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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JULIA SOROKIN, LOUIS A. BRAVO,
Plaintiffs,
v.
SHERIFF'S DEPARTMENT OF SAN DIEGO
COUNTY, et al.,
Defendants.

Case No. 10cv1842- WQH (BLM)

**ORDER (1) GRANTING IN PART
DEFENDANTS' REQUEST FOR
SANCTIONS, (2) SETTING NEW
DISCOVERY DATES, AND (3)
VACATING THE APRIL 15, 2011
SETTLEMENT CONFERENCE**

[ECF No. 25]

In 2010, Plaintiffs Julia Sorokin and Louis Bravo filed three complaints in the Southern District of California. In May, Plaintiffs filed a civil rights complaint against a number of individuals and entities involved in law enforcement in New York City. 10cv1153-WQH(BLM). In September 2010, Plaintiffs filed the instant civil rights complaint against a number of individuals and entities involved in law enforcement in San Diego. ECF No. 1. In the same month, Plaintiffs filed a complaint against Dow Jones, The Wall Street Journal and an individual. 10cv1861-WQH(BLM). In February 2011, the first and third cases were transferred to the Southern District of New York. As a result, only the instant case remains in the Southern District of California.

On December 6, 2010, after consulting with all parties, this Court issued a scheduling order setting discovery deadlines and requiring the parties to complete all discovery by July 1, 2011. ECF No. 13. In accordance with the Court's order, Defendants noticed the depositions of both

1 Plaintiffs and served on Plaintiffs Requests for Production of Documents, Requests for Admission,
2 and Special Interrogatories. ECF No. 25-2 at 3, Ex. B. Plaintiffs failed to appear for their
3 depositions and failed to respond to any of the written discovery. As a result, Defendants were
4 forced to file the instant motion for sanctions. ECF No. 25. Plaintiffs filed an untimely opposition,
5 which this Court accepted on discrepancy. ECF Nos. 28 &29. In their opposition, Plaintiffs
6 indirectly acknowledge that they have not complied with their discovery obligations but they argue
7 that their “principle case” is in New York and that since the instant case is “technically” the same
8 case as the one against the New York law enforcement entities, they should be excused from
9 handling this case at this time. ECF No. 29 at 2-4. Plaintiff’s arguments are without merit.

10 On February 28, 2011, the Court issued an order setting a briefing schedule to address the
11 alleged discovery violations and set a court hearing at 9 a.m. on March 29, 2011. ECF No. 24.
12 The Order explicitly required the parties to appear in person at the hearing and warned them that
13 failure to comply with the Order could result in the imposition of sanctions. Id. Neither Plaintiff
14 appeared at the hearing. Defense counsel appeared and the hearing was conducted without
15 Plaintiffs. ECF No. 30.

16 **A. Plaintiffs’ Failure to Appear at Their Noticed Depositions**

17 The Federal Rules of Civil Procedure state that a court may impose sanctions if “a party
18 [...] fails, after being served with proper notice, to appear for that person’s deposition[.]” Fed.
19 R. Civ. P. 37(d)(1)(A)(i). Under Rule 37, a failure by a party to appear at their deposition will
20 result in sanctions unless the failure “was substantially justified or other circumstances make an
21 award of expenses unjust.” Fed. R. Civ. P. 37(d)(3). Furthermore, in the Case Management
22 Conference Order, the Court required Plaintiffs to contact defense counsel to finalize a date for
23 their depositions and warned them that failure to comply with a “discovery order of the Court may
24 result in the sanctions provided for in Fed. R. Civ. P. 37[.]” ECF No. 13. Possible Rule 37
25 sanctions range from payment of expenses and attorney’s fees to dismissal of the action in whole.
26 Fed. R. Civ. P. 37.

27 In their motion for sanctions, Defendants explain that Plaintiffs’ depositions initially were
28 set for December 14, 2010. ECF. No. 25-1 at 2. During the telephonic Case Management

1 Conference, Plaintiffs explained that Mr. Bravo may not be able to appear at the deposition, as
2 he had a doctor's appointment. ECF No. 25-2 at 2. In light of Mr. Bravo's conflict, the Court
3 ordered Plaintiffs to contact defense counsel, George Brewster, Jr., by December 9, 2010, to
4 finalize their deposition date. ECF No. 13. In compliance with that order, Plaintiffs sent an e-mail
5 to Mr. Brewster suggesting the dates of February 15, 16, or 18, 2011. ECF 25-2 at 2. After a
6 brief exchange, Plaintiffs confirmed that they would be available on those dates. Id.
7 Consequently, Defendants re-noticed the Plaintiffs' depositions for February 16, 2011, and served
8 the notice by mail on December 14, 2010. Id. at 2-3. Mr. Brewster sent Plaintiffs an email
9 reminder about their depositions on February 8, 2011. Id. at 3.

