entire prophylactic rationale for imposition
6 of an adverse inference sanction. As this court reiterated in
7 *AmeriPride*, "[a]llowing the trier of fact to draw the inference
8 presumably deters parties from destroying relevant evidence before
9 it can be introduced at trial." 2006 WL 2308442 at *5.
10 Accordingly, such a sanction is appropriate in this case.

11 2. At the trial of this matter, the jury will be instructed
12 as follows:

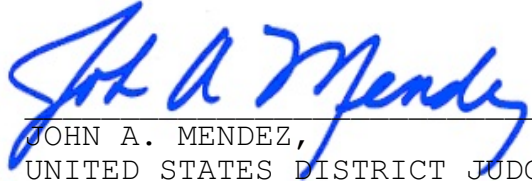
13 The Court determined during pretrial
14 proceedings that Defendant willfully and
15 systematically altered and failed to
16 preserve evidence relevant to the issues you
17 have to decide in this case, and that the
18 Defendant carried out this spoliation of
19 evidence at a time it knew it was obligated
20 to preserve the evidence for Plaintiffs'
planned inspection. You may infer from this
destruction that the evidence Defendant
altered or failed to preserve would have
been unfavorable to its position on the fact
issues that you are being asked to decide in
this case.

21 3. Defendant shall reimburse Plaintiffs for their costs and
22 fees incurred (1) in bringing the Motion for Sanctions (Docket
23 ## 32-39); (2) during the meet and confer with defense counsel
24 related to Defendant's actions; and (3) in bringing the instant
25 Request for Reconsideration of Magistrate Judge's Ruling. In
26 addition, Defendant shall reimburse Plaintiffs for their costs
27 expended in the investigation of Defendant's activities including
28 the hiring of an expert witness in ammonia emissions. Within ten

1 days of the entry of this order, Plaintiffs shall submit with
2 accompanying declaration a statement of the pertinent fees and
3 costs.

4 IT IS SO ORDERED.

5 Dated: February 17, 2010



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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