

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

MARTIN MCLAIN, individually,)
and d/b/a MAC'S BAR & GRILL,)
)
Plaintiff,)
)
vs.)
)
CITY OF MILLINGTON, TENNESSEE,)
TULLY REED, JERRY LADD, TROY)
WALLS, and MICHAEL WEST, in)
their individual and official)
capacities,)
)
)
Defendant.)

No. 04-2072M1V

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL

The plaintiff, Martin McClain, the owner of a bar in the city of Millington, Tennessee, brought this action under 42 U.S.C. § 1983 against the City of Millington and four individual police officers alleging that the defendants participated in a campaign of harassment and subjected his bar, its employees, and patrons to inordinate police scrutiny in retaliation for filing a lawsuit challenging the municipal beer ordinance, all in violation of the Fourth and Fourteenth Amendments. He also has alleged a state law claim for intentional infliction of emotional distress.

Now before the court is the December 6, 2004 motion of McClain pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, to

compel the four individual defendants - Tully Reed, Jerry Ladd, Troy Walls, and Michael West - to respond more fully to certain interrogatories in the plaintiff's first set of interrogatories served June 15, 2004. Specifically, McClain moves to compel complete and adequate responses to four interrogatories: Interrogatories Nos. 11, 13, 14, and 15. The motion was referred to the United States Magistrate Judge for determination. For the reasons that follow, the motion is denied.

ANALYSIS

Interrogatory No. 11

Interrogatory No. 11 and defendants Ladd, Walls, and West responses to Interrogatory No. 11 are as follows:¹

Interrogatory No. 11: Identify each and every complaint made against you in your official capacity as an officer of the Millington Police Department, identify the Complainant, the subject matter of the complaint, and describe the disposition of each complaint.

Response: Defendant respectfully objects to Interrogatory No. 11 on the grounds that the request is both overbroad and outside the scope of discovery insofar as it requests complaints which are not of the same type that are the subject of the instant lawsuit. Defendant further objects to Interrogatory No. 11 as overbroad as it is not temporally limited. Without waiving said objections, Defendant would state that there have been no complaints filed against him by business owners alleging excessive

¹ Each of the four individual defendants filed identical responses to the interrogatories at issue in this motion except for Interrogatory No. 11. Reed's response to Interrogatory No. 11 differed as set out above.

policing or inspection by this Defendant. Without waiving said objections, Defendant has attached a letter received by the Millington City Attorney expressing concern about police presence outside a Millington business which does not name any individual officers.

Defendant Reed filed the identical response but added "Defendant has also attached a copy of a complaint filed against him by business owners alleging excessive policing or inspections by the Defendant." (Pl.'s Mot. to Compel at 2.)

The plaintiff contends that every complaint ever filed against the officers is relevant because this matter involves a pattern of misconduct. The defendants argue that the plaintiff should only be entitled to discover complaints which allege conduct similar to the allegations in the complaint and that they have already produced such documents.

Once an objection to the relevance of the information sought is raised, the burden shifts to the party seeking the information to demonstrate that the requests are relevant to the subject matter involved in the pending action. *Andritrz-Sprout-Bauer*, 174 F.R.D. 609, 631 (M.D. Pa. 1997). The party seeking discovery must be able to "articulate the possible linkage between the discovery sought and admissible evidence." 7 MOORE'S FEDERAL PRACTICE § 37.22 [2][B]. In the present case, McClain bears the burden of showing the relevance of all complaints of misconduct against the four individual police officers.

In similar cases, courts have limited complaints of personal misconduct to complaints alleging the same claims as those asserted in the complaint. In *Miller v. Pancucci*, 141 F.R. D. 292 (N. D. Cal. 1992), the court sustained the individual defendants' objections to a discovery request for all personal complaints and limited the request to complaints of excessive force and other complaints similar to the allegations in the complaint. *Id.* at 296. Similarly, in *Larrs v. Cleaver*, 1999 WL 33117449 (D.Conn. 1999), a § 1983 lawsuit filed by a plaintiff inmate alleging excessive force by defendant correction officers, the court allowed discovery of the defendant officers' prior disciplinary hearings and lawsuits but only ones involving allegations of excessive force or mistreatment of inmates.

The court agrees with the defendants that Interrogatory No. 11 is overbroad and should be limited to those complaints of misconduct similar to the ones alleged in the complaint. Because the defendants have already produced the responsive information, the motion to compel is denied as to Interrogatory No. 11.

