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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Clarice Leota Hardy,

Plaintiff,

v.

City of Nome, and John Papasodora and Nicholas Harvey in their individual capacities,

Defendants.

No. 2:20-cv-00001 (HRH)

MOTION TO COMPEL DEFENDANT CITY OF NOME'S DISCOVERY RESPONSES

Plaintiff moves for an order to compel Defendant City of Nome (the City) to produce records and information that are relevant and necessary to Plaintiff's case. Plaintiff served discovery requests on the City more than five months ago, and despite Plaintiff's repeated efforts to resolve the numerous unfounded objections raised by the City in its responses, the City has failed, at every turn, to engage with Plaintiff in any meaningful way to work through the disagreements without forcing the Court to get involved. Plaintiff certifies, therefore, that she has in good faith conferred or attempted to confer with the City an

effort to obtain the discovery sought without court action, as described more fully below. Furthermore, despite reasonable attempts, Plaintiff has been unable to secure the City's cooperation in filing a joint discovery motion and is forced to file this Motion without the City's participation. Regrettably, Plaintiff can wait no longer for responses that, it appears, will never come, and must ask the Court to force the City's cooperation.

PLAINTIFF'S RULE 37(a)(1) CERTIFICATION

Plaintiff served her First Discovery Requests on the City of Nome on November 30, 2020. Ex. 1. On January 8, 2021, the City responded to the requests, raising numerous objections to almost every interrogatory and request for production. Ex. 2. The City did not produce any documents until February 2, 2021. Ex. 3. On February 18, 2021, Plaintiff wrote a detailed letter to the City explaining why she believed the majority of Defendant's objections to be unfounded. Ex. 4. Plaintiff followed up with a second letter to the City on February 25, explaining why discovery Plaintiff received from Defendant John Papasodora, the City's former police chief, made it more obvious that the City's responses were significantly deficient. Ex. 5.

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Plaintiff requested that the City respond to her February 18 letter within ten days, and the City initially agreed to do so. Ex. 6. But the City did not respond, and instead provided a vague reply on February 22 saying that it was "scanning copies of responsive records and documents, for production." Ex. 7. Plaintiff thereafter wrote to the City again, on March 12, detailing the efforts she had made to date to obtain the discovery, and again expressing her concerns about the lack of a complete response from the City. Ex. 8. The City replied and stated that it would provide a response by Tuesday, March 16. Ex. 9.

But on March 16, rather than provide the response it had promised, the City again pushed back the time it would respond, this time to March 19. Ex. 10. In response, Plaintiff asked that the City be available for a phone conference to discuss the matter, and the City agreed to participate in a call scheduled for 11:00 a.m. on Tuesday, March 23. Ex. 11. But in the same reply, the City stated that it would not provide the response it had promised on March 19, but that it would send it to Plaintiff on Monday, March 22, in advance of the parties' scheduled call on Tuesday, March 23. *Id.* Then, on Monday, March 22, the City informed Plaintiff that it was "continuing to work

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with the City of Nome" to supplement its responses and indicated that it would need at least another week to do so. Ex. 12. In the same message, the City unilaterally cancelled the parties' scheduled conference for Tuesday, March 23. *Id.*

The City's silence persisted. On April 19, Plaintiff again reminded the City that it had still not responded to Plaintiff's February 18 and 25 letters, and specifically stated:

> we remain at a significant disadvantage because of your ongoing failure to provide discovery or to respond to our February 18 & 25 correspondence in a comprehensive way. We must now focus on bringing this dispute to an end. It has already required an extension of the discovery deadline, and it threatens to prejudice us further as time goes on. For instance, under no circumstances would we be able to consider taking any depositions until we first receive and examine the personnel files we requested, the audits, and the other documents you have thus far refused to produce. Please provide a complete response to our letters no later than Friday, April 23. After that we will be forced to bring this dispute to the court's attention.

Ex. 13.

