

United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,
Plaintiffs,
v.
GAVIN C. NEWSOM, et al.,
Defendants.

Case No. 94-cv-02307 CW
ORDER GRANTING MOTION FOR A
PROTECTIVE ORDER; DENYING
MOTION TO STRIKE AS MOOT
(Re: Dkt. Nos. 3075, 3116)

Now before the Court is Plaintiffs' motion for a protective order to prevent Defendants from taking the depositions of thirteen class members whose declarations were filed on June 3, 2020, in support of Plaintiffs' pending post-judgment state-wide enforcement motion with respect to seven prisons (state-wide enforcement motion), Docket No. 2948. Motion for Protective Order, Docket No. 3075. Plaintiffs argue that Defendants have not provided any legitimate reason for taking the depositions; the depositions would place the deponents at risk of contracting Covid-19, retaliation, and re-traumatization; and Defendants were not diligent in noticing the depositions.

In post-judgment proceedings, a party's ability to take discovery is subject to the Court's discretion. See California

1 Dep't of Soc. Servs. v. Leavitt, 523 F.3d 1025, 1033 (9th Cir.
2 2008). A party seeking to take discovery in connection with a
3 motion to enforce a judgment¹ must make a "timely" showing that the
4 discovery it seeks could uncover "potentially favorable
5 information" relevant to the resolution of the motion. Id. at
6 1034 (citations omitted).

7 Here, Defendants failed to make this requisite showing. The
8 original deadline for Defendants' opposition to the state-wide
9 enforcement motion was June 17, 2020. Thus, Defendants were on
10 notice since June 3, 2020, of a deadline to file any evidence in
11 support of their opposition to the state-wide enforcement motion.

12 On June 15, 2020, the Court extended the June 17, 2020,
13 deadline for opposing the state-wide enforcement motion to
14 September 8, 2020, in response to Defendants' motion for an
15 extension of time. See Order, Docket No. 2961. Although
16 Plaintiffs served the thirteen deponents' declarations on
17 Defendants in May 2020 and filed them on the docket on June 3,
18 2020, Defendants waited until August 28, 2020, to notify
19 Plaintiffs of their intent to depose the thirteen inmates, and
20 until September 3, 2020, to serve the deposition notices, even
21 though their opposition to the state-wide enforcement motion was
22 due just a few days later.

23 On August 31, 2020, Defendants moved for a second time to
24 extend the deadline for filing an opposition to the state-wide
25 enforcement motion by thirty days. Docket No. 3053. One of the
26 bases for the extension motion was that Defendants wished to take

27 _____
28 ¹ Plaintiffs' state-wide enforcement motion is analogous to a
motion to enforce a judgment.

1 the thirteen depositions at issue. Defendants did not show that
2 the depositions in question were needed to uncover potentially
3 favorable information relevant to the resolution of the state-wide
4 enforcement motion. See Defs.' Mot. to Extend Time at 3-4, Docket
5 No. 3053. Nor did Defendants show that they had been diligent in
6 noticing the depositions. Id. Accordingly, the Court found that
7 Defendants had not shown good cause for extending the September 8,
8 2020, deadline by thirty days.² Because Defendants failed to make
9 a timely showing that the thirteen depositions could uncover
10 potentially favorable information relevant to the resolution of
11 the state-wide enforcement motion, the Court GRANTS Plaintiffs'
12 motion for a protective order with respect to the thirteen
13 depositions at issue.

14 Also pending before the Court is Defendants' motion to strike,
15 which they filed on October 2, 2020. Motion to Strike, Docket No.
16 3116. Defendants move (1) to strike new materials that Plaintiffs
17 filed in support of their reply in connection with the state-wide
18 enforcement motion on the ground that the Court's consideration of
19 the new materials would prejudice Defendants if the Court does not
20 allow them additional time to respond; and (2) to strike the reply
21 declaration of Gay Grunfeld on the ground that it contains
22 impermissible argument. Subject to the terms discussed during the
23 hearing held on October 6, 2020, the Court will provide Defendants
24 with time to respond to any materials beyond the scope of
25 Defendants' opposition that Plaintiffs filed in support of their

26
27 ² The Court extended this deadline by three days, from
28 September 8, 2020, to September 11, 2020, when it ruled on
Defendants' second extension motion on September 6, 2020. Docket
No. 3058.

1 reply. The Court will not consider the non-evidentiary argument
2 contained in the Grunfeld declaration. Accordingly, Defendants'
3 motion to strike is DENIED AS MOOT.

4 IT IS SO ORDERED.

5 Dated: 10/8/2020



6 CLAUDIA WILKEN
7 United States District Judge

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