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Michael Flores*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

**YVONNE ARCURE, KEVIN COOK, &
JOSEPH FESSENDEN,**

Plaintiffs,

v.

**CALIFORNIA DEPARTMENT OF
DEVELOPMENTAL SERVICES,
DEBORAH MEEKER, JEFFREY
BRADLEY, DOUGLAS LOEHNER,
DAVID CORRAL, & MICHAEL FLORES,**

Defendants.

1:13-cv-00541-LJO-BAM

**STIPULATION TO PARTIALLY
RESOLVE DISCOVERY DISPUTE AND
ORDER**

STIPULATION

Plaintiff Kevin Cook ("Cook") and Defendant California Department of Developmental Services ("DDS") have reached an agreement that partially resolves their discovery dispute for the motion to compel that was filed on September 8, 2014, (Doc. 122).

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1 The terms of the stipulation are as follows:

2 1. DDS withdraws without prejudice interrogatory subpart 11c.

3 2. Cook will provide complete unqualified responses to all of the interrogatories
4 listed in Exhibit A on or before October 24, 2014.

5 3. The only objections that Cook will make to the interrogatories are the objections
6 stated in Exhibit A.

7 4. Cook withdraws all objections with the exception of the attorney-client and work
8 product privileges to Request for Production No. 55, and will mail serve all responsive documents
9 in his custody or control on or before October 24, 2014.

10 5. DDS narrows requests for production of documents numbers 64-79 consistent with
11 its letter to Cook's counsel dated October 9, 2014. The requests have been narrowed to seek e-
12 mails Cook sent from a non-DDS e-mail account or that he received on a non-DDS e-mail
13 account, and text messages he sent to or received from, Kathren Woodside, Lisa Huff, Gene
14 Alvarez, and Joseph Puccio from March 1, 2007, to the present that:

15 (a) relate to the California Department of Developmental Services or any of its
16 current or former employees; (b) relate to any fact or incident alleged in the
17 Complaint (Doc. 1), the First Amended Complaint (Doc. 21), the Second Amended
Complaint (Doc. 53) or the Third Amended Complaint (Doc. 95); or relate to YOUR
[Cook's] health, or personal and professional reputation.

18 6. Cook withdraws all objections to requests for production of documents numbers
19 64-79 as revised with the exception of the attorney-client and work product privileges, and will
20 mail serve all responsive documents currently in a reproducible format that are under his custody
21 or control on or before October 24, 2014. For responsive documents that are not currently in a
22 reproducible format for production, Cook will diligently work with his wireless phone provider(s)
23 and e-mail service provider(s) to obtain responsive documents and will keep DDS apprised of his
24 efforts.

25 7. Notwithstanding the resolution concerning requests for production of documents
26 numbers 64-79, Cook and DDS will submit to the court whether Cook is required to produce all
27 e-mails and text messages that relate to his "emotional condition" and "enjoyment of life." The
28

1 parties also intend to submit the outstanding dispute regarding requests for production numbers
2 56-64 to the Court.

3 8. A party may be subject to sanctions for violating this stipulation.

4 **SO STIPULATED**

5
6 Dated: October 15, 2014

Respectfully submitted,

7 KAMALA D. HARRIS
8 Attorney General of California
9 JUDITH A. RECCHIO
Supervising Deputy Attorney General

10 *Matthew T. Besmer*

11 MATTHEW T. BESMER
12 Deputy Attorney General
13 *Attorneys for Defendants*
14 *Department of Developmental Services,*
Douglas Loehner and Michael Flores

15 Dated: October 15, 2014

LAW OFFICES OF LAWRENCE J. KING

17 *Lawrence J. King*

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19 _____
Lawrence J. King, Attorney for
20 Plaintiffs
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Attorney for Plaintiffs
Arcure, Cook & Fessenden

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

**YVONNE ARCURE, KEVIN COOK, &
JOSEPH FESSENDEN,**

Plaintiffs,

v.

**CALIFORNIA DEPARTMENT OF
DEVELOPMENTAL SERVICES,
DEBORAH MEEKER, JEFFREY
BRADLEY, DOUGLAS LOEHNER,
DAVID CORRAL, & MICHAEL FLORES,**

Defendants.