But still there was no response. Plaintiff's deadline of April 23 came and went, and on May 1, Plaintiff, in a last attempt to gain some cooperation, wrote a final letter to the City. Ex. 14. The letter informs the City that Plaintiff was preparing a motion to compel the

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outstanding production and asks the City's cooperation in filing a joint discovery motion with the Court, as directed in the Court's Scheduling and Planning Order (Docket 39 at 7). *Id.* at 1. The letter requested a response by May 4, stating that Plaintiff would be forced to file her motion to compel without the City's participation if she did not hear back from the City. On May 4, the City informed Plaintiff that it would not reply by May 4, but that a response would be made by May 7. Ex. 15. As of this date, May 18, Plaintiff has yet to hear from the City.

LEGAL STANDARD

Under the Federal Rules of Civil Procedure, a party may obtain discovery that is "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). A party may also move to compel production when the other party "fails to produce documents" under Rule 34. Fed. R. Civ. P. 37(a)(3)(B)(iv).

This Court has held that while "[t]he party seeking to compel discovery has the burden of establishing that its requests satisfy the relevancy requirements of Rule 26(b)(1), . . . [t]he party who resists discovery has the burden to show that discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections." *S. Peninsula Hosp., Inc. v. Xerox State Healthcare, LLC*, No. 3:15-CV-000177-TMB, 2019 WL 1873297, at *3 (D. Alaska Feb. 5, 2019) (granting motion to compel discovery for a copy of electronic database relevant to plaintiff's class action complaint). This Court has also recognized the Ninth Circuit's broad interpretation of relevancy regarding discovery requests. "The Ninth Circuit has emphasized that 'wide access to relevant facts serves the integrity and fairness of the judicial process by promoting the search for truth.' Thus, the relevancy standard 'has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.'" *Id.* (citing *Epstein v. MCA, Inc.*, 54 F.3d 1422, 1423 (9th Cir. 1995) (per curiam) and *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)) (other citations omitted). Indeed, this Court has taken such an expansive view of the

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relevancy standard that even when it had "doubts" about the relevance of information sought by a party, it granted the party's motion to compel because the information was "not totally irrelevant" to the party's claims. *Pebble Ltd. P'ship v. Env't Prot. Agency*, No. 3:14-CV-0171-HRH, 2016 WL 4502373, at *4 (D. Alaska May 5, 2016).

When a party receives a request for document production, it "must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons." Fed. R. Civ. P. 34(a)(2)(B). "[A] party must adequately and precisely specif[y] . . . the actual documents where information will be found . . . vague references to documents do not suffice." *Becker v. Kikiktagruk Inupiat Corp.*, 3:09-cv-015-TMB, 2009 WL 10705060, at *2 (D. Alaska Oct. 20, 2009) (internal citations omitted). A party may compel discovery when the opposing party does not respond to interrogatories and requests for production "with the candor and specificity that the rules of discovery require."). *Id.* at *3.

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STATEMENT OF FACTS

Ms. Hardy's allegations point to a failure of the City of Nome and the Nome Police Department to investigate Ms. Hardy's sexual assault complaint. As this Court has noted:

> Plaintiff alleges that she "was employed by the City of Nome, NPD, [Nome Police Department] from 2015 to 2018." [Defendant Nicolas] Harvey is alleged to have been "a Lieutenant with the NPD." Plaintiff alleges that "in mid-March 2017, [she] was sexually assaulted in her apartment by Donald Johnson[.]" Plaintiff alleges that while she "had no recollection of the sexual assault[,] friends told her they had seen a video of the assault posted on Snapchat[,]" which had allegedly been taken by a friend of Johnson's girlfriend. Plaintiff alleges that "[s]hortly after the assault, [she] reported the incident to her coworker at the NPD, then-Lieutenant Nick Harvey. Lt. Harvey asked [plaintiff] to compile a written report of the incident." Plaintiff alleges she wrote a report and that "Harvey assured [her] that he would begin an investigation right away." . . . Plaintiff alleges that [she repeatedly asked Harvey about the status of his investigation and] he "assured [her] that he was working on [her] case[.]" Plaintiff alleges that she believed what Lt. Harvey told her about the progress of the investigation because she regarded him as a trusted superior [and] . . . had no reason to suspect that what Lt. Harvey told her about the progress of the investigation was not the truth.

