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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 MERCY AMBAT, *et al.*,

No. C 07-03622 SI

9 Plaintiffs,

**ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL DEPOSITION**

10 v.

11 CITY AND COUNTY OF SAN FRANCISCO,

12 Defendants.
13 _____/

14 Defendants request an order compelling plaintiff Jon Gray to appear for another deposition and
15 prohibiting plaintiffs' counsel from instructing Mr. Gray not to answer questions about allegations he
16 made regarding William Riker, an arbitrator, and James Harrigan, the Sheriff's General Counsel.
17 Plaintiffs oppose defendants' request.¹

18 At Mr. Gray's deposition, plaintiffs' counsel instructed Mr. Gray not to answer defense counsel's
19 questions on the grounds that the information sought was irrelevant, otherwise available to the defense,
20 and protected by California's statutory privilege for statements made in connection with judicial and
21 quasi-judicial proceedings, *see* Cal. Civil Code § 47. In their opposition to defendants' discovery
22 request, plaintiffs' sole argument is that the information sought from Mr. Gray was privileged.
23 Accordingly, the Court will confine its discussion to that contention.

24 Plaintiff may not refuse to answer questions based on California Civil Code Section 47. Section
25 47 prohibits the use of statements made in connection with judicial and quasi-judicial proceedings as
26 a basis for civil liability for certain torts, such as defamation. *Cabral v. Martins*, --- Cal. Rptr. 3d ----,
27 _____

28 ¹ The parties' letter briefs are found at Docket Nos. 161 and 121.

1 2009 WL 2581365, at *8 (Cal. Ct. App. Aug. 21, 2009). It does not, however, impose a limitation on
2 discovery or evidentiary use of such statements in a subsequent proceeding. *Oren Royal Oaks Venture*
3 *v. Greenberg, Bernhard, Weiss & Karma, Inc.*, 728 P.2d 1202, 1208 (Cal. 1986) (“[W]hile [Section 47]
4 bars certain tort causes of action which are predicated on a judicial statement or publication itself, the
5 section does not create an evidentiary privilege for such statements.”); *see also Block v. Sacramento*
6 *Clinical Labs, Inc.*, 182 Cal. Rptr. 438, 439 (Cal. Ct. App. 1982) (“The privileges of Civil Code section
7 47, unlike evidentiary privileges which function by the exclusion of evidence, operate as limitations
8 upon liability.”) (internal citation omitted).


9 Therefore, there was no proper basis for plaintiffs’ counsel to instruct Mr. Gray not to answer
10 defense counsel’s questions concerning the basis for Mr. Gray’s statements about Mr. Riker and Mr.
11 Harrigan. Defendants’ request to compel Mr. Gray to reappear for deposition is GRANTED.

12
13 **CONCLUSION**

14 Defendants’ request to compel the deposition of Jon Gray and to prohibit plaintiffs’ counsel
15 from instructing Mr. Gray not to answer the questions described herein is GRANTED. [Docket No.
16 116]. Plaintiffs are ordered to produce Mr. Gray for deposition by October 9, 2009.

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18 **IT IS SO ORDERED.**

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20 Dated: September 24, 2009

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23 SUSAN ILLSTON
24 United States District Judge
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