

2006 WL 1455484

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United States District Court,  
W.D. New York.

Adam PRITCHARD, et al., Plaintiffs,  
v.  
The COUNTY OF ERIE, et al., Defendants.

No. 04CV534C. | May 22, 2006.

#### Attorneys and Law Firms

Bruce E. Menken, Beranbaum Menken Ben-Asher & Bierman LLP, Alexander E. Barnett, The Mason Law Firm, PC, New York, NY, Charles Joseph Laduca, Cuneo Gilbert & Laduca, LLP, Washington, DC, David G. Jay, Buffalo, NY, Elmer R. Keach, III, Law Offices of Elmer Robert Keach III, Amsterdam, NY, for Plaintiffs.

Frank T. Gaglione, Frank T. Gaglione, P.C., Amherst, NY, Kristin Klein Wheaton, Assistant County Attorney, James Paul Domagalski, Hiscock & Barclay LLP, Thomas C. D'Agostino, Mattar, D'Agostino & Gottlieb, LLP, Buffalo, NY, for Defendants.

#### Opinion

#### Order

HUGH B. SCOTT, Magistrate Judge.

\*1 Before the Court is a continuation of discovery motion practice related to production of certain privileged documents; here, plaintiffs move to compel (Docket No. 110, May 18, 2006) the County Defendants<sup>1</sup> to produce documents ordered by the undersigned (Docket No. 78; *see* Docket No. 25) and affirmed on appeal to Judge Curtin (Docket No. 106). Defendants sought unsuccessfully a stay of Judge Curtin's Order to allow them to appeal the Order to compel to the United States Court of Appeals for the Second Circuit (Docket Nos. 107, 113; *see also* Docket No. 109). The Order denying

#### Footnotes

<sup>1</sup> As previously used in this action, the term "County Defendants" refers to the defendants Erie County, former and current Erie County Sheriffs, and certain Sheriff's Department officials responsible for management of the Erie County Holding Center and Erie County Correctional Facility, save separately represented defendant H. McCarthy Gipson. Docket No. 78, Order at 1 n. 1; *see* Docket No. 106, Order at 1 n. 2.

the stay application referred plaintiffs' motion to compel to the undersigned for scheduling and disposition (Docket No. 113).

The latest Scheduling Order in this case (Docket No. 103, Order at 9-14) set class certification discovery to be completed by May 1, 2006, with class certification motion by July 10, 2006, with all discovery to be completed by September 12, 2006, and dispositive motions by December 27, 2006 (*id.* at 12-13, 13-14). That Order expressly stated that no further extensions of these deadlines would be granted (*id.* at 13, 14) and the Court concluded there that it "expect[ed] going forward timely completion of discovery and motion practice and ultimately progressing this case to the merits" (*id.* at 13, citing Docket No. 52, Order of Sept. 26, 2005, at 35).

Meanwhile, counsel for the County Defendants wrote to Judge Curtin requesting a brief period to respond to plaintiffs' motion (Docket No. 112, letter of May 19, 2006). Any response would essentially be a motion for reconsideration and (given the stated positions of the parties) any disposition here would be appealed. Given the familiarity with these prior motions, the arguments therein, and Orders and the fact that this motion to compel seeks the same relief sought in the earlier motions, briefing was not held and the County Defendants' request (Docket No. 112) is **denied**.

The present motion seeks to culminate plaintiffs' attempt to obtain certain privilege log documents that two judges of this Court have held should be produced. The County Defendants, while seeking a stay while they prepare an appeal, to date have not filed a notice of appeal or moved for a writ of mandamus. There is no reason for *this* Court to delay production of these documents. Therefore, plaintiffs' motion to compel (Docket No. 110) is **granted**; defendants shall produce the documents sought forthwith, barring relief from another court. The County Defendants' application for time to brief this motion (Docket No. 112) is **denied**.

So Ordered.

