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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 IVANA KIROLA, et al.,

7 Plaintiffs,

8 vs.

9 THE CITY AND COUNTY OF SAN  
10 FRANCISCO, et al.,

11 Defendants.  
12

Case No: C 07-03685 SBA

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION FOR: (1) CLARIFICATION  
OF SCOPE OF DISCOVERY  
AUTHORIZED UNDER THE  
COURT'S JANUARY 31, 2011  
ORDER; AND (2) TO QUASH  
SUBPOENA FOR DEPOSITION OF  
JOANNA FRAGULI**

13 Dkt. 467

14 On November 23, 2010, Defendants filed a Motion to Stay Trial Pending Appeal of  
15 Order Denying Leave for Post-Certification Contact with Class Member Joanna Fraguli  
16 ("Defendants' Motion for Stay"). Dkt. 432. On January 21, 2011, Defendants filed a Motion  
17 for Leave to Amend Trial Exhibit List to Reflect Current Conditions in City's Public Right of  
18 Way, Libraries, Rec Park Facilities, and Financial Condition ("Defendants' Motion for  
19 Leave"). Dkt. 451. Both of these motions were considered by the Court during the January 25,  
20 2011 pretrial conference in this matter.

21 As indicated during the pretrial conference, and as memorialized in the Court's January  
22 31, 2011 written Order, the Court continued the January 31, 2011 trial date to April 4, 2011,  
23 granted Defendants' Motion for Leave, and denied Defendants' Motion for Stay as moot in  
24 view of the new trial date. Dkt. 462. In granting Defendants' Motion for Leave, the Court  
25 stated in its January 31, 2011 Order:

26 Defendants' Motion for Leave to Amend Trial Exhibit List to Reflect Current  
27 Conditions in City's Public Right of Way, Libraries, Rec Park Facilities, and  
28 Financial Condition (Dkt. 451) ("Defendants' Motion") is GRANTED. The  
parties are granted leave to conduct discovery directed to only the new exhibits

1 specifically identified in Defendants’ Motion. The deadline for such discovery  
2 is February 24, 2011.

3 Id. at 1 (emphasis added). Furthermore, with respect to Defendants’ Motion for Stay, the Court  
4 stated: “The parties are granted leave to depose Ms. Fraguli. The deadline for conducting her  
5 deposition is February 24, 2011.” Id.

6 On February 13, 2011, the parties submitted a letter brief to Magistrate Judge Edward  
7 M. Chen, the assigned discovery magistrate judge in this matter, setting forth their respective  
8 positions as to Plaintiffs’ Motion to Compel. Dkt. 464. Plaintiffs’ Motion to Compel is  
9 directed to the parties’ disputes over discovery requests that Plaintiffs served after the Court’s  
10 January 31, 2011 Order. Id.

11 Thereafter, Defendants filed the instant Motion for: (1) Clarification of Scope of  
12 Discovery Authorized Under the Court’s January 31, 2011 Order; and (2) to Quash Subpoena  
13 for Deposition of Joanna Fraguli (“Defendants’ Motion for Clarification”). Dkt. 467, Ex. A.  
14 In that motion, Defendants seek from this Court clarification regarding the scope of discovery  
15 authorized under the January 31, 2011 Order, in view of what they characterize as Plaintiffs’  
16 “overreaching discovery demands in wake of the Court’s limited reopening of discovery ....”  
17 Id. at 1. The Court notes that the parties’ disputes regarding Plaintiffs’ discovery requests have  
18 already been fully briefed before Magistrate Judge Chen. Moreover, Defendants fail to identify  
19 any ambiguity in the plain language of the Court’s January 31, 2011 Order regarding the scope  
20 of additional discovery. Indeed, the Court made clear that the parties are granted “leave to  
21 conduct discovery directed to only the new exhibits specifically identified in Defendants’  
22 Motion.” Dkt. 462 at 1 (emphasis added). In view of these factors and the approaching April  
23 4, 2011 trial date, Plaintiffs’ Motion to Compel is ripe for adjudication by Magistrate Judge  
24 Chen, without requiring any further clarification from the undersigned.

25 With respect to Defendants’ motion to quash Plaintiffs’ subpoena for deposition of Ms.  
26 Fraguli, Defendants explain that although they declined the opportunity to depose Ms. Fraguli,  
27 Plaintiffs noticed her deposition themselves. Defendants are correct that the Court only  
28 granted Defendants leave to conduct Ms. Fraguli’s deposition. While there may be some

1 ambiguity in the Court's written order on this issue, the Court's reasons for granting  
2 Defendants leave to take Ms. Fraguli's deposition, as stated on the record at the January 25,  
3 2011 pretrial conference, contain no such ambiguity:

4 And then with respect to the – class member who seems to be interested in  
5 talking with the defendant but – on an ex parte basis, one thing I thought I would  
6 just throw out for purposes of your discussion is giving you all a limited amount  
7 of time to engage in discovery – plaintiffs engage in discovery on the updated  
8 exhibit list and – and the defendants an opportunity to – not on ex parte basis but  
9 with the presence of plaintiffs to talk to the – to engage in discovery with respect  
10 to the class members.

11 ....

12 [Addressing Defendants' counsel] What I'm trying to do is accommodate your  
13 seeming interest in talking with her as the same time as making sure that any –  
14 any possible prejudice as a result of – of the plaintiffs not being able to be  
15 present when a member of the class is being questioned and minimize that  
16 prejudice, at the same time.

17 Dkt. 473, Ex. A. (Hearing Tr. January 25, 2011) at 5:12-20; 6:14-19 (emphasis added).

18 Accordingly, for the reasons stated above,

19 IT IS HEREBY ORDERED THAT Defendants' Motion for Clarification (Dkt. 467, Ex.  
20 A) is GRANTED IN PART and DENIED IN PART as follows:

- 21 1. Defendants' motion for Clarification of Scope of Discovery Authorized Under  
22 the Court's January 31, 2011 Order is DENIED; and
- 23 2. Defendants' motion to Quash Subpoena for Deposition of Joanna Fraguli is  
24 GRANTED.

25 IT IS SO ORDERED.

26 Dated: February 23, 2011

27   
28 SAUNDRA BROWN ARMSTRONG  
United States District Judge