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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RYAN COUCH, et al.,	)	1:08cv1621 LJO DLB
	)	
	)	
Plaintiffs,	)	ORDER GRANTING PLAINTIFFS' MOTION
	)	FOR LEAVE TO TAKE ADDITIONAL
v.	)	DEPOSITIONS AND DEPOSITIONS OF
	)	PRISONERS
	)	(Document 157)
TOMMY WAN, KIMBERLI BONCORE,	)	
and RALPH DIAZ	)	
	)	
Defendants.	)	
_____	)	

On August 18, 2011, Plaintiffs Ryan Couch and Kenneth Jimenez (“Plaintiffs”) filed the instant motion for leave to take ten depositions, including two depositions of individuals confined in prison, in addition to the ten depositions allowed pursuant to Federal Rule of Civil Procedure 20. The motion was heard before the Honorable Dennis L. Beck, United States Magistrate Judge, on September 23, 2011. Daniel Zlatnik and Edward Caden appeared on behalf of Plaintiffs. Mary Horst, Deputy Attorney General, appeared on behalf non-party California Department of Corrections and Rehabilitation (“CDCR”) and on behalf of Defendants Tommy Wan, Kimberli Boncore and Ralph Diaz.

**BACKGROUND**

Officers Couch and Jimenez allege violations of their free speech rights and violations of the Racketeer Influenced Corrupt Organizations Act ("RICO"), [18 U.S.C. § 1964](#), against

1 Defendants Tommy Wan, Kimberli Boncore and Ralph Diaz in their individual and official  
2 capacities.

3 Plaintiffs filed a motion seeking leave to exceed the presumptive limits of Fed. R. Civ. P.  
4 30(a)(2) and conduct ten additional depositions. The parties filed a joint statement of discovery  
5 dispute on September 16, 2011.

## 6 DISCUSSION

### 7 **A. Legal Standard**

8 Rule 30(a) (2)(A)(i) provides that no party may take more than ten depositions without  
9 leave of court or stipulation of the parties. A party seeking leave of court must make a  
10 “particularized showing” why the discovery is necessary. *C & C Jewelry Mfg., Inc. v. West*, 2011  
11 WL 767839, \* 1 (N.D. Cal.2011) (citing *Archer Daniel Midland Co. v. Aon Risk Servs., Inc.*,  
12 187 F.R.D. 578, 586 (D. Minn. 1999)). Rule 30(a)(2) provides that, when a party seeks leave to  
13 take more than ten depositions, the Court must grant leave to the extent consistent with Rule  
14 26(b)(2). Under Rule 26(b)(2)(C), a court must limit discovery if it determines (1) the discovery  
15 sought is cumulative or duplicative, or can better be obtained from some other source; (2) the  
16 party seeking discovery has had ample opportunity to obtain the information by discovery in the  
17 action; and (3) the burden or expense of the proposed discovery outweighs its likely benefit. Fed.  
18 R. Civ. P. 26(b)(2)(C)(i)-(iii); *Lehman Bros. Holdings, Inc. v. CMG Mortg., Inc.*, 2011 WL  
19 203675, \*2 (N.D. Cal.2011).

### 20 **B. Analysis**

#### 21 1. Additional Depositions

22 Defendants argue that Plaintiffs’ request is premature because Plaintiffs have not  
23 completed the ten depositions permitted as of right. As stated at the hearing, Plaintiffs have  
24 conducted only five depositions. Generally, courts will not grant leave to expand the number of  
25 depositions until the moving party has exhausted the ten depositions permitted as of right under  
26 Rule 30(a)(2). *See, e.g., Authentec, Inc. v. Atura Tech.* 2008 WL 5120767, \*1 (N.D. Cal. Dec. 4,  
27 2008). However, courts have departed from this “exhaustion rule” where the complexity of the  
28 case clearly warranted more than ten depositions. *See, e.g., Del Campo v. American Corrective*

1 *Counseling Servs., Inc.*, 2007 WL 3306496 (N.D. Cal. Nov. 6, 2007) (complex case involving  
2 five plaintiffs and eleven defendants, court found that it would be prejudicial to require plaintiffs  
3 to choose to take ten depositions before they knew whether they would be granted more).

