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FILED

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT

CAROLE BEATON,

CASE NO. DR130058

Plaintiff,

ORDER REGARDING CITY OF EUREKA'S
MOTION FOR A PROTECTIVE ORDER

vs.

CITY OF EUREKA, FRANK JAGER,
Mayor, Does 1 through 10,

Defendants.

S:ADR130058

ORDER

1 Presently before the Court is the motion for a protective order of defendant City of
2 Eureka ("City"). The motion is opposed by plaintiff Carole Beaton.

3 **Background**

4 **The First Amended Complaint**

5 Beaton is a Humboldt County resident bringing suit solely for alleged violations of the
6 California Constitution. At the risk of oversimplifying her case, the Court summarizes briefly
7 the allegations supporting her claims:

8 (1) Mayor Jager and the City of Eureka allegedly revived a practice of allowing
9 invocations before City Council meetings, which resulted in multiple instances of sectarian
10 prayers (*i.e.*, prayers pertaining to specific religions, like Christianity and Hinduism).¹ (*See* First
11 Amended Complaint ¶¶ 9, 10, 13(a).)

12 (2) Mayor Jager allegedly used his official position as Mayor of Eureka to promote
13 sectarian "prayer breakfasts" held at the Wharfinger Building. (*See* First Amended Complaint ¶¶
14 11, 12, 13(b).)

15 (3) The City of Eureka allegedly used public resources like telephones and staff time to
16 support the invocations and the prayer breakfasts. (*See* First Amended Complaint ¶ 13(c).)

17 **The Present Discovery Dispute**

18 In February 2014, Beaton's counsel learned that a Peace Officer Breakfast was held in
19

20 ¹ In December 2013, and as a result of a motion filed by City and defendant Frank Jager, the Court
21 summarily adjudicated that invocations at Eureka City Council meetings in general, and City's Policy and
22 Procedure No. 1.25 in particular, do not violate the California Constitution. The same order provided that
23 Beaton could pursue her claim, consistent with *Rubin v. City of Burbank*, 101 Cal. App. 4th 1194 (2002),
24 that specific invocations violated the California Constitution. Incidentally, the Court notes that: (1) it
25 previously determined, albeit without great confidence, that *Marsh v. Chambers*, 463 U.S. 783 (1983)
governs the invocation issues presented by this case; (2) *Rubin v. City of Burbank* was explicitly decided
based on the *Rubin* Court's interpretation of *Marsh*; (3) in May 2014 the U.S. Supreme Court discussed
its *Marsh* decision at length in *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014); and (5) the
discussion of *Marsh* in *Town of Greece* renders untenable the holding of *Rubin v. City of Burbank* (*i.e.*,
that a single reference to Jesus Christ in a legislative invocation is sufficient to find a violation of the
federal establishment clause as interpreted in *Marsh*).

1 January at Harvest Church in Eureka. (See Martin Dec. ¶¶ 2-3 & Ex. A.) The breakfast was
2 scheduled for 7:00 a.m. on a weekday, a day and time that counsel believes many police officers
3 would be working. (*Id.* ¶ 2.)

4 Counsel was provided a copy of an invitation to the Breakfast that he believes was sent to
5 the Eureka Police Department (“EDP”). (*Id.* ¶ 3 & Ex. A.) The invitation states that its author
6 holds the title, “Master Chaplain.” (*Id.*) The invitation states in part, “Will you take some time
7 out of your busy schedule to join us for a great, free hot breakfast, fantastic fellowship and a
8 fresh word from the Lord?” (*Id.*) It continues, “This really is a great way to start our day! If
9 you happen to work day [*sic*] watch come and join us. You can leave anytime you want or need
10 to.” (*Id.*) It also states, “EPD Chief Andy Mills will lead the devotional for this month.” (*Id.*)
11 Counsel’s primary concern is that City “was improperly mixing government and religion by
12 permitting or encouraging peace officers to participate in partisan religious activity while on
13 duty.” (*Id.* ¶ 2.)

14 Beaton sought to take the deposition of Andrew Mills, the EDP Chief of Police, to
15 discover facts regarding the Peace Officer Breakfast. City refused to produce Chief Mills for
16 deposition, and Beaton insisted that the deposition go forward. The parties attempted to resolve
17 their differences by meeting and conferring through an email exchange in March and through a
18 face-to-face meeting in April. They were unable to reach an understanding and City filed this
19 motion for a protective order.

20 *Analysis*

21 City moves for an order barring Beaton from deposing Chief Mills.

22 The motion is brought under section 2025.420 of the California Code of Civil Procedure
23 (“CCP”). That section provides in pertinent part, “The court, for good cause shown, may make
24 any order that justice requires to protect any party, deponent, or other natural person or
25 organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and

1 expense.” CCP § 2025.420(b). The statute allows trial courts to issue a protective order
2 providing that “the deposition not be taken at all.” CCP § 2025.420(b)(1).

3 City’s argument is that Chief Mills cannot possibly offer testimony relevant to Beaton’s
4 claims because, among other reasons, Chief Mills only started living and working in Eureka in
5 November 2013. (See Day-Wilson Dec. ¶ 2.) City infers from this lack of relevance that
6 Beaton’s purpose in deposing Chief Mills could only be to harass or embarrass him. (Memo. in
7 support at 5:17-20.) But aside from drawing that inference, City offers no argument or evidence
8 that Beaton has an improper motive in trying to depose him.

9 City does not assert that Chief Mills is unavailable for deposition. City does not assert
10 that his being absent for a deposition would be detrimental to EPD. City does not argue that
11 City’s participation in the prayer breakfast was constitutional or that it refrained from
12 participating. At this stage there is no evidence addressing the seemingly legitimate concern that
13 City employees may have been paid public wages/salaries to attend what appears to have been a
14 religious event.

15 Discovery in this action is still open, and will remain open until September 29. CCP §§
16 2024.020(a), 2016.060. It cannot be argued that Beaton is attempting to change her case in order
17 to sidestep an unfavorable order on summary judgment or summary adjudication. Beaton has
18 already defeated summary adjudication on the issue of City’s participation in the 2012 and 2013
19 prayer breakfasts involving Mayor Jager. Futher, new allegations and evidence about a Peace
20 Officer Breakfast do not relate to the issues raised by City’s policy regarding legislative
21 invocations, and thus the new allegations should have no effect on the summary adjudication
22 order that was favorable to City.

23 In short, City’s motion should be granted or denied based solely on its relevance
24 argument.

25 Beaton does not appear to dispute that Chief Mills has no relevant evidence about the

1 separate prayer breakfasts or legislative invocations that are described in her First Amended
2 Complaint (“FAC”). Indeed, Beaton candidly discloses that she is considering adding a new
3 claim based on facts about the Peace Officer Breakfast that took place *after* the filing of the
4 FAC. She argues that the allegations of the FAC can be stretched to include what would
5 otherwise be a new claim that City violated the California Constitution through its participation
6 in the Peace Officer Breakfast. Beaton argues, alternatively, that procedural law allows her to
7 amend the FAC to state a new claim involving the Peace Officer Breakfast, after which she
8 would be entitled to depose Chief Mills.

9 The Court does not agree with Beaton that the allegations of the FAC can be stretched to
10 encompass new allegations about a 2014 Peace Officer Breakfast. If Beaton intends to present
11 claims about the Peace Office Breakfast at trial, then she will ultimately need to make a
12 successful motion to amend the FAC, and one factor in determining such a motion will be the
13 prejudice that allowing the amendment would cause City and Mayor Jager. The Court makes
14 this point because Beaton should not assume she can simply wait for trial and then amend the
15 complaint to conform to proof offered; rather, the prejudice such a maneuver would cause City
16 and Mayor Jager would need to be evaluated seriously. *See Trafton v. Youngblood*, 69 Cal. 2d
17 17, 31-33 (1968); *Garcia v. Roberts*, 173 Cal. App. 4th 900, 908-13 (2009); *City of Stanton v.*
18 *Cox*, 207 Cal. App. 3d 1557, 1562-64 (1989).