10 On February 15, 2011, the day before the depositions were scheduled to occur, Plaintiffs
11 informed Mr. Brewster that they would not be attending. Id. Plaintiffs explained that they would
12 be in New York, handling the two related cases that had been transferred there from this district.
13 Id. Following this conversation, Mr. Brewster contacted the Court, notified Plaintiffs that the
14 depositions were going forward the next day, and proceeded with the deposition as scheduled.
15 Id. at 3-4. Plaintiffs did not show and Mr. Brewster noticed their non-appearance. Id. at 4, Ex.
16 D.

17 In their opposition to the sanction motion, Plaintiffs merely state that the two New York
18 cases have "run into problems that have forced Plaintiffs Julia Sorokin and Louis A. Bravo to be
19 physically present in New York" and that they have had difficulty sending mail and accessing their
20 e-mail. ECF No. 29 at 2. Plaintiffs did not submit any evidence, including a declaration from
21 either Plaintiff, to support their arguments. Plaintiffs also never explain why they could not
22 appear in San Diego for their depositions on February 16th-the date they chose. Finally, Plaintiff's
23 general assertions that it is difficult to handle cases in two districts and that they would prefer to
24 resolve the cases in New York before handling this case do not justify Plaintiffs' complete failure
25 to respond to discovery and to attend required court appearances in this district.¹

26
27 ¹Plaintiffs state in their opposition that they sent an e-mail to a judge in New York and to this Court,
28 presumably explaining their problems in New York. ECF No. 29 at 3. Plaintiffs did not include a copy of this e-mail
in their opposition, and this Court has no record of having received it. Plaintiffs do not provide the contents of the
e-mail, except to say that it is "regarding the problem" of Plaintiff's related cases being transferred to New York. Id.
Even if this Court had received an e-mail, it would not excuse Plaintiffs' actions in this case. Merely apprising the

1 Plaintiffs also contend that they are “not avoiding participation in this action, since
2 technically Sorokin v. Sheriff and Sorokin vs. New York District Attorney’s Office are the same
3 case.” ECF No. 29 at 3. The Court rejects Plaintiff’s argument. While these cases may involve
4 some related issues; they are not the same case. The cases assert different claims against
5 different defendants and Plaintiffs must respond to discovery and participate in court appearances
6 in each of the cases.

7 Accordingly, this Court finds that Plaintiffs knowingly, voluntarily and intentionally failed
8 to appear at their properly-noticed deposition. Fed. R. Civ. P. 37(d)(1)(A)(i). The Court also
9 finds that Plaintiffs’ failure to appear was not “substantially justified” and that there are no “other
10 circumstances” that would “make an award of expenses unjust.” Fed. R. Civ. P. 37(d)(3). Thus,
11 sanctions against Plaintiffs are appropriate and required.

12 **B. Plaintiff’s Failure to Respond to Written Discovery Requests**

13 Defendants also request sanctions on the grounds that Plaintiffs have failed to respond to
14 any written discovery requests. Specifically, Defendants assert that Plaintiffs were served with
15 the following requests: (1) Special Interrogatories, (2) Requests for Production of Documents, and
16 (3) Requests for Admissions. ECF No. 25-1 at 3; ECF No. 25-2 at 3, Ex. B. A court shall impose
17 sanctions where “a party, after being properly served with interrogatories under Rule 33 [...] fails
18 to serve its answers, objections or written responses” unless the responding party shows that the
19 failure was “substantially justified or other circumstances make an award of expenses unjust.”
20 Fed. R. Civ. P. 37(d). In addition, a party can be sanctioned for failure to obey an order to permit
21 or provide discovery. Fed. R. Civ. P. 37(b)(2)(A). Finally, though a party is not typically subject
22 to sanctions for their failure to respond to requests for admissions, any requests not responded
23 to within 30 days are deemed admitted. Fed. R. Civ. P. 36(a)(3).

24 In Defendants’ motion for sanctions, Mr. Brewster states that Plaintiffs were served with
25 the discovery requests on January 10, 2011. ECF No. 25-2 at 3. Responses to these requests
26 were due February 12, 2011. Id. On February 8, 2011, Mr. Brewster sent an e-mail to Plaintiffs,
27 reminding them when responses were due. Id. Defendants did not receive timely responses to
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Court of an ongoing difficulty or indicating an intention to violate a Court order or discovery obligation does not authorize or excuse the subsequent non-performance or non-compliance.

