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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HERIBERTO RODRIGUEZ,
CARLOS FLORES, ERICK
NUNEZ, JUAN CARLOS
SANCHEZ, and JUAN TRINIDAD,

Plaintiffs,

vs.

COUNTY OF LOS ANGELES,
LOS ANGELES SHERIFF'S
DEPARTMENT, et al.,

Defendants.

No. CV 10-6342 CBM(AJWx)

**ORDER DENYING PLAINTIFFS'
MOTION TO STRIKE
DEFENDANTS' ANSWER AND
ENTER JUDGMENT BUT
GRANTING PLAINTIFFS'
ALTERNATIVE TO IMPOSE
OTHER LESSER SANCTIONS FOR
SPOILIATION OF EVIDENCE**

1 The matter before the Court is Plaintiffs’ Motion to Strike Defendants’
2 Answer and Enter Judgment, or, in the Alternative, to Impose Other Lesser
3 Sanctions for Spoliation of Evidence. [Docket No. 170.]

4 Included in Defendant Hernan Delgado’s Opposition is a Request for
5 Sanctions Against Plaintiffs’ Counsel in the Sum of \$3,875 for Frivolous Motion.
6 [Docket Nos. 172, 173.]

7 **I. FACTUAL AND PROCEDURAL OVERVIEW**

8 Plaintiffs Heriberto Rodriguez, Carlos Flores, Erick Nunez, Juan Carlos
9 Sanchez, and Juan Trinidad (collectively, “Plaintiffs”) are former or current
10 inmates of the Los Angeles County (the “County”) Men’s Central Jail (“MCJ”).
11 The First Amended Complaint alleges that the deputies of the County’s Sheriff’s
12 Department physically beat them on August 25, 2008, in violation of, inter alia,
13 their federal constitutional rights. (First Amended Complaint (“FAC”) at 1-2.)
14 [Docket No. 5.] Plaintiffs allegedly suffered severe injuries as a result of the
15 beating, which they claim was in response to a protest of about fifteen to thirty
16 MCJ inmates refusing to leave their cells. (*Id.* at ¶¶ 2, 14, 16, 18, 20, 22, 24.)

17 **A. LASD Videotape Policy**

18 Los Angeles Sheriff’s Department (“LASD”) video operators are provided
19 separate training by the LASD and are required to follow the LASD’s Custody
20 Division Video Policy. (Kaye Decl. ¶ 6, Exs. B-D.) The Policy states that the
21 purpose of the video recording is “[t]o ensure accurate records regarding tactical
22 operations and injury allegations.” (*Id.*, Ex. A at 4.) The Policy states that “the
23 entire extraction/removal” should be recorded and that the operator should
24 “immediately respond[] to the incident location, prior to the deployment of the
25 extraction team, and begin[] filming . . . the inmates’ behavior prior to, during, and
26 after the extraction/removal, including transportation to another location.” (*Id.* at
27 9.) The filming should include “the actual extraction/removal.” (*Id.*)
28

1 (D.N.J. 2008). A district court has inherent authority to impose sanctions based
2 on the spoliation of relevant evidence including entering judgment, imposing issue
3 and evidence sanctions, and giving adverse inference instructions to the jury.
4 *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 958 (9th Cir. 2006); *Anheuser-Busch, Inc.*
5 *v. Natural Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995). Sanctions are
6 appropriate when there is evidence that the spoliation “threatens the integrity of
7 [the c]ourt.” *Mosaid Techs. Inc. v. Samsung Elecs. Co.*, 348 F. Supp. 2d 332, 335
8 (D.N.J. 2004).

9 Spoliation sanctions serve a remedial function by
10 leveling the playing field or restoring the prejudiced
11 party to the position it would have been without
12 spoliation. They also serve a punitive function, by
13 punishing the spoliator for its actions, and a deterrent
14 function, by sending a clear message to other potential
15 litigants that this type of behavior will not be tolerated
16 and will be dealt with appropriately if need be.

17 *Id.*

18 Courts consider five factors when deciding whether to impose the harsh
19 sanction of dismissal: “(1) the public's interest in expeditious resolution of
20 litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the
21 party seeking sanctions; (4) the public policy favoring disposition of cases on their
22 merits; and (5) the availability of less drastic sanctions.” *Leon*, 464 F.3d at 958
23 (citation omitted). The district court need not make explicit findings regarding
24 each of these factors, but a finding of “willfulness, fault, or bad faith” is required
25 for dismissal to be proper. *Id.* (citations omitted). Additionally, the district court
26 must consider “less severe alternatives” than outright dismissal. *Id.*

27 **III. DISCUSSION**

28 **A. Whether There Was Spoliation of Evidence**

1. Whether the Produced Videos Amount to Spoliation of Evidence

First, Plaintiffs complain that the 41 videos produced during discovery are
insufficient and violate Defendant LASD’s policies for videotaping cell

1 extractions because they show the extraction process only from a distance and are
2 frequently obstructed by other police officers. Plaintiffs argue that these
3 deficiencies were intentional to hide constitutional violations. The Court finds
4 that these potential deficiencies in filmmaking are not destruction, alteration, or a
5 failure to preserve evidence, and the deficient filmmaking alone does not amount
6 to spoliation. Instead, the noted deficiencies are evidence to be weighed by a jury.

7 **2. Whether the “Missing Videos” Amount to Spoliation of Evidence**

8 Second, Plaintiffs complain that specific videos were not produced despite
9 orders compelling their production. Plaintiffs note that LASD employees can be
10 seen in the videos provided videotaping inside the cells or from closer vantage
11 points. (Muller Decl. ¶¶ 13-18, 21, Ex. B; Kaye Decl. ¶ 21.) Plaintiffs argue that
12 these videos would more likely show the alleged unconstitutional behavior.

