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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 EUREKA DIVISION

MICHAEL IZELL SEALS,

No. CV 04-3764 NJV

Plaintiff,

ORDER GRANTING PLAINTIFF'S
 MOTION TO COMPEL DEPOSITION
 TESTIMONY

v.

OFFICER RODNEY K. MITCHELL, ET AL.,

(Doc. No. 146)

Defendants.

Plaintiff Michael Izell Seals brought a 42 U.S.C. § 1983 action against Defendants John Rynhart and Lyle Thomas alleging use of excessive force during Plaintiff's arrest on February 5, 2003. Plaintiff moves to compel deposition testimony by Defendants on the following subjects: (1) Defendants' employment history; (2) their prior use of force, if any; (3) evaluation of their performance in training programs; and (4) prior citizen complaints filed against them, if any. Doc. No. 146. Defendants timely filed an opposition and Plaintiff timely filed a reply. Having considered the papers submitted, and for good cause shown, the Court GRANTS Plaintiff's motion to compel deposition testimony by Defendants on these subjects.

DISCUSSION

Plaintiff served requests for production of documents including "the complete employment, training, performance and personnel records of Deputy John Rynhart and of Deputy Lyle Thomas and diaries and other writings maintained in the course of their employment as peace officers," and "internal and external investigations, inquiry or commentary regarding the February 5, 2003 arrest of Plaintiff and all events relating to this arrest." *See* Doc. No. 137 ¶ 2. By stipulation dated October

1 8, 2010, and approved by the Court on October 12, 2010, Defendants agreed to produce the
2 requested records to the Court for in camera review to identify the relevant records. Doc. Nos. 137
3 & 140. The Court entered the parties' stipulated protective order on October 12, 2010. Doc. No.
4 139. The stipulated protective order sets limits on the use and disclosure of "Confidential Material"
5 and defines "Confidential Material" to include the following documents: employment, training,
6 performance and personnel records of Deputies Rynhart and Thomas ordered by the Court,
7 following in camera review, to be produced in this action; and internal and external investigations,
8 inquiry or commentary regarding the February 5, 2003 arrest of Plaintiff and all events relating to
9 this arrest ordered by the Court, following in camera review, to be produced in this action. Doc. No.
10 139 ¶ 1(a) and (b).

11 Plaintiff deposed Defendant Rynhart on October 26, 2010 in Napa, California, and deposed
12 Defendant Thomas on October 29, 2010 in Boise, Idaho. At both depositions, after being instructed
13 by defense counsel not to respond based on the Court's pending in camera review, Defendants
14 refused to respond to questions regarding their personnel files, performance evaluation in training,
15 prior employment-related complaints, and their involvement in other lawsuits. *See* Decl. of Meghna
16 Subramanian In Support Of Plaintiff's Motion to Compel Deposition Testimony, Exs. 1 and 2 (Doc.
17 No. 147); Defs.' Opp'n.

18 On November 5, 2010, Plaintiff filed the present motion to compel deposition testimony by
19 Defendants regarding (1) Defendants' employment history; (2) their prior use of force, if any; (3)
20 evaluation of their performance in training programs; and (4) prior citizen complaints filed against
21 them, if any. Defendants argue that defense counsel's objections to deposition questions regarding
22 information contained in Defendants' personnel records were justified based on this Court's in
23 camera review of Defendants' documents, which was pending at the time of Defendants' October 26
24 and 29, 2010 depositions. Defendants do not present any substantive legal argument or cite to any
25 legal authority supporting their opposition to the discovery of such information through deposition
26 testimony, nor do Defendants respond to Plaintiff's legal argument or authority. Defendants also do
27 not address the Court's recent Order Following In Camera Review. Doc. No. 151.

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1 On November 29, 2010, the Court held that Defendants must produce the documents
2 submitted for in camera review because the information contained therein was sufficiently relevant
3 to Plaintiff's claim, including the citizen's complaint, documents related to the internal investigation
4 surrounding the underlying incident, and Defendants' personnel and training records. Doc. No. 151.
5 Therefore, Defendants' objections from their October 26 and 29, 2010 depositions and continued
6 reliance on those October 2010 objections in their opposition to the motion to compel are now moot.

7 The Court has already determined that investigation regarding the underlying incident and
8 Defendants' training and personnel records are relevant and that Plaintiff's need for these records
9 outweighs the police department's interest in protecting official information and the individual
10 officers' privacy interests. *Id.*; *see also Soto v. City of Concord*, 162 F.R.D. 603, 615 (N.D. Cal.
11 1995); *Green v. Baca*, 226 F.R.D. 624, 644 (C.D. Cal. 2005) ("In cases involving section 1983
12 claims, courts have repeatedly held that police personnel files and documents are relevant and
13 discoverable."). The relevancy of this information is not limited to documents; it also applies to
14 deposition testimony regarding these subjects. *See Randolph v. City of East Palo Alto*, 2007 U.S.
15 Dist. LEXIS 89249, *8-9 (N.D. Cal. 2007) (in a §1983 case, ordering defendants to respond to
16 deposition "questions regarding their employment history, their prior use of excessive force, and
17 prior citizen complaints filed against them").

18 Therefore, Plaintiff's motion to compel deposition testimony is GRANTED. The Court
19 orders Defendants Rynhart and Thomas to attend their supplemental depositions and respond to
20 questions regarding the following four subjects: (1) their employment history; (2) their prior use of
21 force, if any; (3) evaluation of their performance in training programs; and (4) prior citizen
22 complaints filed against them, if any. The supplemental depositions shall be limited to these four
23 subjects and will take place at Plaintiff's counsel's offices in San Francisco. Defendants shall bear
24 the costs associated with taking these supplemental depositions. The deadline for non-expert
25 discovery¹ is extended until January 15, 2011 for the limited purpose of taking the supplemental
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27 ¹ The October 29, 2010 deadline for non-expert discovery was extended by stipulation to
28 December 8, 2010 for the limited purpose of completing discovery related to five witnesses identified
in Defendants' Third Supplemental Disclosures: Officer Raymond Brady, Officer McDonald, Charlie
Diener, Dave Perkins, and Joe Hughes. Doc. No. 145.

1 depositions of Defendants Rynhart and Thomas. The parties shall meet and confer as to dates before
2 noticing the supplemental depositions.

3 To the extent that the parties contend that documents or testimony produced during discovery
4 should be excluded at trial, the parties may submit, with their pretrial filings, in limine motions to
5 exclude evidence.

6 **CONCLUSION**

7 Plaintiff's motion to compel deposition testimony is GRANTED.

8 IT IS SO ORDERED.

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10 Dated: December 17, 2010



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12 NANDOR J. VADAS
13 United States Magistrate Judge
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