1 any of their requests. On February 15, 2011, three days after the deadline to respond, Plaintiffs
2 sent an e-mail reply to Mr. Brewster, but Plaintiffs did not address their late responses. Id. As
3 of March 29, 2011, Defendants had not received any of Plaintiffs' responses.

4 In their opposition, Plaintiffs do not address their failure to comply with Defendants' written
5 discovery requests. Rather, Plaintiffs merely state that they cannot continue with their obligations
6 in this case while their related cases are pending in New York and ask the Court to "grant a longer
7 postponement." ECF No. 29 at 3-4. However, Plaintiffs already presented this precise argument
8 in their request to stay the case. ECF No. 21. The Honorable William Q. Hayes denied Plaintiffs'
9 request, finding that Plaintiffs had not established that they will suffer a "hardship or inequity"
10 if required to continue with this case. ECF No. 26 at 2. Plaintiffs have not presented any new
11 facts and the Court finds that they have failed to establish that their failure to respond to
12 discovery was "substantially justified" or that there are "other circumstances" that would "make
13 an award of expenses unjust." Fed. R. Civ P. 37(d)(3). Accordingly, sanctions against Plaintiffs
14 are appropriate for their failure to respond to Defendants' interrogatories. Moreover, the requests
15 for admission are deemed admitted and the Court **ORDERS** Plaintiffs to produce the requested
16 documents. See infra Section C.

17 **C. Sanctions**

18 **1. Plaintiffs failure to attend their noticed depositions and to respond to** 19 **interrogatories.**

20 Defendants ask the Court to dismiss Plaintiffs' case on the ground that the Plaintiffs have
21 flagrantly disregarded the discovery process. ECF No. 25 at 5. Alternatively, Defendants seek
22 their reasonable attorneys fees and costs. Id.

23 Rule 37 of the Federal Rules of Civil Procedure authorizes the district court to dismiss an
24 action if a party fails to appear for his or her deposition, respond to properly served discovery
25 requests, or comply with a court order. Fed. R. Civ. P. 37(b), (d). Dismissal is an appropriate
26 sanction only where the non-complying party's behavior demonstrates "willfulness, bad faith, or
27 fault." Hyde & Drath v. Baker, 24 F.3d 1162, 1167 (9th Cir. 1994). "Disobedient conduct not
28 shown to be outside the control of the litigant is sufficient to demonstrate willfulness, bad faith,
or fault." Jorgensen v. Cassidy, 320 F.3d 906, 912 (9th Cir. 2003) (quoting Hyde & Drath, 24

1 F.3d at 1166). However, before dismissing a case, a court should consider the following factors:
2 “(1) the public's interest in expeditious resolution of litigation, (2) the court's need to manage its
3 dockets, (3) the risk of prejudice to the party seeking sanctions, (4) the public policy favoring
4 disposition of cases on their merits, and (5) the availability of less drastic sanctions.” Hyde &
5 Drath, 24 F.3d at 1166 (citing Wanderer v. Johnston, 910 F.2d 652, 656 (9th Cir. 1990)); see also
6 Stars’ Desert Inn Hotel & Country Club, Inc. v. Hwang, 105 F.3d 521, 524 (9th Cir. 1997). “The
7 first two of these factors favor the imposition of sanctions in most cases, while the fourth cuts
8 against a default or dismissal sanction. Thus the key factors are prejudice and availability of
9 lesser sanctions.” Hwang, 105 F.3d at 524.

10 Here, both the prejudice and availability of lesser sanctions factors weigh against dismissal
11 at this time. While Defendants have suffered harm from Plaintiffs’ repeated discovery violations,
12 Defendants still have time before the discovery deadline to conduct the requested discovery.
13 Similarly, while Plaintiffs have intentionally violated a Court order by failing to appear at the March
14 29th hearing, the Court has not conclusively determined that lesser sanctions will not be
15 successful in getting Plaintiffs to comply with their discovery obligations or that Plaintiffs will
16 ignore the Court’s discovery orders. Accordingly, the Court declines to recommend that this case
17 be dismissed for Plaintiffs’ current discovery violations. However, the Court notes that Plaintiffs
18 have repeatedly, knowingly, and intentionally violated their discovery obligations and court orders.
19 The Court warns Plaintiffs that a future failure to comply with a discovery obligation or a court
20 order may result in the dismissal of this case. See Fed. R. Civ. P. 37.

21 The Court finds that Defendants’ alternative request of fees and costs is an appropriate
22 sanction for Plaintiffs’ failure to appear for their depositions, failure to respond to the Special
23 Interrogatories, and failure to attend the required court hearing. Defendants request \$200 for
24 court reporter fees incurred when Plaintiffs failed to show at their February 15, 2011 depositions.
25 ECF No. 25-1 at 5; ECF No. 25-2 at 4, Ex. D (paid invoice). The Court finds that this expense is
26 a reasonable one incurred as a direct result of Plaintiffs’ intentional refusal to appear for their
27 properly-noticed deposition and Defendants’ need to document the discovery violation.