Interrogatory No. 13

Interrogatory No. 13 and the defendants' responses to Interrogatory No. 13 are as follows:

Interrogatory No. 13: In the Answer you filed in this cause, you alleged that Martin McClain engaged in conduct which violated the following Ordinances of the City of

Millington and Statutes of the State of Tennessee:

1. Ordinances

- 8-211 Prohibited conduct or activities by beer permit holders, their owners and employees.
- 8-212 Liability of permit holder for acts of agents or employees.
- 8-215 Revocation or suspension of beer permits; imposition of civil penalties.
- 8-218 Violations.
- 11-301 Disturbing the peace.
- 11-404 Resisting or interfering with a police officer.
- 11-706 Misdemeanors of the state adopted.
- 15-103 Reckless driving.
- 15-106 Laned streets.
- 15-305 Drivers to operate vehicles safely.

2. Statutes

- T.C.A. § 39-17-305 Disorderly conduct.
- T.C.A. § 39-17-310 Public intoxication.
- T.C.A. § 55-8-103 Required obedience to traffic laws - penalty.
- T.C.A. § 55-18-115 Driving on the right side of roadway-exceptions.
- T.C.A. § 55-10-205 Reckless driving.
- T.C.A. § 55-10-401 Driving under the influence of intoxicant, drug or drug producing stimulant prohibited - alcohol concentration in blood or breath.
- T.C.A. § 55-10-406 Tests for alcoholic or drug content of blood - Implied consent - Administration - Liability - Refusal to submit to test - Suspension of license - Notice - hearing - use of analysis as later evidence.
- T.C.A. § 55-10-408 Tests for alcoholic or drug content of blood - Presumptions of intoxication and impairment.
- T.C.A. § 55-10-416 Open Container law.
- T.C.A. § 55-10-418 Adult driving while impaired.

In regard to each, these alleged violations of City Ordinances and State Statutes identify the factual basis for each violation and identify the date on which each alleged violation occurred.

Response: The factual basis for each violation, and dates of these violations, are set forth in the Police Reports which have been produced.

The defendants claim that they have sufficiently responded by referring to documents already produced. Rule 33(d) permits a party to provide business records in response to interrogatories. Rule 33(d) requires, however, that "[a] specification [of the record or document] be in sufficient detail to permit the interrogating party to locate and to identify, as readily as the party served, the records from which the answer may be ascertained." FED. R. CIV. P. 33(d) The defendants response to Interrogatory No. 13 complies with the requirements of Rule 33(d), and McClain has failed to demonstrate to the court why the documents are not sufficient. Accordingly, McClain's motion to compel is denied as to Interrogatory No. 13.

Interrogatory No. 14

Interrogatory No. 14 and the defendants' responses to Interrogatory No. 14 are as follows:

Interrogatory No. 14: Describe in detail the factual basis for the allegation contained in paragraph 8 of your Answer that Plaintiff Martin McClain failed to mitigate his damages.

Response: Defendant objects to Interrogatory No. 14 on the grounds that it calls for a legal conclusion. Without waiving said objection, Defendant would state that the evidence will demonstrate that the Plaintiff, Martin McClain, failed to mitigate his damages by, among other things, closing his business and engaging in

conduct while still in business that resulted in a decrease in patronage.

In their response to the motion to compel, the defendants state to the court that is undisputed that McClain closed his business shortly after the lawsuit was filed. In addition, the defendants further state to the court that their assertion that McClain engaged in conduct that resulted in a decrease in patronage is based upon entries in McClain's bar log which was produced by McClain in discovery to the defendants. Because McClain already is in possession of the very information on which the defendants base their assertion, McClain's motion to compel is denied as to Interrogatory No. 14.

Interrogatory No. 15

Interrogatory No. 15 and the defendants' responses to Interrogatory No. 15 are as follows:

Interrogatory No. 15: Describe in detail the factual basis for the allegation in paragraph 12 of your Answer that "in the event there may have been any unlawful conduct on the part of Defendant's [sic] Reed, Ladd, Walls, West, said actions were contrary to the law and in violation of the rules and regulations of the Millington Police Department, and therefore Defendant, City of Millington is not liable to such actions."

Response : Defendant objects to Interrogatory No. 15 on the grounds that it calls for a legal conclusion. Without waiving said objection, Defendant would state that he has not engaged in any unlawful conduct as alleged in the complaint.

This statement is a part of an affirmative defense raised by

the City of Millington in a joint answer filed by the city and the four individual defendants. The four individual defendants specifically deny any unlawful activity. Therefore, the response is complete, and McClain's motion to compel is denied as to Interrogatory No. 15.

CONCLUSION

In sum, McClain's motion to compel is denied in the entirety. of Millington IT IS SO ORDERED this 21st day of December, 2004.

DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE