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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CASE NO. 1:15-CV-01365-DAD-SKO

MARK MCGOWAN, individually and as
successor-in-interest to Nancy Joyce
Garrett, deceased; DEBORAH BLANCO,
individually and as successor-in-interest to
Nancy Joyce Garrett,

Plaintiffs,

v.

COUNTY OF KERN, a municipality;
NICHOLAS JOHN CLERICO, an
individual; and DOES 1-100,

Defendants.

**ORDER GRANTING PLAINTIFFS’
REQUEST FOR ADDITIONAL
DEPOSITIONS**

On January 25, 2019, the parties appeared telephonically for an informal discovery dispute conference. Thomas Seabaugh, Esq., appeared telephonically on behalf of Plaintiffs. Kathleen Rivera, Esq., appeared telephonically on behalf of Defendant County of Kern (“County”), and James Weakley, Esq., appeared telephonically on behalf of Defendant Nicholas John Clerico. (*See* Doc. 114.)

Plaintiffs seek to depose five individuals, whom Plaintiffs contend have information relevant to the County’s alleged spoliation of evidence. The allegedly spoliated evidence is the County’s records of deputy-involved traffic collisions from 2005 to 2010, which were destroyed by a County employee, Ms. Christina Lomas, following verbal and written authorization from the five individuals Plaintiffs seek to depose.

1 After review of the parties' written submissions and hearing the parties' arguments, the
2 Court finds Plaintiffs have made an adequate "particularized showing" of the need for additional
3 depositions. *See Bell v. Fowler*, 99 F.3d 262, 271 (8th Cir. 1996). The additional deponents'
4 testimony bears on the issue of the County's culpability in destroying the records and there is no
5 less burdensome alternative for Plaintiffs to obtain the information they seek. (*See Fed. R. Civ. P.*
6 *26(b)(2)*.) Accordingly, the Court GRANTS Plaintiffs' request to enlarge the number of allowed
7 depositions under Fed. R. Civ. P. 30(a)(2) and take the depositions of the additional five individuals
8 as set forth below.

9 **1. Sergeant Michael Whorf and Commander Justin Fleeman**

10 Sergeant Michael Whorf and Commander Justin Fleeman discussed the destruction of the
11 records of deputy-involved traffic collisions from 2005 to 2010 with Ms. Lomas prior to her
12 destruction of the records and permitted Ms. Lomas to proceed with seeking written authorization
13 to destroy the records. Therefore, as discussed with the parties, Plaintiffs may depose Sergeant
14 Whorf and Commander Fleeman for the limited purpose of determining their recollection of the
15 conversation with Ms. Lomas, their awareness of Plaintiffs' lawsuit, their knowledge of any
16 litigation hold and the County's litigation hold policies, and their basis for approving her request
17 to seek authorization to destroy the records.

18 **2. Mr. Gurujodha Khalsa, Ms. Susan Rooney, and Mr. Mick Gleason**

19 Mr. Gurujodha Khalsa, Ms. Susan Rooney, and Mr. Gleason all signed an authorization form
20 authorizing the destruction of the records, which specifically identified the records for destruction
21 as accident reports from the Fleet Maintenance Unit with the Sheriff's Department from 2005 to
22 2010. Mr. Khalsa signed as the representative from the County Counsel's Office, Ms. Rooney
23 signed as the representative of the County Auditor-Controller's office, and Mr. Gleason signed as
24 the Chair of the County Board of Supervisors. As each of their reasons for signing the form bears
25 on the County's culpability in destroying the records, Plaintiffs may depose Mr. Khalsa, Ms.
26 Rooney, and Mr. Gleason regarding their state of mind when they authorized the destruction of the
27 records, consisting of their awareness of Plaintiffs' lawsuit, their knowledge of any litigation hold
28 and the County's litigation hold policies, as well as their independent understanding of why they

1 authorized the destruction of the records.

2 The Court notes that Mr. Khalsa signed the authorization form as the representative of the
3 County Counsel, so certain aspects of his deposition may be subject to the attorney-client privilege.
4 Plaintiffs may, however, ask Mr. Khalsa about general details of the litigation hold including what
5 it covered, who received it, and when it was received, without infringing on the attorney-client
6 privilege.

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8 IT IS SO ORDERED.

9 Dated: January 28, 2019

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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