28 Defendants also request \$820 in attorney’s fees, representing four hours of Mr. Brewster’s
work at his billing rate of \$205 per hour. In his declaration, Mr. Brewster explains that these four

1 hours consist of: preparing and filing the notice of motion, memorandum of points and authorities
2 and his declaration, appearing for Plaintiffs' depositions and emailing Plaintiffs with respect to
3 their depositions and discovery responses. ECF No. 25-2 at 4. The Court has broad discretion
4 to determine attorney's fees (Paul v. Gaulty, 886 F.2d 268, 270 (9th Cir. 1989)), and finds it
5 appropriate to make the following changes to Defendants' request:

6 1) The Court deducts 30 minutes from Defendants' request for attorney's fees,
7 representing Mr. Brewster's time spent corresponding with Plaintiffs via emails. The Court
8 finds this work was not the result of Plaintiff's failures and therefore not an appropriate
9 basis for an award of attorney's fees. Fed. R. Civ. P. 37(d)(3).

10 2) The Court adds one hour to Defendants' request for attorney's fees, representing Mr.
11 Brewster's appearance in court on March 29, 2011 for the hearing on Defendants' Motion
12 for Sanctions.

13 These adjustments bring the time Mr. Brewster has expended on this matter to 4.5 hours. At Mr.
14 Brewster's reasonable hourly rate of \$205, his attorney's fees stand at \$922.50. Thus, the Court
15 **ORDERS** Plaintiffs to pay Defendants \$1,122.50, representing Mr. Brewster's reasonable
16 attorney's fees and the \$200 fee incurred as a result of Plaintiffs' failure to appear for their
17 depositions. Plaintiffs must pay this sanction by **April 18, 2011** and must file with the Court a
18 Notice of Payment of Sanctions by **April 25, 2011**.

19 **2. Plaintiffs' failure to respond to Defendants' request for production of**
20 **documents**

21 Although Plaintiffs knowingly and intentionally failed to comply with Rule 34 and produce
22 the requested documents, Rule 37 sanctions are not available. However, Rule 37 sanctions are
23 appropriate when a party fails to obey a court order to provide discovery. Fed. R. Civ. P.
24 37(b)(2)(A). Therefore, the Court **ORDERS** Plaintiffs to respond to Defendants' request for
25 production of documents by **April 20, 2011**. Plaintiffs' failure to respond to Defendants' Request
26 for Production of Documents by this date will result in the imposition of Rule 37 sanctions,
27 including the possible dismissal of the case. Id.

28 **3. Plaintiffs' failure to respond to Defendants' request for admissions**

Rule 36 mandates that if Requests for Admissions are not timely answered, each request

1 is deemed admitted unless the responding party establishes that a withdrawal of these admissions
2 would "promote the presentation of the merits of the actions" and would not "prejudice the
3 requesting party in maintaining or defending the action on the merits." Fed. R. Civ. P. 36.
4 Plaintiffs have not made the requisite showing, so each Request is deemed admitted and
5 conclusively established.

6 **D. Discovery Orders**

7 Throughout their correspondence with defense counsel and in their opposition to the
8 instant motion, Plaintiffs never argue that Defendants' discovery requests were unreasonable or
9 improper. Accordingly, and in an effort to provide Plaintiffs with a final opportunity to comply
10 with their discovery obligations in this case, the Court **ORDERS** Plaintiffs to appear for their
11 depositions on **April 22, 2011** at the Office of George Brewster, 1600 Pacific Highway, Room
12 355, San Diego, CA, 92101. Plaintiff Louis A. Bravo's deposition will begin at **9:00 a.m.**, and the
13 deposition of Plaintiff Julia Sorokin will begin at **11:00 a.m.** Both Plaintiffs also are required to
14 provide written responses to Defendants' Requests for Production of Documents and Special
15 Interrogatories by **April 20, 2011**. Plaintiffs are again warned that failure to comply with this
16 Court's orders, failure to respond to written discovery, and/or failure to appear for the April 22nd
17 depositions may result in additional sanctions, including the dismissal of their case in whole.

18 **E. Settlement Conference**

19 Given Plaintiffs' discovery violations and the resulting status of the case, the Court
20 **VACATES** the Settlement Conference currently scheduled for April 15, 2011.

21 **IT IS SO ORDERED.**

22 DATED: April 6, 2011

23 

24 BARBARA L. MAJOR
25 United States Magistrate Judge
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