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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RIAZ PATRAS, MARYAM PATRAS and
MARK PATRAS

Plaintiffs,

vs.

CITY OF ANTIOCH, OFFICER DESMOND
BITTNER, SERGEANT MITCH
SCHWITTERS, OFFICER W.N. DILLARD
II, OFFICER STEVEN SOARES, CHIEF OF
POLICE JAMES HYDE, and DOES 1-100

Defendants.

CASE NO.: CV-09-1891 MMC

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND FOR AN AWARD
OF MONETARY SANCTIONS AS
MODIFIED**

On July 27, 2010, at 9:00 a.m. at the above-entitled Court located at 450 Golden Gate Ave., San Francisco, CA 94102, the parties appeared before Honorable Elizabeth D. Laporte, United States Magistrate Judge on Plaintiffs' Motion to Compel Production of Documents and an Award for Monetary Sanctions. Petra Bruggisser and Noah Blechman appeared on behalf of Defendants. Stephen Sommers appeared on behalf of Plaintiffs.

After considering the submitted documents and oral argument, this Court granted Plaintiffs' motion in part and denied the motion in part.

Kumin Sommers, LLP

1 **A. Plaintiffs' request for Responses to Request for Production Numbers 2, 3, 4, and 5.**

2 Request for Production Number 2:

3 Any and all audio taped conversations between Defendant Officer Dillard and Defendant
4 Officer Bittner regarding Section 8 Housing tenants.

5 GRANTED IN PART AND DENIED IN PART. The Court found that Defendants had
6 not raised an "official information" privilege as such procedure outlined by *Kelly v. City of San*
7 *Jose*, 114 F.R.D. 653, 668-673 (N.D.Cal. 1987). The Court weighed privacy rights of Section 8
8 Housing tenants against Plaintiffs' right to discover evidence regarding their individual, *Monell*
9 and associated claims. The Court found the privacy rights of tenants who rent from Plaintiffs do
10 not outweigh the Plaintiffs' right to discovery of evidence to support Plaintiffs' individual,
11 *Monell* and associated claims. However, the Court found that privacy rights of Section 8 tenants
12 who do not rent from Plaintiffs do not trump Plaintiffs' right to discovery of evidence to support
13 Plaintiffs' individual, *Monell* and associated claims. The Court further found that Plaintiffs'
14 unlimited timeframe for its request to be overbroad.

15 DEFENDANTS ARE HEREBY ORDERED to produce all audio taped conversations
16 between Officers Dillard and Bittner from [June 1, 2007 through October 31, 2007], regarding
17 Section 8 Housing tenants who rent from any of the Plaintiffs.

18 The Parties shall further meet and confer regarding Plaintiffs' remaining request
19 pertaining to audio taped conversations between Defendant Officer Dillard and Officer Bittner
20 regarding other Section 8 Housing tenants that did not rent from any of the Plaintiffs..

21 IT IS FURTHER ORDERED that Defendants produce an affidavit or declaration from a
22 responsible official(s) within the agency with personal knowledge, under oath or penalty of
23 perjury, which affirms that the agency conducted a diligent search for the evidence subject to this
24 request and that such evidence has been produced, and explains the steps that were taken in
25 conducting the search.

1 Request for Production Number 3:

2 All DOCUMENTS relating to, regarding, referring to and/or describing any and all taped
3 conversations between Defendant Officer Dillard and Defendant Officer Bittner regarding
4 Section 8 Housing tenants.

5 GRANTED IN PART AND DENIED IN PART. The Court found that Defendants had
6 not raised an “official information” privilege as such procedure outlined by *Kelly v. City of San*
7 *Jose*, 114 F.R.D. 653, 668-673 (N.D.Cal. 1987). The Court weighed privacy rights of Section 8
8 Housing tenants against Plaintiffs’ right to discover evidence regarding their individual, *Monell*
9 and associated claims. The Court found the privacy rights of tenants who rent from Plaintiffs do
10 not outweigh the Plaintiffs’ right to discovery of evidence to support their individual, *Monell* and
11 associated claims. However, the Court found that privacy rights of Section 8 tenants who do not
12 rent from Plaintiffs do not trump Plaintiffs’ right to discovery of evidence to support their
13 individual, *Monell* and associated claims. The Court further found that Plaintiffs’ unlimited
14 timeframe for its request to be overbroad.

15 DEFENDANTS ARE HEREBY ORDERED to produce all documents related to,
16 regarding, referring to and/or describing any and all audio taped conversations between Officers
17 Dillard and Bittner from [June 1, 2007 through October 31, 2007], regarding Section 8 Housing
18 tenants who rent from any of the Plaintiffs.

19 IT IS FURTHER ORDERED that Defendants produce an affidavit or declaration from a
20 responsible official(s) within the agency with personal knowledge, under oath or penalty of
21 perjury, which affirms that the agency conducted a diligent search for the evidence subject to this
22 request and that such evidence has been produced, and explains the steps that were taken in
23 conducting the search.

24 Request for Production Number 4:

25 Any and all audio taped conversations between Defendant Officer Dillard and Defendant
26 Officer Bittner regarding any of the Plaintiffs in this case.

27 GRANTED. Defendants asserted that all such audiotapes have been produced.
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IT IS ORDERED that Defendants produce an affidavit or declaration from a responsible official(s) within the agency with personal knowledge, under oath or penalty of perjury, which affirms that the agency conducted a diligent search for the evidence subject to this request and that such evidence has been produced, and explains the steps that were taken in conducting the search.

Request for Production Number 5:

All DOCUMENTS relating to, regarding, referring to and/or describing any and all taped conversations between Defendant Officer Dillard and Defendant Officer Bittner regarding any of the Plaintiffs in this case.

GRANTED. Defendants asserted that all such audiotapes have been produced.

IT IS ORDERED that Defendants produce an affidavit or declaration from a responsible official(s) within the agency with personal knowledge, under oath or penalty of perjury, which affirms that the agency conducted a diligent search for the evidence subject to this request and that such evidence has been produced, and explains the steps that were taken in conducting the search.

B. Plaintiffs' Request for Monetary Sanctions.

DENIED.

IT IS SO ORDERED

Date: ___Aug. 6, 2010_____

Elizabeth D. Laporte
Honorable Elizabeth D. Laporte
Magistrate of the U.S. District Court
Northern District of California