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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH P. CUVIELLO, et al.,

No. C 06-05517 MHP

Plaintiffs,

MEMORANDUM & ORDER

v.

CITY OF OAKLAND, et al.,

**Re: Plaintiffs' Motion for De Novo Review
of Magistrate Recommendation, Request for
Expansion of the Record, and Objections to
the Scheduling of an Evidentiary Hearing
for Plaintiffs' Motion for Sanctions**Defendants.

This action arises from plaintiffs' efforts to film the treatment of animals during the Ringling Brothers Circus's annual exhibitions at the Oakland Coliseum. The detailed factual background is set forth in prior orders and reports. See Docket Nos. 47, 76 & 180. The parties stipulated to a modified preliminary injunction, which was approved by the court on August 1, 2008. Docket No. 81.

On October 24, 2008, following the 2008 circus, plaintiffs filed a motion for an order to show cause why defendants should not be held in contempt and sanctioned. On January 21, 2009, the court referred the motion to Magistrate Judge Chen, pursuant to Federal Rule of Civil Procedure 72(b) and Civil Local Rule 72-3, for a hearing and a Report and Recommendation on plaintiffs' motion. Docket No. 133. A hearing was held before the magistrate judge on March 11, 2009. On March 26, he entered an order setting a May 15, 2009, evidentiary hearing but limiting the scope of the hearing. Docket No. 180. Plaintiffs noticed two separate motions challenging the magistrate judge's rulings.

1 Plaintiffs' motions are premature. The motion before the magistrate judge is a motion for
2 sanctions based on purported contempt of court by defendants. Federal magistrate judges have no
3 power of contempt themselves but must certify the facts to a judge of the district court. Bingman v.
4 Ward, 100 F.3d 653, 657 (9th Cir. 1996) (citations omitted). For that reason, this court has referred
5 the matter to the magistrate judge for a Report and Recommendation only. The order challenged by
6 plaintiffs deals with the manner in which the magistrate judge intends to hear evidence and reach
7 conclusions to inform his Report and Recommendation. There is no grounds for this court to review
8 in a piecemeal manner decisions of the magistrate judge pertaining to the proceedings before him.
9 Once the magistrate judge has entered his Report and Recommendation, the parties will have an
10 opportunity to raise any objection to it or to the procedures used by the magistrate judge to reach his
11 conclusions.

12 For the foregoing reasons, plaintiffs' motions are DENIED in their entirety, without
13 prejudice to renewal following entry of the magistrate judge's Report and Recommendation.

14
15 IT IS SO ORDERED.

16
17 Dated: May 5, 2009



MARILYN HALL PATEL
United States District Court Judge
Northern District of California