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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BALJIT ATHWAL and DALJIT ATWAL,

Plaintiffs,

vs.

COUNTY OF STANISLAUS, CITY OF  
TURLOCK; CITY OF MODESTO; CITY  
OF CERES; STANISLAUS COUNTY  
OFFICE OF THE DISTRICT ATTORNEY;  
KIRK BUNCH; JON EVERS; TIMOTHY  
REDD; DALE LINGERFELT; STEVE  
JACOBSON; BIRGIT FLADAGER;  
GALEN CARROLL; PAUL EDWARD  
JONES,

Defendants.

Case No. 1:15-cv-00311-TLN-BAM

**ORDER REGARDING DISCOVERY  
DISPUTE**

(Doc. 154)

WALTER W. WELLS and SCOTT  
MCFARLANE,

Plaintiffs,

vs.

COUNTY OF STANISLAUS, *et al.*,

Defendants.

Case No. 1:20-cv-770-TLN-BAM

Pending before the Court is a discovery dispute brought by Plaintiffs Baljit Athwal and Daljit Athwal and Plaintiffs Walter Wells and Scott MacFarlane to compel Defendant County of Stanislaus to produce further responses to (1) Plaintiff Athwal’s Interrogatories Nos. 12 and 13 and Requests for Production (“RFP”) Nos. 31-35 and 38; and (2) Plaintiff Wells’ Requests for Production Nos. 1, 2, 5

1 and 8.<sup>1</sup> Plaintiffs filed a pretrial discovery statement on September 22, 2021. (Doc. 156.) Defendants  
2 County of Stanislaus, Stanislaus County Office of the District Attorney, Kirk Bunch, Dale Lingerfelt,  
3 Steve Jacobson, and Birgit Fladager filed an untimely pretrial discovery statement on September 27,  
4 2021. (Doc. 157.)

5 The matter was heard via Zoom video on September 29, 2021, before United States Magistrate  
6 Judge Barbara A. McAuliffe. Counsel Jessica Grant and Meredith Angueira appeared by Zoom video  
7 on behalf of Plaintiffs Baljit Athwal and Daljit Athwal and Plaintiffs Walter Wells and Scott  
8 MacFarlane. Counsel John Whitefleet appeared by Zoom video on behalf of Defendant County of  
9 Stanislaus.

10 For the reasons stated on the record, and as discussed in detail below, Plaintiffs' motion to  
11 compel further discovery responses is GRANTED IN PART and DENIED IN PART.

## 12 BACKGROUND

13 On June 4, 2021, Plaintiffs moved to compel Defendant's responses to Plaintiff Athwal's  
14 Interrogatories Nos. 12 and 13 and Plaintiff Wells' Requests for Production ("RFP") Nos. 1-5 and 8.  
15 (Doc. 138.) Plaintiffs filed an amended motion to compel on June 16, 2021. (Doc. 141.) During meet  
16 and confer efforts on July 1, 2021, Defendant agreed to produce responses to RFP Nos. 1 and 2 within  
17 two weeks and responses to RFP Nos. 5 and 8 within three weeks. (*See* Doc. 159.) Thereafter, on  
18 July 23, 2021, the Court issued an order denying Plaintiffs' motion to compel responses to RFP Nos. 3  
19 and 4 and compelling Defendant to provide responses to Interrogatories Nos. 12 and 13 within thirty  
20 (30) days. (Doc. 146.)

21 On August 2, 2021, the Court held a conference to address the status of Defendant's  
22 production. Plaintiffs reported that they had not received any responsive documents and had not  
23 received a response from Defendant. Counsel for Defendant County of Stanislaus was unaware that  
24 an agreement had been reached or even the purpose of the status conference because negotiating  
25 counsel was no longer with the defense firm. The Court set a further status conference for August 6,  
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28 <sup>1</sup> Plaintiff Athwal's RFPs Nos. 31-35 and 38 are identical to Plaintiff Wells' RFP Nos. 1-5 and 8. The Court generally will refer to these RFPs collectively as RFP Nos. 1-5 and 8.

1 2021. (Doc. 149.)

2 On August 6, 2021, the Court held a status conference to address the status of Defendant's  
3 discovery responses. Defendant reported providing responses to RFP Nos. 1, 2, and 8. Defense  
4 counsel indicated that a response to RFP No. 5 was being processed and a second search for  
5 documents responsive to RFP Nos. 1 and 2 was being conducted to ensure accuracy. The Court  
6 ordered Defendant to provide responses to RFP No. 5 and supplemental responses to RFP Nos. 1 and  
7 2 no later than August 27, 2021. Defendant also was ordered to identify if any documents were  
8 withheld based on objection or privilege. (Doc. 151.)

9 On September 1, 2021, the Court held a further status conference to address Defendant's  
10 responses to Interrogatories Nos. 12 and 13 and RFP Nos. 1, 2, 5 and 8. Plaintiffs identified  
11 deficiencies with Defendant's responses. The Court directed the parties to meet and confer regarding  
12 the asserted deficiencies and set the matter for the instant discovery dispute conference on September  
13 29, 2021. The Court instructed the parties to file discovery dispute briefs by September 24, 2021.  
14 (Doc. 151.)

15 Plaintiffs filed their discovery dispute statement on September 22, 2021, identifying  
16 deficiencies in Defendant's responses to RFP Nos. 1 and 2 and Interrogatory No. 13. (Doc. 156.)  
17 Defendant filed an untimely discovery statement on September 27, 2021, asserting that any issue  
18 concerning RFP Nos. 1 and 2 had been resolved and that the response to Interrogatory No. 13 was  
19 sufficient under Federal Rule of Civil Procedure 33. (Doc. 157.)

## 20 DISCUSSION

### 21 A. RFP Nos. 1 and 2

22 Plaintiffs contend that Defendant has failed to produce supplement responses to RFP Nos. 1  
23 and 2 and has failed to amend its responses to indicate whether it has conducted a second search for  
24 documents responsive to RFP Nos. 1 and 2. Defendant counters that it served a supplemental response  
25 to RFP Nos. 1 and 2 on August 27, 2021. Further, defense counsel reportedly informed Plaintiffs that  
26 an additional search was performed, which is why the supplemental production reflected the  
27 production of additional documents. Defendant therefore asserts that this issue is therefore resolved.  
28 (Doc. 157 at 2.)

1 As clarified at the discovery conference, Plaintiffs seek to compel supplemental, verified  
2 responses to RFP Nos. 1 and 2 which expressly state under penalty of perjury that Defendant  
3 conducted a second search for documents responsive to RFP Nos. 1 and 2 and that any responsive  
4 documents were produced.

5 Plaintiffs' motion to compel a supplemental response to RFP Nos. 1 and 2 will be granted, in  
6 part. Within fourteen (14) days from the date of this Order, Defendant will be required to provide  
7 supplemental responses to RFP Nos. 1 and 2 signed by counsel of record certifying that a second  
8 search was conducted for responsive documents and that any responsive documents have been  
9 produced. *See Fed. R. Civ. P 26(g)*. Defendant also will be required to indicate if any documents  
10 were withheld based on an objection or privilege. No verified response under oath is required. *Fed. R.*  
11 *Civ. P 26(g); 34.*

12 **B. Interrogatory No. 13:**

13 Plaintiffs assert that Defendant has not complied with the Court's July 23, 2021 order to  
14 provide a response to Interrogatory No. 13, which demands: "For every PERSON identified in  
15 [Interrogatory No. 12], IDENTIFY the facts, including motive, that led you to believe he or she might  
16 have been directly or indirectly involved in the murder of Korey Kauffman." (*See Doc. 144 at 10-11.*)

17 Plaintiffs point out that Defendant's amended response to Interrogatory No. 13 invoked  
18 Federal Rule of Civil Procedure 33(d) but did not identify any specific records pursuant to that rule.  
19 Plaintiffs argue that Defendant's general reference to "reports, interviews, wiretaps" is insufficient to  
20 respond to Interrogatory No. 13. (*Doc. 156 at 3.*) In short, Plaintiffs contend that Defendant's  
21 response is deficient because it does not identify any facts as required by the interrogatory and merely  
22 refers generally to documents produced in discovery.

23 As to its response to Interrogatory No. 13, Defendant counters that Plaintiffs failed to identify  
24 the complete response. Defendant specifies that, following objections, the response was as follows:

25 insofar as the information requested was not maintained in the manner requested, and is  
26 equally available to Plaintiffs by reviewing the reports, interviews, wiretaps in the  
27 underlying investigation, Defendant opts pursuant to Rule 33(d) of the Federal Rules of  
28 Civil Procedure to refer to those reports, interviews, wiretaps in the underlying  
investigation, which may refer to individuals as suspects or persons of interest, which  
include Victor Altamirano, Jason Armstrong, Baljit Athwal, Daljit Atwal, Tina Carlos,

1 Frank Carson, Michael Cooley, Rickey Cooley, Christina DeFilippo, Georgia DeFilippo,  
2 Filo, Luis Garcia, Rudy Gonzales, Keith Hobbs, Eula Keyes, John Lacey, David  
3 McMillian, Charlie Odell, Toby Oate, Eduardo Quintanar, Praveen Singh, Danny Sisco,  
Brandon Starr, Bobby Tickner, Walter Wells, Robert Woody.

4 (Doc. 157 at 2-3.)

5 Defendant explains that there were multiple indices included in the hard drive production of  
6 underlying criminal proceedings containing over 300,000 files. The indices are organized by author,  
7 Bates Number, Date of Occurrence, and by interviewee. (*Id.* at 3.) Each index has the author of the  
8 report, date of the occurrence, date of the report, a summary of the report, the correspondence bates  
9 numbers, the corresponding bates references to a transcript if applicable, and several other categories.  
10 Defendant indicates that the indices are searchable, with the referenced documents linked to the actual  
11 documents. Defendant argues that Plaintiffs may locate the named individuals just as easily as  
12 Defendant and the burden is equal for either side to determine the information sought from the  
13 available documents. Defendant further argues that when production is accompanied by indices  
14 designed to guide the searcher, such production is sufficient and appropriate under Rule 33(d). (*Id.* at  
15 3-4.)

16 As argued at the conference, Plaintiffs rely on *State of Colorado ex rel. Woodard v. Schmidt-*  
17 *Tiago Const. Co.*, 108 F.R.D. 731, 735 (D. Colo. 1985), for the proposition that Defendant is required  
18 to list the specific document provided and indicate the page or paragraphs that are responsive to the  
19 “fact” sought in the interrogatory. In the cited case, the plaintiff argued that it had produced thousands  
20 of documents and was not required to list specific documents which would answer a specific  
21 interrogatory or request for production of documents. The court disagreed, stating that the “appropriate  
22 answer when documents are to be used [under Rule 33(d)] is to list the specific document provided the  
23 other party and indicat[e] the page or paragraphs that are responsive to the interrogatory.” *Id.* at 735.

24 Plaintiffs note that *Forest Guardians v. Kempthorne*, No. CIV 06CV2560-L(LSP), 2008 WL  
25 4492635, at \*3 (S.D. Cal. Sept. 29, 2008), which is relied upon by Defendant to justify its response,  
26 also cited *State of Colorado* and similarly explained that when invoking Rule 33(d), the responding  
27 party has the duty to specify by category and location, the records from which answers to  
28 interrogatories can be derived. *Id.* In *Forest Guardians*, defendant responded to interrogatories by

1 generally citing to records contained in the administrative record. The court found this response  
2 insufficient, explaining that an index “is a roadmap to all documents that are contained within the  
3 administrative record, not a roadmap to documents from which an answer to a specific interrogatory  
4 can be ascertained.” *Id.* The court reasoned that “[i]t is inconceivable that all documents contained  
5 within the administrative record are responsive to each interrogatory. A more appropriate response  
6 would be to identify documents listed on the index that are responsive to each specific interrogatory.”  
7 *Id.*

8         Having considered the parties’ arguments, the Court finds the cited cases distinguishable. The  
9 Court accepts Defendant’s argument that this is not a simple case and it is uncertain when a person  
10 becomes a “suspect” as requested by Plaintiffs’ interrogatory. As Defendant points out, such a  
11 determination is a moving target. This is particularly so where the murder underlying this case was  
12 investigated for 18 months and involved a 14-month preliminary hearing. Interrogatory No. 13  
13 interrogatory asks for “facts” relating to every person identified as a suspect identified in interrogatory  
14 12. Defendant identified over twenty-five different individuals. Unlike the cited cases, here, it is  
15 entirely conceivable that each document provides a piece of a complex puzzle. Given this complexity,  
16 it is probable that each of the documents produced and listed in the indices are responsive to the  
17 interrogatory. Defendant appropriately provided indices to guide the searcher to the responsive  
18 documents. *See O’Connor v. Boeing N. Am., Inc.*, 185 F.R.D. 272, 278 (C.D. Cal. 1999) (holding that  
19 when voluminous documents are produced under Rule 33(d), they must be accompanied by indices  
20 designed to guide the searcher to the documents responsive to the interrogatories).

21         The Court is also convinced by Defendant’s representation at the conference that individuals  
22 familiar with the investigation of “suspects” are no longer employed by county. Thus, the burden of  
23 deriving the answers is the same for both parties. Fed. R. Civ. P. 33(d); *cf. O’Connor*, 185 F.R.D. at  
24 278 (“Without detailed specification by category and location of responsive documents, the burden of  
25 deriving the answers to the interrogatories is not the same for the parties; rather, it would be easier for  
26 persons employed by the defendants to locate responsive documents”).

27         For these reasons, Plaintiffs’ motion to compel a further response to Interrogatory No. 13 will  
28 be denied.

1 **CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED as follows:

3 1. Plaintiffs' motion to compel a supplemental response to RFP Nos. 1 and 2 is  
4 GRANTED in part;

5 2. Within **fourteen (14) days** from the date of this Order, Defendant shall provide  
6 supplemental responses to RFP Nos. 1 and 2 signed by counsel of record certifying that a second  
7 search was conducted for responsive documents and that any responsive documents have been  
8 produced. Defendant also shall indicate if any documents were withheld based on an objection or  
9 privilege; and

10 3. Plaintiffs' motion to compel a further response to Interrogatory No. 13 is DENIED.

11  
12 IT IS SO ORDERED.

13 Dated: October 1, 2021

/s/ Barbara A. McAuliffe  
14 UNITED STATES MAGISTRATE JUDGE