19 Because the Court does not agree with Beaton about the breadth of the FAC, the pertinent
20 question is whether the standard of relevance applied to discovery is broad enough to permit
21 Beaton to obtain the information she seeks. Put another way, may Beaton obtain information
22 about events that are related to the legal claims made in the FAC but unrelated to the factual
23 issues raised by the FAC?

24 The case law clearly answers that question in Beaton’s favor. In *Union Mutual Life Ins.*
25 *Co. v. Superior Court*, 80 Cal. App. 3d 1 (1978), *cited with approval in Mattco Forge, Inc. v.*

1 *Arthur Young & Co.*, 223 Cal. App. 3d 1429, 1436 n. 3 (1990), the Court upheld the trial court's
2 determination that the defendant in a putative class action was required to answer interrogatories
3 despite that the interrogatories at issue "do not seek information in support of a class action
4 alleged in the complaint; rather, the discovery is sought to enable [the plaintiff] to amend the
5 complaint to state a class action relating to long-term employee disability policies issued by [the
6 defendant] to business entities other than [the plaintiff's employer], once the necessary
7 information is obtained." *Id.* at 6-10, 13. The Court further stated:

8 Part of [the defendant's] contention that the information requested in [the
9 subject interrogatories] is not relevant to the subject matter of the lawsuit
10 appears to rest upon the proposition that, since no California or nationwide
11 class action was alleged in the complaint, there was no subject matter to which
12 the material could be relevant. However, it is well established that relevancy
13 of the subject matter does not depend upon a legally sufficient pleading, nor is
14 it restricted to the issues formally raised in the pleadings. Relevancy of the
15 subject matter is determined by the potential as well as actual issues in the
16 case [citation]; discovery is proper if it would be material to any possible issue
17 raised by new allegations in an amended complaint [citations]. In the case at
18 bench, the complaint makes clear real party's intention to amend the
19 complaint to include the class actions in question if a basis therefor is
20 disclosed by discovery. There is no claim that real party is acting other than
21 in good faith. Under these circumstances, the scope of the discoverable
22 information should not be narrowed merely because no California or
23 nationwide class action was alleged in the complaint.

24 *Id.* at 10-11; *see also* CCP § 2017.010 ("[A]ny party may obtain discovery regarding any matter,
25 not privileged, that is relevant to the subject matter involved in the pending action...if the matter
either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of
admissible evidence."); *Greyhound Corp. v. Superior Court*, 56 Cal. 2d 355, 377 (1961) (the
discovery statutes "must be construed liberally in favor of disclosure unless the request is clearly
improper by virtue of well-established causes for denial"); *Pacific Telephone & Telegraph Co. v.*
Superior Court, 2 Cal. 3d 161, 173 (1970) ("doubts as to relevance should generally be resolved
in favor of permitting discovery").

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ORDER

City's motion for a protective order is denied.

Dated: June 25, 2014

W. BRUCE WATSON

W. Bruce Watson, Judge of the Superior Court

STATE OF CALIFORNIA,)
COUNTY OF HUMBOLDT) SS. AFFIDAVIT OF SERVICE BY MAIL

I, Kayla M., say:

That I am a citizen of the United States, over 18 years of age, a resident of the County of Humboldt, State of California, and not a party to the within action; that my business address is 825 5th Street, Humboldt County Courthouse, Eureka, California, 95501; that I served a true copy of the attached ORDER REGARDING CITY OF EUREKA'S MOTION FOR A PROTECTIVE ORDER by placing said copies in the attorney's mail delivery box in the Court Operations Office at Eureka, California on the date indicated below, or by placing said copies in envelope(s) and then placing the envelope(s) for collection and mailing on the date indicated below following our ordinary business practices. I am readily familiar with this business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Eureka, California in a sealed envelope with postage prepaid. These copies were addressed to:

Peter Martin, Court Operations Box #57

Cyndy Day-Wilson, ~~531 K Street, Eureka, CA 95501~~
Court Operations Box #63

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on the 20th day of June, 2014, at the City of Eureka, County of Humboldt, State of California.

KERRI L. KEENAN, Clerk of the Court

By 
Deputy Clerk