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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE ESTATE OF RUBEN NUNEZ
by and through its successor-in-
interest LYDIA NUNEZ, ALBERT
NUNEZ, and LYDIA NUNEZ,
Plaintiff,
v.
CORRECTIONAL PHYSICIANS
MEDICAL GROUP, INC., et al.,
Defendants.

Case No.: 16cv1412-BEN-MDD

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR SANCTIONS
AGAINST DEFENDANT CPMG**

[ECF No. 358]

Before the Court is Plaintiff's motion for sanctions against Defendant Correctional Physicians Medical Group, Inc. ("CPMG") based upon an alleged discovery violation. On January 7, 2019, Plaintiff moved the district judge to refer this matter to this Court. (ECF No. 337). The district judge granted the motion on February 1, 2019. (ECF No. 343). Plaintiff filed this motion for sanctions on February 12, 2019. (ECF No. 358). CPMG responded in opposition on February 15, 2019. (ECF No. 363).

LEGAL STANDARD

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2 The Court's authority to impose sanctions stems from various
3 provisions in the Federal Rules of Civil Procedure and from the Court's
4 inherent authority. The Court's inherent authority was explained by the
5 Supreme Court as follows:

6 Federal courts possess certain "inherent powers," not conferred by
7 rule or statute, "to manage their own affairs so as to achieve the
8 orderly and expeditious disposition of cases." *Link v. Wabash R.*
9 *Co.*, 370 U.S. 626, 630–631, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962).
10 That authority includes "the ability to fashion an appropriate
11 sanction for conduct which abuses the judicial process." *Chambers*
v. NASCO, Inc., 501 U.S. 32, 44–45, 111 S.Ct. 2123, 115 L.Ed.2d
27 (1991).

12 *Goodyear Tire & Rubber Co. v. Haeger*, __ U.S. __, 137 S. Ct. 1178, 1186, 197
13 L. Ed. 2d 585 (2017). For the Court to act pursuant to its inherent authority,
14 there must be bad faith or a willful abuse of the discovery process. *Id.*;
15 *Oregon RSA No. 6 v. Castle Rock Cellular of Oregon Ltd. Partnership*, 76 F.3d
16 1003, 1007 (9th Cir. 1996); *CrossFit, Inc. v. National Strength and*
17 *Conditioning Assoc.*, No. 14-cv-1191-JLS-KSC, 2017 WL 4700070 *3 (S.D.
18 Cal. Oct. 19, 2017).

19 Rule 26(g)(3), Fed. R. Civ. P., provides that a party or attorney who
20 signs a discovery response that is incomplete or incorrect as of the time it is
21 made, may be sanctioned unless the signer acted with substantial
22 justification. Rule 26(e), Fed. R. Civ. P., requires that a party who has
23 responded to a discovery request must supplement the response in a timely
24 manner upon learning that the response was incorrect or incomplete in some
25 material respect and that the corrective information had not otherwise been
26 made known to other parties in the course of discovery.

27 Rule 37(b)(2), Fed. R. Civ. P., provides for sanctions for failing to obey a

1 discovery order. Rule 37(c) provides for sanctions for failing to supplement a
2 response. And, Rule 37(e) provides for sanctions for the loss of electronically
3 stored information that should have been preserved and was lost because a
4 party failed to take reasonable steps to preserve it and it cannot be restored
5 or replaced.

6 DISCUSSION

7 Plaintiff asserts that counsel for Defendants CPMG, Sara Hansen and
8 San Diego County engaged in a conspiracy to withhold critical evidence from
9 discovery in this case. These are serious allegations and the Court has
10 reviewed the history of discovery disputes in this case, reviewed all of the
11 pleadings filed in connection with this motion in this Court and before the
12 district judge and reviewed the allegedly withheld discovery. The Court finds
13 no evidence of a conspiracy to withhold discovery. Although the parties did
14 attempt to make some evidence non-discoverable, through the use of certain
15 state protections, that does not make for a conspiracy. The Court overruled
16 their objections and the evidence was disclosed. This is no different than
17 attorneys unsuccessfully seeking to protect information under the attorney-
18 client privilege or work-product protection. It is not unlawful or suspicious to
19 seek to use legal protections. There is no evidence of willfulness or bad faith
20 to implicate the Court's inherent authority.

21 The bulk of the discovery allegedly withheld by CPMG is an email
22 chain, most of which does not involve Plaintiff. The remainder appear to be
23 meeting notes and certain documents that appear to have originated with the
24 County of San Diego. There is no evidence of destruction of information,
25 merely tardy disclosure. Because no electronically stored evidence appears to
26 have been lost or destroyed, Rule 37(e) is not implicated.

27 The Court finds that CPMG timely supplemented its response under

1 Rule 26(e). Perfection is not required in discovery. *Cf.* Fed. R. Civ. P. 26(g)
2 (certification of discovery responses must be informed by “a reasonable
3 inquiry”); *Da Silva Moore v. Publicis Groupe*, 287 F.R.D. 182, 191 (S.D.N.Y.
4 2012) (“the Federal Rules of Civil Procedure do not require perfection”). The
5 relevant portions of the email chain were contained within a much larger,
6 mostly irrelevant thread of mail. And the Court accepts CPMG’s statement
7 that the other documents were unknown.

8 The Court finds that with the trial date being vacated to be reset
9 shortly, there is time for certain corrective action. The Court will permit
10 Plaintiff to depose Dr. Mannis, Dr. Rao and Dr. Badre based solely on the
11 contents of the newly disclosed evidence. Each deposition shall be no longer
12 than four hours and shall be taken, if Plaintiff chooses to do so, within 21
13 days of this Order. Each party shall bear their own costs. This is not
14 intended to authorize discovery about discovery; the questioning is limited to
15 issues raised in the contents of the newly discovered documents.

16 CONCLUSION

17 Plaintiff’s motion for sanctions against Defendant CPMG is **GRANTED**
18 **IN PART AND DENIED IN PART.** The motion is **GRANTED** only to the
19 extent that Plaintiff may depose Drs. Mannis, Rao and Badre, for no more
20 than four hours each, limited to questioning regarding the contents of the
21 newly produced documents. In all other respects, the motion for sanctions is
22 **DENIED.**

23 **IT IS SO ORDERED.**

24 Dated: March 4, 2019



25 Hon. Mitchell D. Dembin
26 United States Magistrate Judge
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