13 Plaintiffs also note that no videos have been provided for some extractions of
14 specific individuals at issue, and it is clear from the videos provided that there
15 were at least three individuals videotaping the extractions, but that for many
16 specific extractions, only one vantage-point has been provided. (*Id.*) Plaintiffs
17 again argue that these omitted videos were intentionally destroyed or withheld.

18 The Court finds that the fact that these videos clearly existed and are now
19 “missing” is evidence of spoliation. The Court then turns to what sanction is
20 proper for this spoliation.

21 **B. *Leon* Factors for Consideration of Harsh Sanctions**

22 **1. Whether There Was Willfulness, Fault, or Bad Faith**

23 “A party’s destruction of evidence qualifies as willful spoliation if the party
24 has ‘some notice that the documents were potentially relevant to the litigation
25 before they were destroyed.’” *Leon*, 464 F.3d at 959. The evidence is clear here
26 that Defendants had notice that the videos were potentially relevant, even before
27 litigation began, because of their policy and because of the letter sent to
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1 Defendants requesting them to preserve all videos. The fact that the extractions
2 resulted in severe injuries suggests litigation was likely and that Defendants
3 potentially faced liability, which created an incentive to preserve all videos.
4 Moreover, as a large law enforcement agency, LASD is very aware of the need to
5 preserve this type of evidence for litigation, and its officers are well trained to do
6 so. It appears from the videos that the allegedly missing videos were recorded in
7 close proximity to the inmates' cells and were pointed inside the cells during the
8 extractions.

9 The Court finds that the combination of the notice given to the Defendants,
10 their own video preservation policy, and the fact that videos are clearly missing is
11 sufficient under the law to establish willfulness.¹

12 **2. Other *Leon* Factors**

13 Of the other *Leon* factors, there is a public interest in resolving this
14 litigation quickly and the Court does have a need to manage its docket efficiently.
15 This case was filed in 2010 and has been delayed numerous times because of
16 litigation disputes. Withholding videos prejudices Plaintiffs. Each of these favors
17 a strong sanction. The remaining factors, however, strongly favor a less severe
18 sanction than default judgment. Public policy favors disposition of cases on their
19 merits and less drastic sanctions are available.

20 **C. The Court's Sanction**

21 The Court orders as a sanction for the spoliation of evidence that the jury
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23 ¹ Defendants request that Plaintiffs' expert witness on this issue, Steve Martin, be stricken on
24 the grounds that "Defendants had no awareness of Mr. Martin's involvement in this action, and
25 Mr. Martin has neither produced a Rule 25 report or been subject to deposition." (Opposition at
26 11:22-24.) Mr. Martin, a former correctional officer, submitted a declaration in support of
27 Plaintiffs' motion describing the purpose of videotaping extractions and offering his opinions of
28 what might be in the "missing" videotapes taken by individuals seen in produced videos. The
Court finds that it was improper for Plaintiffs to introduce this testimony without first disclosing
the expert witness to Defendants and allowing Defendants to conduct discovery as to the
witness. The Court therefore does not consider it for purposes of this Motion, but the testimony
may be used for future purposes if procedure is properly followed.

1 receive a curative instruction stating that the Defendants had an affirmative duty to
2 video record what occurred during the extractions and to preserve the videos, but
3 that certain videos once existed and now are missing or destroyed. Additionally
4 Defendants are precluded from offering any evidence about the reasons for, or the
5 circumstances surrounding, their destruction or loss of the video evidence. The
6 Court also makes a finding to be used for all purposes that Defendants violated
7 their own video preservation policy.

8 The Court denies Plaintiff's request for harsher sanctions such as a finding
9 of a violation of rights. Such findings are better left to the jury to decide.

10 **D. Defendant Hernan Delgado's Opposition and Request for Monetary**
11 **Sanctions**

12 Defendant Hernan Delgado, a former LASD deputy, filed a separate
13 opposition from the other Defendants and argues that Plaintiff has presented no
14 evidence that Mr. Delgado ever had possession or control over any videos.
15 Plaintiffs do not identify any specific conduct on the part of Mr. Delgado. Mr.
16 Delgado asks for monetary sanctions in the amount of \$3,875 for his counsel's
17 time defending this motion.

18 The Court DENIES Delgado's request for sanctions because the actions of
19 the individual and County Defendants are inextricably intertwined. When the duty
20 to preserve the video evidence arose, Defendant Delgado was an employee of
21 LASD and, in that capacity, was represented by LASD's counsel, including those
22 individuals who received the preservation letters that were sent by Plaintiffs'
23 counsel. Plaintiffs had no way of knowing what happened to the "missing"
24 videos, so it is possible that the videos were destroyed or not preserved before Mr.
25 Delgado left LASD and obtained separate counsel.

26 The Court finds that Mr. Delgado's arguments would be quite persuasive if
27 the Court were entering judgment against him as a sanction, but the Court has
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1 elected a less severe and non-dispositive sanction. The Court therefore DENIES
2 Mr. Delgado's request for sanctions.

3 **IV. CONCLUSION**

4 The Court DENIES Plaintiffs' Motion to Strike Defendants' Answer and
5 Enter Judgment but GRANTS Plaintiff's Alternative to Impose Other Lesser
6 Sanctions for Spoliation of Evidence and orders the sanction described above.
7 The Court DENIES Defendant Delgado's Request for Sanctions.

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9 **IT IS SO ORDERED.**

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11 DATED: February 25, 2013



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13 CONSUELO B. MARSHALL
14 UNITED STATES DISTRICT JUDGE
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