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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 R.D.G., et al.,) Case No.: 1:13-cv-02057 JLT
12)
13 Plaintiff,) ORDER AFTER SECOND INFORMAL
14 v.) TELEPHONIC CONFERENCE
15) (Doc. 44)
16 CITY OF BAKERSFIELD, et al.,)
17)
18 Defendants.)
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20 At the request of counsel, on April 17, 2015, the Court held an informal telephonic conference
21 related to issues Plaintiff has raised related to the conduct of the depositions of Defendant Woessner
22 and the Fed. R. Civ. P. 30(b)(6) deponent, Sherman.

23 At the conference, counsel noted that many times in the Woessner deposition, defense counsel
24 instructed the witness not to answer questions despite that the instruction was not made to preserve a
25 privilege or to allow time to seek a protective order. The Court agreed that such an instruction is
26 appropriate only under those circumstances set forth by Fed. R. Civ. P. 30(c)(2) [“A person may
27 instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation
28 ordered by the court, or to present a motion under Rule 30(d)(3).”]. However, the Court reminded
counsel that when confronted with whether a deposition should be reopened, the Court may limit the
discovery sought by balancing factors such as the costs involved, whether the information could be
obtained more efficiently from a different source and the importance of the discovery, among other

1 factors. Fed. R. Civ. P. 26(b)(2)(C). The Court directed the conversation toward these factors.

2 As to the deposition of Woessner, at the conference it was clear that answers *had* been given to
3 several questions Plaintiffs contended had not been given. For example, Woessner testified he had no
4 information whether decedent's gun was jammed. Likewise, Plaintiff's counsel stated that Woessner
5 testified that when he reached the breezeway while chasing the decedent, he saw the decedent had
6 continued running and did not stop there. Thus, Plaintiff's counsel conceded that the information as to
7 whether the decedent ambushed Woessner, was addressed at the deposition.

8 At the deposition, Woessner did not provide responses to hypothetical questions posed by
9 Plaintiffs' counsel related to whether, if the circumstances were different—such as the officer being
10 aware the decedent was not going to ambush him and the officer being aware the decedent was
11 carrying an inoperable—he would have taken different actions. At the conference, Plaintiffs' counsel
12 argued that the answers to these questions would test the officer's credibility as well as his training and
13 experience and could impact the opinions of their expert; the Court disagrees—at least based upon the
14 showing currently made. Indeed, Plaintiffs' counsel could not point to how the responses to the posed
15 hypotheticals would be admissible at trial. For example, counsel made no showing that the responses
16 did not call for speculation or did not constitute an expert opinion.

17 Though Plaintiffs' counsel decided that they did not wish to discuss the other areas of their
18 concern as to the Woessner deposition (specifically questions related to whether an AR-15 “has the
19 ability to go through walls,” and the honesty of the officer when he *did* respond to the question by
20 stating, “I’m not sure. I don’t know anything about plaster or anything, I’m sorry I don’t know”), the
21 parties discussed whether Sherman was an appropriate deponent under Fed. R. Civ. P. 30(b)(6).
22 Plaintiffs' chief concern was that Sherman lacked personal knowledge of much of the information
23 about which he testified.

24 The Court reminded counsel that under this Rule 30(b)(6), the key issue is whether the person
25 produced by the entity has the authority to bind it in the litigation. The entity's designee need not have
26 personal knowledge or have been witness to the events addressed at the deposition. United States v.
27 Taylor, 166 F.R.D. 356, 361 *aff'd* 166 F.R.D. 367 (M.D.N.C. 1996); Great Am. Ins. Co. of New York
28 v. Vegas Const. Co., Inc., 251 F.R.D. 534, 539 (D.Nev. 2008). Rather the deponent must be sufficiently

1 prepared about information known by the entity or reasonably available to it, so he can address the
2 topics raised at the deposition on behalf of the entity. Id. However, resolution of this issue was not
3 achieved.

4 Thus, after discussing the issues at the conference, the Court **ORDERS**:

5 1. Plaintiffs are authorized to file a motion to compel the further deposition of Woessner. If
6 they choose to file such a motion, in addition to addressing the specific deposition questions at issue,
7 they must address the factors set forth in Fed. R. Civ. P. 26(b)(2)(C) such to justify reopening the
8 deposition. Likewise, they are directed to discuss the timeliness of the motion in light of the fact that
9 the deposition occurred in January 2015. The motion **SHALL** comply with Local Rule 251(c);

10 2. Plaintiffs are authorized to file a motion to compel the further deposition of the entity.
11 However, if they choose to file such a motion, in addition to addressing the specific deposition
12 questions at issue, they must address the factors why they believe the deponent previously produced
13 was inadequate under applicable federal authority. The motion **SHALL** comply with Local Rule
14 251(c);

15 3. As to either motion, Plaintiffs are limited to the issues actually raised in meet and confer
16 efforts with opposing counsel and actually discussed at the informal conference.

17 **No modifications of the case schedule are authorized hereby.**

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19 IT IS SO ORDERED.

20 Dated: April 17, 2015

/s/ Jennifer L. Thurston
21 UNITED STATES MAGISTRATE JUDGE
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