Order: Motion to Dismiss (Docket 45) at 1-3 (internal citations omitted).

In addition to her claims against Lt. Harvey, Ms. Hardy accuses then-Police Chief John Papasodora of serious wrongdoing:

> Plaintiff alleges that . . . she "then recounted to Chief Papasodora all that she had told Sgt. Dickerson and of the times she had been assured by Lt. Harvey that he was working on her complaint." Plaintiff alleges that "Chief Papasodora searched NPD's electronic database but could not find a record of [her] complaint. Chief Papasodora told [plaintiff] that he would speak to Lt. Harvey and have him apprise him of the status of the investigation." Plaintiff alleges that "Chief Papasodora told [her] that she would need to submit another written report about the sexual assault" and that she did so on March 27, 2018. Plaintiff alleges that "Chief Papasodora said that he would forward her complaint to the [Alaska State Troopers ('AST')] immediately to request that an investigation be initiated right away." Plaintiff alleges that "Chief Papasodora also told [her] that he was going to ask AST to investigate why Lt. Harvey took no action in response to her complaint." Plaintiff alleges that she never heard anything from Chief Papasodora as to his investigation into Lt. Harvey's failure to investigate her report of a sexual assault and that when she contacted AST in May 2018, she "was told that AST had no record of a complaint from her." Plaintiff alleges that when she asked Papasodora about this, he said "he 'had been meaning to get to it' but that he had not yet taken any action on [her] complaint."

Order: Motion for Leave to File Third-Party Complaint (Docket 53) at 3-4 (internal citations omitted).

In addition to individual claims against Harvey and Papasodora, Plaintiff's complaint alleges a deprivation of equal protection guaranteed by the Fourteenth Amendment and Article I § 1 of the

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Alaska Constitution based on "Defendants' failure to investigate Ms. Hardy's reported sexual assault [which] was part of a widespread practice that was so permanent and well settled that it constituted a custom or practice of the NPD." Complaint (Docket 1) ¶ 84. This Court has recognized that Ms. Hardy's claims against the City of Nome are based on "the alleged failure of defendants to properly handle sexual assault cases. "This kind of 'custom and practice' allegation, as well as plaintiff's 'failure to train' allegation, have to do with and are relevant to plaintiff's Section 1983 cause of action." Order: Motion to Strike (Docket 33) at 2.

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ARGUMENT

The discovery at issue in this motion goes to the heart of Ms. Hardy's case against the City of Nome. Indeed, if the City can withhold this discovery, Ms. Hardy will be substantially prejudiced in proving her claims against the City. The City surely knows this.

The City is refusing to produce a substantial amount of the documents and information that Ms. Hardy has requested in her First Discovery Requests. Plaintiff's discovery disputes with the City fall into seven categories of information relevant to Plaintiff's claims:

(1) audits conducted by (or commissioned by) the City of Nome of practices at issue here; (2) information that the City claims is contained in "confidential personnel records"; (3) emails sent between the two individual defendants, Nicholas Harvey and John Papasodora; (4) Defendants' efforts to determine why Lt. Harvey failed to investigate Plaintiff Hardy's allegations of sexual assault; (5) communications between the City of Nome and NPD regarding sexual assault allegations made by women other than Plaintiff Hardy; (6) comparative information about how NPD treated non-sexual assaults; and (7) Defendants' training. These disputes are addressed below.

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A. Plaintiff Hardy has a right to discover the audits conducted by (or commissioned by) the City of Nome into practices at issue here

Newspaper reports have discussed, and the City has confirmed, that in recent years audits have been conducted by, or commissioned by, the City of practices at issue in the lawsuit, including whether the City has failed to properly investigate sexual assault complaints submitted by Alaska Native women. Ex. 16. These audits are relevant to Ms. Hardy's allegation of policy and custom. They may confirm—as Ms. Hardy believes they will—that the City of Nome has a

longstanding practice of failing to investigate most complaints submitted by Native women of sexual assault. The City has refused to produce these audits or provide any comprehensive description of them. In Interrogatory No. 5, Plaintiff asked the City to identify and describe the audits that have been conducted since 2007, Ex. 4 at 8-9, and in Request for Production No. 12, Plaintiffs requested the audits themselves. *Id.* The City has refused to provide an adequate answer this interrogatory, or to produce the audits, asserting that the request is "overly broad." *Id.*

Defendant's overbreadth objection cannot be sustained. The City makes no attempt to describe why Plaintiff's request asks for too much information. For example, if there were over, say, a dozen audits during this time, the City could say so, and describe why they believe they were not relevant, but the City's response leave Plaintiff only to guess at the number of audits or their subjects. Plaintiff believes, however, that the audits she requests—those that review the NPD's "performance, conduct, or work"—go to the heart of her case.

Plaintiff's Complaint alleges that "Chief Estes initiated an audit of the NPD's earlier handling of sexual assault cases. Among other

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things, the audit found that 76 out of the 182 reports of sexual assault made to NPD between 2015 to 2018 were inadequately investigated. Of those sexual assault cases that were inadequately investigated, the vast majority—over 90 percent—were filed by Alaska Native women." (Docket 1) at ¶¶ 20-22. If an audit in 2007 found that the Nome Police Department was not investigating 80 percent of the complaints submitted by Native women of sexual assault, this would be strong evidence of a policy and custom. Defendants should be instructed to respond to Interrogatory No. 5 and RFP No. 12.

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B. Plaintiff has a right to discover what the City labels as "confidential personnel records"

The City has refused to produce some of the most relevant and important evidence sought by Plaintiff Hardy. Plaintiff has requested (1) information about why Defendant Papasodora's employment with the City ended, (2) records relating to why former Chief Estes's employment ended, (3) records relating to any disciplinary measures Defendant Papasodora took against Mr. Harvey for failing to investigate Plaintiff's report of sexual assault, (4) records relating to Defendant Harvey's demotion and separation from NPD, and (5) records relating to any investigation Mr. Papasodora conducted of Mr.

Harvey's other investigative work. Ex. 4 at 10-11. In support of its refusal to respond to each of these requests, the City has claimed that the requests seek "confidential privileged records." *Id.*

The City's refusal to produce is unsupportable. In order to withhold documents, the producing party must officially invoke privilege or prove that the requested documents are irrelevant. *Winterrowd v. Nelson*, No. 3:02-CV-00097 (JKS), 2008 WL 11429703 (D. Alaska Sept. 9, 2008) (finding that producing party neither officially invoked privilege nor proved irrelevance). The burden of proving that the documents are privileged or irrelevant is on the producing party. *Id*. Furthermore, when a party withholds information based on a claim of privilege, the party must provide "sufficient information to enable the other party to evaluate the applicability of the privilege or protection" *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.,* 408 F.3d 1142, 1147 (9th Cir. 2005). Failure to provide sufficient information may constitute a waiver of the privilege. *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468 (9th Cir. 1992) (citing *Davis v. Fendler*, 650 F.2d 1154, 1160 (9th Cir.1981)); *see also Grove v. Unocal Corp.,* No. 3:04-CV-096-TMB, 2008 WL 11429528

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(D. Alaska Feb. 12, 2008) (finding that defendant's vague defenses were insufficient to meet its burden).

Moreover, "there is no generic 'privacy' privilege," when there may be information relevant to the issues of a case and a protective order can alleviate privacy concerns. *U.S. Equal Employment Opportunity Comm'n v. Club Demonstration Servs., Inc.,* No. 1:19-CV-007-HRH, 2020 WL 5585060 (D. Alaska Sept. 16, 2020). In cases where a protective order is already in place (as is true here—*see* Dockets 43 & 44), documents cannot be withheld on the basis of being confidential. *Manumitted Companies, Inc. v. Tesoro Alaska Co.,* No. 3:05-CV-185 TMB, 2006 WL 8431821 (D. Alaska Aug. 16, 2006).