4 Here, the complexity of this case justifies exceeding the presumptive deposition limit.  
5 The action involves multiple plaintiffs, multiple defendants and complex legal issues. While  
6 there are foundational facts common to both Plaintiffs, many the facts concern only Officer  
7 Couch's claims or only Officer Jimenez's claims. The complaint contains allegations of multiple  
8 retaliatory acts, threats, harassment and intimidation. The RICO claims span multiple events and  
9 multiple individuals.

10 Further, the Court finds that Plaintiffs have made the particularized showing required for  
11 leave to exceed the presumptive deposition limits. First, the proposed depositions are not  
12 cumulative or duplicative. Plaintiffs have identified a preliminary list of over twenty individuals  
13 they may wish to depose, but expect to refine that list to approximately twenty. As the proposed  
14 witnesses and a summary of their anticipated testimony was filed under seal, the Court will not  
15 restate that information. It is sufficient to note that the proposed depositions include persons  
16 with knowledge of facts concerning Officer Jimenez's removal from an Investigative Services  
17 Unit ("ISU") position, Defendant Boncore's alleged relationship with inmates, allegations against  
18 Defendant Wan, and Officer Couch's transfer out of ISU. Defendants argue that the anticipated  
19 testimony is cumulative. While the Court agrees that there may be some overlap, the proposed  
20 depositions and anticipated testimony are not unreasonably cumulative or duplicative.

21 Second, although Plaintiffs have had an opportunity to obtain discovery through other  
22 means, the Court finds that many facts in this case may likely only be obtained through live  
23 witness testimony. By way of example, Plaintiffs point to their allegations that Defendants  
24 ordered deletion of incriminating facts from ex-gang member debriefing reports, ordered  
25 evidence of Defendants' misconduct destroyed, and refused to investigate or seek prosecution of  
26 certain inmates. Given the nature of the allegations and the information sought from the  
27 witnesses, the Court agrees that only oral testimony likely can prove these allegations and that  
28 other less-intrusive discovery devices may be ineffective.

1 Third, the burden or expense of the proposed discovery does not outweigh its likely  
2 benefit. As discussed at the hearing, Plaintiffs will bear much of the expense associated with  
3 additional depositions, including subpoenas, court reporters and transcripts. The Court declines  
4 to require Plaintiffs to pay for the costs, including attorney's fees, incurred by Defendants for  
5 additional depositions. There is no basis for cost-shifting.

6 2. Depositions of Prisoners

7 As part of the request to exceed the presumptive deposition limit, Plaintiffs also seek  
8 leave to depose two identified prisoners.<sup>1</sup> Pursuant to Fed. R. Civ. P. 30(a)(2), a party must seek  
9 leave to conduct a deposition if the deponent is confined in prison. Plaintiffs believe these  
10 prisoners have unique firsthand knowledge of facts at issue in this case.

11 Defendants counter that the depositions of currently incarcerated inmates should not be  
12 allowed because the burden outweighs the likely benefit. They believe that the depositions may  
13 have an impact on the safety and security of all defendants, particularly Officer Boncore.  
14 Defendants' security concerns regarding these depositions are overstated, in part because  
15 Plaintiffs' counsel has already interviewed these prisoners.

16 **CONCLUSION AND ORDER**

17 For the reasons discussed above, Plaintiffs' motion for leave to take additional  
18 depositions is GRANTED. Plaintiffs may take ten depositions, including the depositions of two  
19 prisoners, in addition to the ten depositions allowed under Federal Rule of Civil Procedure 30.  
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21 IT IS SO ORDERED.

22 **Dated: September 26, 2011**

**/s/ Dennis L. Beck**  
23 UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup>As the names of these prisoners and their anticipated testimony was filed under seal, the Court does not identify them by name in this Order.