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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE ESTATE OF CHRISTOPHER G.)	2:02-cv-02929-FMC-RZx
L. WALLACE, et al.,)
)
Plaintiffs,)
)
vs.)
)
CITY OF LOS ANGELES, et al.,)
)
Defendants.)
_____)

**ORDER DENYING PLAINTIFFS'
MOTION TO CONDUCT LIMITED
DISCOVERY**

This matter is before the Court on Plaintiffs' Motion to Conduct Limited Discovery Regarding the Statements of Waymond Anderson (docket no. 503), filed October 29, 2007. The Court deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for November 19, 2007, is removed from the Court's calendar.¹ For the reasons set forth below, the Court hereby DENIES Plaintiffs' Motion.

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¹The hearing on the remaining motion filed in this case set on the same date remains on the Court's calendar.

I. Background

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2 The factual background of this case is well known to the parties and has been
3 recounted in previous orders of this Court. Relevant here is the following: On March
4 5, 2007, based on a joint proposal by the parties, the Court set August 31, 2007 as the
5 deadline for completing depositions. On August 20, 2007, Plaintiffs took the
6 deposition of one Waymond Anderson. (Pls.' Mot. Ex. 7.) Documents turned over
7 by Defendants indicated that Mr. Anderson had once claimed that police officers were
8 involved in the murder of Christopher Wallace (the rapper "Notorious B.I.G.").
9 (Defs.' Opp. Ex. E.) At the deposition, however, Mr. Anderson recanted his story and
10 stated that Kenneth Boagni and Mario Hammonds, among others, threatened to harm
11 Mr. Anderson and his family if he came "forward with the truth in this case."
12 (Anderson Depo. at 22-24.) Mr. Anderson also testified that Plaintiffs attempted to
13 pay off witnesses. (*Id.* at 24-25.) The substance of Mr. Anderson's deposition
14 testimony was reported in the *Los Angeles Times*. (Pls.' Mot. At 4, 20.)

15 Plaintiffs now seek leave to conduct additional discovery. This discovery
16 would be aimed at: (1) determining the motive behind Mr. Anderson's apparent
17 perjury, (2) impeaching his testimony, (3) uncovering whether Defendants knew in
18 advance the substance of Mr. Anderson's deposition testimony, and (4) establish Mr.
19 Anderson's role in the murder of Christopher Wallace. In addition, Plaintiffs ask the
20 Court to lift the protective order so that they may publicly respond to press coverage
21 of Mr. Anderson's deposition.

III. Standard of Law

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24 Federal Rule of Civil Procedure 16(b)(6) permits modification of a scheduling
25 order "upon a showing of good cause and by leave of the district judge." In exercising
26 its broad discretion to determine whether to modify a scheduling order, the district
27 court will examine the diligence of the moving party. *Zivkovic v. S. Cal. Edison Co.*,

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1 302 F.3d 1080, 1087 (9th Cir. 2002). Taking potential prejudice to the party opposing
2 the motion into account, the district court may modify the pretrial schedule where the
3 schedule “cannot reasonably be met despite the diligence of the party seeking the
4 extension,” *Johnson v. Mammoth Recreations Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)
5 (quoting Fed. R. Civ. P. 16 advisory committee notes). However, “[i]f the party
6 seeking the modification ‘was not diligent, the inquiry should end’ and the motion to
7 modify should not be granted.” *Zivkovic*, 302 F.3d at 1087 (quoting *Johnson*, 975
8 F.2d at 609).

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III. Discussion

11 A. Defendants’ Alleged Knowledge of Anderson’s Testimony

12 Plaintiffs have assembled an arsenal of declarations and other evidence to
13 demonstrate the falsity of Mr. Anderson’s deposition testimony, specifically his
14 statements that (1) Plaintiffs attempted to pay witnesses and (2) witnesses like
15 Kenneth Boagni and Mario Hammonds have fabricated their stories regarding the
16 death of Christopher Wallace. They argue that Defendants’ counsel *knew* Mr.
17 Anderson was planning to perjure himself because Defendants “went so far as to have
18 a stand by court reporter, for the first time in this litigation, in case Plaintiffs did not
19 like what Anderson would testify to and should attempt to cancel the deposition.”
20 (Pls.’ Mot. at 14.) Plaintiffs go on to argue that because Defendants must know that
21 the *content* of Mr. Anderson’s deposition testimony was false, they must have known
22 in advance that Mr. Anderson was going to lie.² (*Id.*) Plaintiffs therefore seek
23 additional limited discovery to determine the extent of Defendants’ alleged

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26 ²Plaintiffs continue, “Defendant obviously knew Plaintiffs were walking into
27 a well orchestrated ambush designed to help the City’s defense of the case.” Pls.’
28 Mot. at 15. However, Plaintiffs’ papers fail to provide evidence to support any
inference of wrongdoing.

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1 participation in Mr. Anderson's perjury, suggesting that Defendants have violated
2 ethical standards. (*Id.* at 15.)

3 Plaintiffs' claims about Defendants supposed participation in and profit from
4 Mr. Anderson's deposition testimony are unsupported by the evidence. There is no
5 indication that Defendants orchestrated Mr. Anderson's testimony or compelled him
6 to make accusations against Plaintiffs. Accordingly, no discovery into what
7 Defendants supposedly knew and when they knew it will be allowed.

8 **B. Additional Discovery For the Purposes of Impeachment**

9 Plaintiffs seek additional discovery "including but not limited to . . . a thorough
10 search into Anderson's phone records" dating back to 1997, prison visit records, the
11 retainer agreement between Mr. Anderson and attorney Larry Longo,³ and another
12 deposition of Mr. Anderson (Pls.' Mot. at 18.) This discovery is alleged to be
13 necessary mainly to "address Anderson's widely disseminated perjury with as much
14 information as possible to avoid public bias" against Plaintiffs' case. (*Id.* at 21.)

15 The Court understands Plaintiffs' frustrations with Mr. Anderson's deposition
16 testimony. Plaintiffs acknowledge, and provide substantial evidence to prove, that
17 Mr. Anderson is a liar. Plaintiffs also acknowledge that Mr. Anderson has expressed
18 concern about his own criminal culpability as an accessory to various crimes. Indeed,
19 Plaintiffs' Motion is accompanied by numerous exhibits that impeach Mr. Anderson's
20 testimony. Given that Plaintiffs have ample evidence with which to impeach Mr.
21 Anderson's testimony, additional discovery for the purposes of impeachment or to
22 determine the motive behind his testimony appears to be an exercise in futility.

23 Plaintiffs have not shown good cause for another indefinite delay in the
24 resolution of this case. Despite Plaintiffs' characterization of the additional discovery

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26 ³Mr. Longo was an assistant district attorney alleged to have inappropriate ties
27 to Marion "Suge" Knight, whom he was responsible for prosecuting. Pls.' Mot. Ex.
28 2 at 6-13.

1 sought as “limited,” their moving papers indicate that the additional discovery could
2 be wide-ranging. Although the Court believes Plaintiffs are not pursuing additional
3 discovery as a means to delay the case, to allow more discovery at this late date would
4 mean yet another delay in the retrial of this case. Already, nearly two and a half years
5 have passed since the declaration of a mistrial. The date for retrial has been set and
6 reset. Moreover, in its November 22, 2006 Order, the Court specifically warned the
7 parties that “[n]o further depositions will be authorized in this case.” Accordingly,
8 Plaintiffs’ request for additional discovery is denied.

9 **C. Additional Discovery Related to Anderson’s Involvement in the Murder**

10 Plaintiffs believe additional discovery will help them determine whether Mr.
11 Anderson had a role in the murder of Tupac Shakur and whether certain persons
12 confessed to the murder of Christopher Wallace to Mr. Anderson, as some of his
13 deposition testimony suggests. Plaintiffs do not, however, explain how the additional
14 discovery they seek—namely, another deposition of Mr. Anderson and his phone
15 records dating back ten years—will lead to admissible evidence relevant to their claims
16 in this case. One deposition of Mr. Anderson should have been sufficient for
17 Plaintiffs, notwithstanding that Mr. Anderson did not testify in the manner Plaintiffs
18 expected. Furthermore, it is not clear to the Court how Mr. Anderson’s phone records
19 from ten years ago could uncover his connection or any other party’s connection to
20 these murders. Plaintiffs therefore have failed to demonstrate good cause.

21 **D. The Protective Order**

22 Finally, Plaintiffs seek the lifting of the protective order so that they can rebut
23 the *Los Angeles Times* article that appeared after Mr. Anderson’s deposition
24 testimony. The Court agrees with Plaintiffs that the dissemination of some of the
25 contents of the deposition in the press was unhelpful to the resolution of the case.
26 However, the Court disagrees that the remedy is to release additional information into
27 the public domain before trial. Allowing Plaintiffs to use sealed evidence to rebut the
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1 press attention to Mr. Anderson's deposition will draw further unwanted attention to
2 the case, rather than combating the threat of bias in the jury pool, as Plaintiffs
3 maintain. Increasing the volume of conflicting information about this case to the
4 media just three months before trial is set to begin cannot assist the parties in
5 obtaining a fair and just result. Accordingly, Plaintiffs' request to lift the protective
6 order is denied.

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IV. Conclusion

9 The Court hereby DENIES Plaintiffs' Motion to Conduct Limited Discovery
10 Regarding Statements of Waymond Anderson (docket no. 503).

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12 IT IS SO ORDERED.

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15 November 13, 2007

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FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT