

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**United States District Court**  
For the Northern District of California

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Robert C.P. Keane, et al.,  
Plaintiffs,  
v.  
Seth M. McMullen, et al.,  
Defendants.

No. C 07-4894 SBA (JL)

**ORDER GRANTING IN PART AND DENYING IN PART DISCOVERY REQUESTS (Docket # 99)**

**INTRODUCTION**

All discovery disputes in this case have been referred by the District Court (Hon. Sandra B. Armstrong) pursuant to 28 U.S.C. §636(b) and Civil Local Rule 72. The parties' discovery disputes, in their Joint Statements e-filed and submitted to the Court, were decided without oral argument pursuant to Civil Local Rule 7-1(b). The Plaintiffs request an order requiring the Defendant Accornero to produce to the Court within three days for an *in camera* review all documents relating to Accornero's personnel records, training records, disciplinary actions against him, civil and criminal complaints filed against him, and the investigation and search underlying Plaintiffs' claim. Plaintiffs also request additional time to depose Accornero regarding the documents produced and the incident involving his canine prior to the search. The Defendants request an order compelling the Plaintiffs to

1 produce their fee agreement within five days of this Order along with all billing entries to  
2 date for all attorneys that have worked on the Plaintiffs' case from its inception.

3 **FACTUAL BACKGROUND**

4 Plaintiffs filed this civil rights action pursuant to 42 U.S.C. §1983 and *Bivens v. Six*  
5 *Unknown Armed Federal Agents of the Narcotics Bureau*, 403 U.S. 388 (1971), alleging  
6 that Defendants DEA Special Agent Seth McMullen, DEA Task Force Officer John Silva  
7 and Petaluma Police Department Officer Accornero violated Plaintiffs' constitutional rights.  
8 Accornero participated in a search of Plaintiffs' home with his narcotics dog during the  
9 execution of search warrants obtained by Agent McMullen and Officer Silva.

10 The search occurred on December 19, 2006, Keane was arrested. Plaintiffs allege  
11 that Defendant McMullen obtained the search and arrest warrants by misrepresentations,  
12 that the Defendants failed to knock and announce their presence before entering Plaintiffs'  
13 home, and that the Defendants used excessive force while executing the warrants. With  
14 respect to Accornero, Plaintiffs allege that he threatened Plaintiff Keane with his dog and  
15 that his "aggressive alert dog" destroyed Plaintiffs' personal property during the search.  
16 Accornero denies these allegations.

17 **Plaintiffs' Requests**

18 In the Joint Statement, Plaintiffs ask the Court to order Defendant Accornero to  
19 produce his personnel and training records, records of disciplinary actions against him, civil  
20 and criminal complaints filed against him and all documents relating to the investigation and  
21 search underlying Plaintiffs' complaint. The parties agree that the Court may conduct an *in*  
22 *camera* review of the documents. Plaintiffs further ask that the Plaintiff be granted  
23 additional time to depose Accornero, following the disclosure of this information.

24 When a plaintiff suing under federal civil rights statutes seeks to discover  
25 confidential information from state or local law enforcement agencies, the court should  
26 engage in a balancing approach that is moderately pre-weighted in favor of disclosure.  
27 *Kelly v. City of San Jose*, 114 F.R.D. 653, 661 (N.D. Cal. 1987). In this case, this Court  
28

1 finds that the submission of documents for *in camera* review satisfies the concerns of the  
2 Defendants regarding relevance and privacy.

3 **1. Accornero's Training and Personnel File**

4 The Court hereby orders Defendants to produce the documents for *in camera* review  
5 within one week of the date of this Order. These documents include Accornero's personnel  
6 file and records of disciplinary actions. However, the order is limited to complaints or  
7 disciplinary matters involving: the mishandling or use of a canine, illegal search and  
8 seizure, or excessive force.

9 **2. Civil Actions Brought Against Mr. Accornero**

10 Defendant shall submit the case numbers of any civil or criminal cases in which  
11 Officer Accornero was a party where the plaintiff alleged constitutional rights violations.  
12 Defendant shall comply with this Order within the next five business days.

13 **3. Deposition Testimony of Defendants Paul Accornero and John Silva**

14 If the Court orders Defendant to produce documents following the Court's *in camera*  
15 review, Plaintiff shall be allowed two additional hours to depose Officer Accornero, limited  
16 to questions regarding the documents produced and the incident with the dog the day  
17 before the raid. According to Federal Rule of Civil Procedure 30(d)(1), a deposition is  
18 limited to one day of seven hours. FED. R. CIV. P. 30(d)(1). Because Officer Accornero has  
19 already been deposed for five hours, the Court will allow this additional two hours.

20 **Defendant's Request**


21 Accornero asks the Court to order the Plaintiffs to produce their attorneys' fee  
22 agreement based on the Plaintiffs' asserting their right to attorneys fees. This request is  
23 premature and is denied. Defendants have no need for the fee agreement between the  
24 Plaintiffs and their attorneys at this stage.

25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO ORDERED.

DATED: November 14, 2008

  
\_\_\_\_\_  
JAMES LARSON  
Chief Magistrate Judge

G:\JLALL\CHAMBERS\CASES\CIV-REF\07-4894\ORDER-GIP-99.wpd