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Date By

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT - N.D. OF N.Y.  
**FILED**  
DEC 24 2003  
AT 02:00 PM  
Civil Action No. 5:03-CV-0531 (DNH/DEP)

PAUL MARRIOTT,  
Plaintiff,

v.

Civil Action No. 5:03-CV-0531 (DNH/DEP)

COUNTY OF MONTGOMERY,  
Defendant.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

KEACH LAW FIRM  
One Steuben Place  
Albany, NY 12207

ELMER R. KEACH III, ESQ.

BERANBAUM, MENKEN LAW FIRM  
3 New York Plaza  
New York, New York 10004

JASON J. ROZGER, ESQ.

FOR DEFENDANT:

WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER, LLP  
150 East 42<sup>nd</sup> Street  
New York, New York 10017-5639

JOSEPH L. FRANCOEUR, ESQ.  
THERESA MARANGAS, ESQ.

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this civil rights suit, which is styled as a class action though no class certification motion has yet been

made, is an application by the plaintiff for an order compelling discovery. In his motion, plaintiff seeks information concerning pretrial detainees held at the Montgomery County Jail on misdemeanor or less severe charges from April of 2000 to the present.<sup>1</sup> Defendants vigorously oppose that request, asserting both lack of relevance to the claims and defenses in the action and the privacy concerns associated with the requested information, and urge the court to instead consider alternative means for allowing the plaintiff to contact potential witnesses or class members including to allow defendants' counsel to initiate the contact and inquire whether the detainees are willing to participate in some fashion in this

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<sup>1</sup> The precise text of the request under consideration seeks

[a]ll booking sheets, inmate admission records, suicide screening forms, classification sheets, personal appearance forms, property sheets, documents memorializing conversations between detainees and MCJ employees, and any documents containing the names, addresses [sic] offense charged, date of arrest, date of arrival at the MCJ, telephone numbers and emergency contact information for all pre-trial detainees charged with misdemeanors, violations, violation of parole, violation of probation, or held on civil or family court matters, conducted at the Montgomery County Jail ("MCJ") from April of 2000 to the present.

action.<sup>2</sup>

Oral argument concerning plaintiff's motion was conducted on December 18, 2003. During oral argument I advised the parties that I did not find any basis to conclude that the identity and charges associated with most if not all pretrial detainees was inherently private, particularly in view of the fact that such information usually is publicly available. I did acknowledge, however, privacy concerns with respect to some of the other information sought including, notably, social security numbers and dates of birth, but concluded that those privacy considerations were outweighed in ~~the~~<sup>this</sup> instance by the potential relevance of the information sought and could be adequately addressed through the issuance of a protective order. At the conclusion of the motion hearing a decision, which is incorporated herein by reference, was rendered orally from the bench granting plaintiff's application subject to certain stated conditions.

The court having carefully reviewed the submissions of the parties

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During the ~~discovery~~<sup>discovery</sup> hearing I noted that in his reply letter brief, dated December 16, 2003, plaintiff raised, without first seeking permission, additional discovery issues. Those issues were responded to by letter submission sent by defendants' counsel December 17, 2003, also without court permission. That portion of plaintiff's reply letter addressing discovery issues unrelated to that which the hearing was intended to address, and defendants' submission dated December 17, 2003 in its entirety, are hereby rejected and the parties are reminded of the court's established practice of requiring permission for submission of materials pertaining to any discovery disputes.

and the arguments contained therein, as well as the various authorities cited including, inter alia, Burka v. New York City Transit Authority, 110 F.R.D. 660 (S.D.N.Y. 1986) and Lora v. Board of Education, 74 F.R.D. 565 (E.D.N.Y. 1977), and upon due deliberation, it is hereby

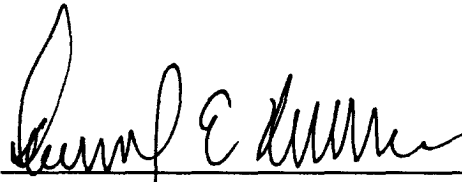
ORDERED as follows:

- 1) Plaintiff's motion to compel discovery is conditionally granted.
- 2) Within sixty (60) days of the date of this order, provided that a confidentiality order as set forth below has been entered prior to that date, defendants shall produce to plaintiff's counsel the name, address, social security number, date of birth, next of kin telephone number, offense charged, date of arrest, and day of arrival at the Montgomery County Jail from April of 2000 to the present for all pretrial detainees charged with misdemeanors, violations, violation of parole, violation of probation, or held on civil or family court matters.
- 3) At defendants' option, the information required above may be provided by producing either inmate booking sheets associated with such detainees, redacted to exclude all other information aside from that referenced herein or, in the alternative, a summary chart containing the information as derived by booking sheets and other available sources of information. Any such chart shall be signed by counsel pursuant to Rule

11 of the Federal Rules of Civil Procedure.

4) The production requirement set forth herein is conditioned upon the prior entry of a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, either on stipulation or, if the parties cannot agree, by the court restricting access to the information disclosed pursuant to this order to attorneys for the parties and those employees and agents working directly with the attorneys, for use only in connection with this action, and further providing that any person to whom information provided under this order is disclosed must sign a statement agreeing to be bound by the confidentiality order, and that plaintiff's counsel must maintain a list of all persons to whom the information has been distributed.

5) That the clerk is directed to promptly forward copies of this order to counsel for the parties to this action.



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David E. Peebles  
U.S. Magistrate Judge

Dated: December 23, 2003  
Syracuse, New York

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