1:13-cv-00541-LJO-BAM

**PLAINTIFF KEVIN COOK'S AMENDED
OBJECTIONS TO THE DEPARTMENT
OF DEVELOPMENTAL SERVICES'
INTERROGATORIES, SET ONE TO
PLAINTIFF KEVIN COOK**

EXHIBIT A TO STIPULATION

PROPOUNDING PARTY: Defendant CALIFORNIA DEPARTMENT OF
DEVELOPMENTAL SERVICES

RESPONDING PARTY: Plaintiff KEVIN COOK

SET NO.: ONE

Dated: October 17, 2014

Respectfully submitted,

LAW OFFICES OF LAWRENCE J. KING

By: Lawrence J. King
For Plaintiffs Yvonne Arcure, Kevin Cook, &
Joseph Fessenden

1 **INTERROGATORIES**

2 **SPECIAL INTERROGATORY NO. 1:**

3 Describe every act of retaliation for which YOU are seeking damages under the California
4 Whistleblower Protection Act, including:

- 5 a. A description of each act of retaliation;
6 b. The approximate month and year each act of retaliation occurred; and
7 c. The name of the PERSON who retaliated against YOU.

8 **RESPONSE TO SPECIAL INTERROGATORY NO. 1:**

9 There is a substantial period of time in after Plaintiff Cook filed his initial State Personnel
10 Board whistleblower complaint during which Plaintiff Cook was subjected to retaliation both for
11 exercising his rights under the California Whistle Blower Protection Act, Title VII and the
12 California Fair Employment & Housing Act. Without waiving these objections, Plaintiff responds
13 to Interrogatories No. 1 as follows:
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16 **SPECIAL INTERROGATORY NO. 2:**

17 Describe every act of retaliation for which YOU are seeking damages under Title VII:

- 18 a. A description of each act of retaliation;
19 b. The approximate month and year each act of retaliation occurred; and
20 c. The name of the PERSON who retaliated against YOU.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

22 There is a substantial period of time in after Plaintiff Cook filed his initial State Personnel
23 Board whistleblower complaint during which Plaintiff Cook was subjected to retaliation both for
24 exercising his rights under the California Whistle Blower Protection Act, Title VII and the
25 California Fair Employment & Housing Act. Without waiving these objections, Plaintiff responds
26 to Interrogatories No. 2 as follows:
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1 **SPECIAL INTERROGATORY NO. 3:**

2 Describe every act of retaliation for which YOU are seeking damages under the FEHA:

- 3 a. A description of each act of retaliation;
- 4 b. The approximate month and year each act of retaliation occurred; and
- 5 c. The name of the PERSON who retaliated against YOU.

6 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

7 There is a substantial period of time in after Plaintiff Cook filed his initial State Personnel

8 Board whistleblower complaint during which Plaintiff Cook was subjected to retaliation both for

9 exercising his rights under the California Whistle Blower Protection Act, Title VII and the

10 California Fair Employment & Housing Act. Without waiving these objections, Plaintiff responds

11 to Interrogatories No. 3 as follows:

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13 **SPECIAL INTERROGATORY NO. 4:**

14 State all facts that support YOUR claim in paragraph 44 of the THIRD AMENDED

15 COMPLAINT that on September 4, 2007, Commander Bradley reassigned all of the sergeants

16 who reported to YOU in retaliation for YOUR participation in EEO investigations, including:

- 17 a. The names of the sergeants who were reassigned;
- 18 b. The positions the sergeants held before they were reassigned;
- 19 c. The positions the sergeants were reassigned to; and
- 20 d. The reasons YOU contend that the reassignments were done in retaliation for

21 YOUR participation in EEO investigations.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

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24 **SPECIAL INTERROGATORY NO. 5:**

25 State all facts that support YOUR allegation in paragraph 45 of the THIRD AMENDED

26 COMPLAINT that “on September 15, 2007, Commander Bradley reassigned Plaintiff Cook in

27 retaliation for his opposition to the sex discrimination and harassment to which his female

28 subordinates were being subjected” including:

- 1 a. The position that YOU held before YOU were reassigned;
- 2 b. The position that YOU were reassigned to; and
- 3 c. The reasons YOU contend that the reassignment was done in retaliation for
- 4 opposing sex discrimination and harassment.

5 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

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7 **SPECIAL INTERROGATORY NO. 6:**

8 Identify all written complaints of whistleblower retaliation filed by YOU with any

9 government entity, specifically:

- 10 a. State the date that you filed each complaint;
- 11 b. Identify the government entity that you filed the complaints with; and
- 12 c. Describe the contents of each written complaint that you filed.

13 **RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

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15 **SPECIAL INTERROGATORY NO. 7:**

16 If YOU contend that YOU were retaliated against because YOU filed a whistleblower

17 complaint with the State Personnel Board on September 17, 2008, state all facts that support your

18 contention including:

- 19 a. The statute(s) that was violated;
- 20 b. The name of the PERSON(S) who retaliated against YOU.
- 21 c. A description of the retaliation; and
- 22 d. The facts that support YOUR contention that the acts were retaliation for filing a
- 23 whistleblower complaint with the State Personnel Board on September 17, 2008.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

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26 **SPECIAL INTERROGATORY NO. 8:**

27 If YOU contend that YOU were retaliated against because YOU filed a whistleblower

28 complaint with the State Personnel Board on June 2, 2009, state all facts that support your

1 contention including:

- 2 a. The law that was violated;
- 3 b. The name of the PERSON(S) who retaliated against YOU.
- 4 c. A description of the retaliation; and
- 5 d. The facts that support YOUR contention that the acts were retaliation for filing a
- 6 whistleblower complaint with the State Personnel Board on June 2, 2009.

7 **RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

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9 **SPECIAL INTERROGATORY NO. 9:**

10 State all facts that support YOUR claim in paragraph 57 of the THIRD AMENDED
11 COMPLAINT that as a result of both YOUR EEOC and SPB complaints you were retaliated
12 against “in October 2009 Plaintiff Cook applied for, but was denied, a promotion to DDS OPS
13 Chief. In May, 2010, Plaintiff Cook’s state assigned vehicle again was taken away. In
14 November, 2010, Acting Commander Bob Lewis issued Plaintiff Cook an unfounded Counseling
15 Memorandum. On January 31, 2011, and again on December 13, 2013, Plaintiff Cook was
16 written-up two more times without good cause. Most recently, after Plaintiff Cook stood up for
17 one of his investigators, Joseph Fessenden, when the PDC Executive Director attempted to force
18 Officer Fessenden to make unwarranted changes to one of his investigative reports, Plaintiff Cook
19 was informed that both Fessenden and another investigator were going to be re-assigned, which
20 would have denied Plaintiff Cook the staff he needed to fulfill his obligations as head of patient
21 abuse investigations and setting him up for failure to create an excuse to fire him.”

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

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24 **SPECIAL INTERROGATORY NO. 10:**

25 List all of YOUR e-mail addresses that YOU have used from March 1, 2007, to the
26 present.

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1 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

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3 **SPECIAL INTERROGATORY NO. 11:**

4 Identify all SOCIAL MEDIA accounts and profiles that YOU have used from March 1,
5 2007, to the present, including:

- 6 a. The web address for each SOCIAL MEDIAL account and/or profile;
7 b. YOUR username associated with each SOCIAL MEDIA account and/or profile;
8 and
9 c. [At this time, DDS withdraws this interrogatory subpart without prejudice].

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

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12 **SPECIAL INTERROGATORY NO. 12:**

13 Identify all wireless telephone numbers that YOU have used from March 1, 2007, to the
14 present, including:

- 15 a. The phone number;
16 b. The dates that you used each phone number; and
17 b. The wireless phone carrier for each phone number.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

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20 **SPECIAL INTERROGATORY NO. 13:**

21 State all facts that support YOUR claim in paragraph 61 of the THIRD AMENDED
22 COMPLAINT that as “a result of Defendants violations of Title VII, Plaintiff Cook has suffered,
23 and will continue to suffer, damages, including, but not limited to, loss of income, loss of
24 enjoyment of life, emotional distress, and damage to his health and personal and professional
25 reputations” including:

- 26 a. YOUR total loss of income as of December 31, 2013;
27 b. Facts that describe the loss of enjoyment of life that YOU have experienced;
28 c. Facts that describe the emotional distress that YOU have experienced;

- 1 d. Facts that describe the damage to YOUR health that YOU have experienced; and
2 e. Facts that describe the damage to YOUR personal and professional reputations that
3 YOU have experienced.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

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6 **SPECIAL INTERROGATORY NO. 14:**

7 State all facts that support YOUR claim in paragraph 64 of the THIRD AMENDED
8 COMPLAINT that as “a result of Defendants violations of the FEHA, Plaintiff Cook has
9 suffered, and will continue to suffer, damages, including, but not limited to, loss of income, loss
10 of enjoyment of life, emotional distress, and damage to his health and personal and professional
11 reputations” including:

- 12 a. YOUR total loss of income as of December 31, 2013;
13 b. Facts that describe the loss of enjoyment of life that YOU have experienced;
14 c. Facts that describe the emotional distress that YOU have experienced;
15 d. Facts that describe the damage to YOUR health that YOU have experienced; and
16 e. Facts that describe the damage to YOUR personal and professional reputations that
17 YOU have experienced.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

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20 **SPECIAL INTERROGATORY NO. 15:**

21 State all facts that support YOUR claim in paragraph 67 of the THIRD AMENDED
22 COMPLAINT that as “a result of Defendants violations of the FEHA, Plaintiff Cook has
23 suffered, and will continue to suffer, damages, including, but not limited to, loss of income, loss
24 of enjoyment of life, emotional distress, and damage to his health and personal and professional
25 reputations” including:

- 26 a. YOUR total loss of income as of December 31, 2013;
27 b. Facts that describe the loss of enjoyment of life that YOU have experienced;
28 c. Facts that describe the emotional distress that YOU have experienced;

- 1 d. Facts that describe the damage to YOUR health that YOU have experienced; and
2 e. Facts that describe the damage to YOUR personal and professional reputations that
3 YOU have experienced.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 15:**

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6 **SPECIAL INTERROGATORY NO. 16:**

7 State all facts that support YOUR claim in paragraph 71 of the THIRD AMENDED
8 COMPLAINT that as “a result of Defendants’ violations of the WBPA, Plaintiff Cook has
9 suffered, and will continue to suffer, damages, including, but not limited to, loss of income, loss
10 of enjoyment of life, emotional distress, and damage to his health and personal and professional
11 reputations” including:

- 12 a. YOUR total loss of income as of December 31, 2013;
13 b. Facts that describe the loss of enjoyment of life that YOU have experienced;
14 c. Facts that describe the emotional distress that YOU have experienced;
15 d. Facts that describe the damage to YOUR health that YOU have experienced; and
16 e. Facts that describe the damage to YOUR personal and professional reputations that
17 YOU have experienced.

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

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20 **SPECIAL INTERROGATORY NO. 17:**

21 Identify every HEALTH CARE PROVIDER appointment that YOU have attended that
22 relates in any way to YOUR retaliation ALLEGATIONS in the THIRD AMENDED
23 COMPLAINT, including:

- 24 a. The date of each appointment;
25 b. The name and address of each HEALTH CARE PROVIDER; and
26 c. The purpose of each appointment.

27 **RESPONSE TO SPECIAL INTERROGATORY NO. 17:**
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ORDER ON STIPULATION

The Court having reviewed the foregoing Stipulation, and good cause appearing therefor:
IT IS HEREBY ORDERED that

1. DDS withdraw, without prejudice, interrogatory subpart 11c.
2. Cook will provide complete unqualified responses to all of the interrogatories listed in Exhibit A, infra, on or before October 24, 2014.
3. The only objections that Cook will make to the interrogatories are the objections stated in Exhibit A.
4. Cook withdraws all objections with the exception of the attorney-client and work product privileges to Request for Production No. 55, and will mail serve all responsive documents in his custody or control on or before October 24, 2014.
5. Requests for production of documents numbers 64-79 have been narrowed to seek e-mails Cook sent from a non-DDS e-mail account or that he received on a non-DDS e-mail account, and text messages he sent to or received, from Kathren Woodside, Lisa Huff, Gene Alvarez, and Joseph Puccio from March 1, 2007, to the present that:
 - (a) relate to the California Department of Developmental Services or any of its current or former employees; (b) relate to any fact or incident alleged in the Complaint (Doc. 1), the First Amended Complaint (Doc. 21), the Second Amended Complaint (Doc. 53) or the Third Amended Complaint (Doc. 95); or relate to YOUR [Cook's] health, or personal and professional reputation.
6. Cook withdraws all objections to requests for production of documents numbers 64-79 as revised with the exception of the attorney-client and work product privileges, and will mail serve all responsive documents currently in a reproducible format that are under his custody or control on or before October 24, 2014. For responsive documents that are not currently in a reproducible format for production, Cook will diligently work with his wireless phone provider(s) e-mail service provider(s) to obtain responsive documents and will keep DDS apprised of his efforts.
7. Notwithstanding the resolution concerning the requests for production of documents numbers 64-79, Cook and DDS may submit to the Court whether Cook is required to

1 produce all e-mails and text messages that relate to his “emotional condition” and “enjoyment of
2 life.” The Court acknowledges that the parties also intend to submit the outstanding dispute
3 regarding requests for production numbers 56-64 to the Court.

4 8. A party may be subject to sanctions for violating this order.

5 IT IS SO ORDERED.
6

7 Dated: October 17, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE