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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES J. MAYFIELD, JAMES
ALLISON MAYFIELD, JR., and TERRI
MAYFIELD,

Plaintiffs,

v.

IVAN OROZCO, SHERIFF
SCOTTJONES, JAMES LEWIS,
RICKPATTISON, COUNTY OF
SACRAMENTO, UNIVERSITY OF
CALIFORNIA DAVIS
HEALTHSYSTEM, DR. GREGORY
SOKOLOV, DR. ROBERT HALS, and
Does 1-5,

Defendants.

No. 2:13-cv-02499 JAM AC

ORDER

Plaintiffs’ motions to compel discovery, ECF Nos. 131 & 132, came on for hearing before the undersigned on October 12, 2016. Lori Rifkin and Joshua Piovia-Scott appeared on behalf of plaintiffs. Nicole Cahill appeared on behalf of the Sacramento County defendants, and Bianca Watts appeared on behalf of the UC defendants.

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1 BACKGROUND

2 Plaintiff James J. Mayfield, together with his wife and son, sue Sacramento County and
3 various Sacramento County Jail correctional staff, and UC Davis Health Services and related jail
4 psychiatric staff, for failure to protect, failure to provide medical care, and related claims. The
5 claims arise from injuries plaintiff suffered as the result of a suicide attempt made in the
6 Sacramento County jail when he was a detainee.

7 THE MOTIONS TO COMPEL

8 Plaintiffs seek to compel (1) further depositions of Dr. Gregory Sokolov, a psychiatrist
9 who is the Jail Psychiatric Services Medical Director, and Ms. Andrea Javist, an LCSW who is
10 the Jail Psychiatric Services Program Manager; (2) supplemental answers to Interrogatories and a
11 further production of documents that the County failed to produce earlier after hearing and order;
12 and (3) production of a recently disclosed 2016 jail audit report.

13 STANDARDS

14 The scope of discovery under the Federal Rules is broad. Discovery may be obtained as
15 to “any nonprivileged matter that is relevant to any party’s claim or defense and proportional to
16 the needs of the case, considering the importance of the issues at stake in the action . . . and
17 whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R.
18 Civ. P. (“Rule”) 26(b)(1). “Information within this scope of discovery need not be admissible in
19 evidence to be discoverable.” Id. “Evidence is relevant if: (a) it has any tendency to make a fact
20 more or less probable than it would be without the evidence; and (b) the fact is of consequence in
21 determining the action.” Fed. R. Evid. 401.

22 Under Rule 34(a)(1) “[a] party may serve on any other party a request within the scope of
23 Rule 26(b): (1) to produce and permit the party making the request to inspect, copy, test, or
24 sample the following items in the responding party’s possession, custody or control . . . ; any
25 designated documents or electronically stored information.” In responding to discovery requests
26 “a party need not have actual possession of documents to be deemed in control of them.” Clark v.
27 Vega Wholesale Inc., 181 F.R.D. 470, 472 (D.Nev.1998) (quoting Estate of Young v. Holmes,
28 134 F.R.D. 291, 294 (D.Nev.1991). “A party that has a legal right to obtain certain documents is

1 deemed to have control of the documents.” Clark, 81 F.R.D. at 472.

2 Pursuant to Rule 37(a), a party propounding discovery or taking a deposition may seek an
3 order “compelling disclosure or discovery.” Under Rule 37(a)(3)(B) such a motion may be made
4 if “a party fails to answer an interrogatory submitted under Rule 33, or fails to produce
5 documents or fails to respond that inspection will be permitted . . . as requested under Rule 34.”

6 DISCUSSION

7 A. Production of the 2016 Jail Audit

8 The Prison Rape Elimination Act of 2003 [“PREA”] was enacted by Congress to address
9 concerns about the sexual assault of prisoners. 42 U.S.C. § 15601 et seq. The Act established a
10 grant-making and regulatory regime designed to address sexual assault and related inmate safety
11 issues in prisons and jails. 42 U.S.C. §§ 15606, 15607. The Sacramento County Jail was audited
12 under this program in 2016 (as well as in other years), and plaintiffs seek access to the 2016
13 Report.

14 Defendant County refuses to produce the report, on several grounds. First, they argue that
15 the 2016 Report did not include any review of the Mayfield incident, which occurred in 2013.
16 Second, it is only an Interim Report and therefore subject to change. The Jail will have an
17 opportunity to develop a corrective action plan for any deficiencies identified, and could even
18 appeal any negative action. Accordingly, defendants argue that the document is irrelevant, that it
19 would not be admissible at trial, and that its use in this litigation would be prejudicial to the
20 County.¹

21 Although the defendants’ position on admissibility may prove to be correct once the
22 document has been produced for examination, admissibility is not the issue at this stage of the
23 proceedings. Plaintiffs argued that this Report, even though it was drafted long after the 2013
24 attempted suicide attempt at the center of this case, would potentially be relevant to meeting
25 plaintiffs’ burden under Monell v. New York City Department of Social Services, 436 U.S. 658

26 ¹ Defendants also note that the Report was not provided to the County until after the original
27 Request for Production of Documents had been both propounded and responded to by the County.
28 That does not matter, as the duty to supplement discovery responses applies.

1 (1978), and to prove punitive damages. The court agrees. Evidence post-dating the Mayfield
2 incident could be admissible on the issue of Monell liability. See Henry v. County of Shasta, 132
3 F.3d 512, 518, 519 (9th Cir. 1997) (evidence of incidents both preceding and following the
4 incident at issue may be used to establish the existence of a policy or custom of deliberate
5 indifference to inmate rights); Medina v. County of San Diego, 2014 U.S. Dist. LEXIS 1135672
6 (S.D. Cal. 2014) (documents showing notice or ratification of prior actions may be the only way
7 to prove policy, custom or habits under Monell). Moreover, evidence of subsequent events may
8 prove either aggravating or mitigating for purposes of a punitive damages claim. See Swinton v.
9 Potomac Corp, 270 F.3d 794, 810, 812 (9th Cir. 2001); Ogilvie v. International Playtex, 821 F.2d
10 1438, 1446 (10th Cir. 1987).

11 For these reasons, the court ruled from the bench on October 12, 2016, that the County
12 must produce the 2016 PREA Audit Report to plaintiff's within 24 hours of the hearing.

13 B. Production Of Documents Previously Ordered Produced

14 In their moving papers, plaintiffs asserted that certain documents the UC defendants had
15 previously been ordered to produce, see ECF No. 117, had not been provided. The discovery
16 requests at issue here (plaintiff's Interrogatory No. 22, Interrogatory No. 23, and Request for
17 Production No. 192) all seek information about the creation of a "Self-Inflicted Injury Log" that
18 was generated regarding the suicide attempt of an inmate other than plaintiff. The undersigned
19 has previously overruled the defendants' objections to discovery of this matter. ECF No. 117 at
20 3-5. To the extent that defendants have not yet produced responsive documents and responses to
21 the interrogatories, they shall do so forthwith. Responses to these discovery requests shall be
22 subject to the Protective Order in place in this case.

23 C. Follow-Up Discovery Related to Sokolov and Javist Depositions

24 Defendant Gregory Sokolov, M.D., medical director of Jail Psychiatric Services, and
25 Andrea Javist, LCSW, program manager for Jail Psychiatric Services, were deposed between
26 June 24 and August 10, 2016. The depositions revealed the existence of documents not
27 previously produced to plaintiff, including an Incident Report that was used by the individual
28 defendants in their follow-up meeting regarding the Mayfield suicide attempt. This Incident

1 Report was produced to plaintiffs following the depositions, along with other documents not
2 previously disclosed which related to plaintiff Mayfield's medical and psychiatric treatment
3 before his suicide attempt, and the follow-up treatment and quality assessment he received after
4 the attempt. The August 16, 2015, cover letter from defendant's counsel that accompanied the
5 post-deposition production referred to additional incident reports that would be "forthcoming" but
6 which were not (according to plaintiffs) produced prior to the filing of the instant motion to
7 compel. Late produced documents did, however, include an appointment log showing how many
8 times and when plaintiff had been seen by mental health and medical staff, and a report produced
9 by a forensic psychiatric consultant retained by the County, Dr. Gage, dated June 8, 2016,
10 assessing the mental health program at the jail. Plaintiff seeks (1) compelled production of all
11 documents identified during the previous depositions, or related to them; and (2) further
12 depositions of Dr. Sokolov and Ms. Javist to examine them about the content of these previously
13 undisclosed documents.

14 Defendants' objections to these requests are overruled. If any of the documents referred
15 to during the previous depositions or in counsel's letter dated August 16, 2015 have not yet been
16 produced to plaintiffs, they shall be produced forthwith. Moreover, in light of the circumstances
17 of the case and the history of discovery, the court finds good cause to permit the further
18 depositions of Dr. Sokolov and Ms. Javist. These depositions are limited to examination
19 regarding the late-disclosed documents identified by plaintiffs and the matters addressed by those
20 documents. Defendant's objection to examination regarding the Gage Report is overruled.

21 D. Timeliness of Discovery

22 The court overrules defendants' objections that plaintiffs brought their motion to compel
23 too close to the discovery deadline. Having considered the course of discovery and the
24 circumstances of the case as a whole, the undersigned finds that plaintiffs brought their motion
25 within a reasonable time and in time to be resolved within the applicable deadline(s). In light of
26 the court's delay in issuing this order, all discovery produced or conducted pursuant to this order
27 will be deemed timely.

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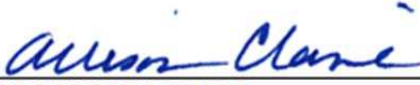
CONCLUSION

For the reasons explained above and at the hearing on the motion, IT IS HEREBY ORDERED as follows:

1. Plaintiffs' motions to compel, ECF Nos. 131 and 132, are GRANTED;
2. Defendants shall produce all outstanding documents and supplemental responses to Interrogatories, as specified above, within seven days;
3. Dr. Sokolv shall be produced for a deposition not to exceed four (4) hours on a day and at a time convenient to the parties no later than October 31, 2016; and
4. Ms. Javist shall be produced for a deposition not to exceed two (2) hours on a day and at a time convenient to the parties, no later than October 31, 2016.
5. All discovery produced or conducted pursuant to this order will be deemed timely.

IT IS SO ORDERED.

DATED: October 23, 2016



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE