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12 Attorneys for Defendant
13 COUNTY OF SAN JOAQUIN, *sued*
14 *erroneously as* SAN JOAQUIN COUNTY
15 EMPLOYMENT AND ECONOMIC
16 DEVELOPMENT DEPARTMENT

17 **UNITED STATES DISTRICT COURT**

18 **EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO BRANCH**

19 ANTHONY W. ROBINSON,

CASE NO. 2:12-CV-02783 CKD

20 Plaintiff,

**NOTICE OF MOTION AND MOTION TO ADD
21 WITNESS STEPHANIE MACDONALD TO
22 THE DEFENDANT’S WITNESS LIST**

23 vs.

Trial Date: June 10, 2019

24 SAN JOAQUIN COUNTY EMPLOYMENT
25 AND ECONOMIC DEVELOPMENT
26 DEPARTMENT AND JOHN SOLIS,

Courtroom: 24

Magistrate Judge: Hon. Carolyn K. Delaney

27 Defendants.
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29 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

30 PLEASE TAKE NOTICE that Defendant County of San Joaquin will and hereby does
31 move this Court for an order allowing it to add witness Stephanie MacDonald to its witness list
32 and to call Ms. MacDonald in its case in chief. This Motion is based upon the fact that
33 Defendant has only recently learned that Plaintiff intends to argue that he was not selected for

1 a position in 2012 because the individuals who interviewed him for the 2012 position reviewed
2 his December 18, 2009 performance evaluation.

3 This Motion is based upon this Notice of Motion, the accompanying Memorandum of
4 Points and Authorities, and the Declaration of Jamie M. Bossuat submitted herewith.

5 Dated: June 7, 2019

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A Professional Law Corporation

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8 By: /s/ Jamie M. Bossuat
9 JAMIE M. BOSSUAT
10 Attorneys for Defendant
COUNTY OF SAN JOAQUIN

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 The Court's Pretrial Order (Doc 191) establishes several circumstances in which the
13 Court will allow the addition of a witness. One basis is if "the party offering the witness
14 demonstrates that the witness is for the purpose of rebutting evidence that could not
15 reasonably be anticipated at the pretrial conference." Pretrial Order, p. 5.

16 Defendant now seeks to add a new witness to rebut a new theory that Plaintiff
17 developed and presented after the parties had submitted witness lists. Plaintiff, at the Pretrial
18 Conference, argued for the first time that he was not selected for a job with the County in
19 2012 because the interviewers for that position reviewed his unsatisfactory 2009 performance
20 evaluation. Declaration of Jamie M. Bossuat ("Bossuat Dec."), ¶ 2. Plaintiff conveyed this
21 new theory to counsel for defendant during the Pretrial Conference while the parties were
22 meeting and conferring on which documents Plaintiff intended to offer as exhibits. Bossuat
23 Dec., ¶ 2. Plaintiff's Exhibit 53 is an Information Release Form that identifies that three
24 individuals from the County's Human Services Agency reviewed Plaintiff's personnel file on
25 October 31, 2012. Exhibit A to Bossuat Dec. Exhibit 35 was produced as part of the County's
26 Rule 26 disclosures as part of Plaintiff's personnel file. Bossuat Dec., ¶ 3. Early in the case,
27 discovery encompassed Plaintiff's 2011 layoff and the County's layoff mitigation procedures,
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1 including Plaintiff's post-layoff applications and interviews. *Id.* However, once the layoff was
2 removed as an issue in this case, Defendant had no reason to believe that Plaintiff would
3 argue that there was a connection between his 2009 performance evaluation and his 2012 job
4 applications. Bossuat Dec., ¶ 3.

5 Because Defendant had no reason to believe that the 2012 applications would be at
6 issue at trial, Defendant did not list the three individuals who viewed Plaintiff's personnel file in
7 2012 as witnesses. Bossuat Dec., ¶ 4. However, having learned of the new theory,
8 Defendant included a request to exclude evidence of post-layoff applications in its Motion in
9 Limine No. 1. The Court denied the Motion as to post-layoff applications. Doc. 220.

10 Promptly following the Court's Order on the Motions in Limine, Defendant began
11 attempting to identify and contact the individuals who signed the Information Release Form.
12 Bossuat Dec., ¶ 5. Defendant has successfully contacted Stephanie MacDonald, a current
13 County employee who is one of the individuals who signed the Information Release Form. *Id.*
14 She is currently on vacation, but will be available to testify on Wednesday afternoon or
15 Thursday. *Id.*

16 As a result of the foregoing, Defendant requests that Stephanie MacDonald be added
17 to its witness list and permitted to testify. Defendant is seeking to add this witness at the
18 earliest possible opportunity because it was previously unaware that Plaintiff intended to
19 argue that there was a connection between the Information Release Form and his 2009
20 unsatisfactory evaluation or that the Court would allow evidence on the 2012 applications.

21 Dated: May 28, 2019

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24 By: /s/ Jamie M. Bossuat
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