Furthermore, all of Plaintiff's requests are relevant to the issues presented in this case. First, regarding Interrogatory No. 1 and RFP 16, Plaintiff Hardy has every reason—and every right—to know why Chief Papasodora left his employment. Did City officials take any affirmative steps to fire the Chief after learning about his misconduct? Did City officials question his handling of Ms. Hardy's complaint (and other complaints of sexual assault) or did they acquiesce in his actions? Papasodora may *himself* have been a "policy maker" sufficient to render

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the City of Nome liable under Section 1983. *See Pembaur v. City of Cincinnatti*, 475 U.S. at 469, 480-81 (1986); *Larez v. City of Los Angeles,* 946 F.2d 630, 646-47 (9th Cir. 1991) (finding that a chief of police was a policy maker with regard to the actions under review). But even if Papasodora is not a policy maker, the city officials who supervised him surely are the City's policy makers and, therefore, Plaintiff Hardy has a right to obtain this discovery.

Plaintiff's right to obtain these documents does not hinge on whether the City filed them in Papasodora's personnel file. In the first place, the Protective Order removes all legitimate concerns about this. (Docket 43). Moreover, it is settled law in the Ninth Circuit that privacy interests in a police officer's personnel file are "especially limited in view of the role played by the police officer as a public servant who must be accountable to public review." *Garrett v. City of San Francisco,* 818 F.2d 1515, 1519 n.6 (9th Cir. 1987); *see also Ceramic Corp. of America v. Inka Maritime Corp.*, 163 F.R.D. 584, 589 (C.D. Cal. 1995). The Alaska Supreme Court has taken a similar stand under state law. *Jones v. Jennings* ,788 P.2d 732, 736 (Alaska 1990).

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Accordingly, the Court should order Defendants to respond to Interrogatory No. 8 and RFP No. 16.

Second, with respect to RFP 20, documents relating to Chief Estes's resignation from NPD are also relevant to Plaintiff's custom and policy claim. Ms. Hardy states in her complaint that Robert Estes replaced John Papasodora as Chief of Police and that, after he was hired, Mr. Estes "initiated an audit of the NPD's earlier handling of sexual assault cases"; that "the audit found that 76 out of the 182 reports of sexual assault made to NPD between 2015 to 2018 were inadequately investigated;" that of those cases, "the vast majority—over 90 percent—were filed by Alaska Native women"; that during a meeting held on October 7, 2019, "Chief Estes informed the City Council that NPD needed more resources to conduct adequate investigation" of its cold cases; that the City "rejected Chief Estes's request for additional resources"; and that "Chief Estes resigned from the NPD the following day." *See* Complaint (Doc. 1) at ¶¶ 20-22, 38-39.

The evidence sought in RFP No. 20 is highly relevant to Plaintiff's custom and policy claim. If, as Plaintiff Hardy alleges, the City refused to provide Chief Estes with the resources he requested to

investigate sexual assault cases, this would help prove the City's policy and custom of discriminating against the prosecution of those claims. Ms. Hardy has a right to examine "all documents pertaining to Robert Estes' resignation from the NPD." The Court should order the City to produce those documents.

Third, regarding Plaintiff's request in RFP 23 for records relating to any disciplinary measures Defendant Papasodora took against Mr. Harvey for failing to investigate Plaintiff's report of sexual assault, the Ninth Circuit has made it clear that whether an employee was investigated and disciplined after the government learned of potential misconduct by the employee is relevant to policy and custom. *See Gomez*, 255 F.3d at 1127; *Larez*, 946 F.2d 647. Accordingly, the information sought in RFP No. 25 is relevant to Plaintiff's case (and the City does not contend otherwise). Given the Protective Order, the City's objection to producing this evidence borders on the frivolous.

The same is true for the information sought in Plaintiff's Requests for Production Nos. 24, 25, and 26, where she seeks records relating to Mr. Harvey's demotion and separation from NPD, and records pertaining to any investigation Mr. Papasodora conducted of

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Mr. Harvey's other investigative work. Ex. 4 at 10-11. Here again, these requests seek relevant information regarding policy and custom. Even if these documents were subject to some privilege—which the City has yet to demonstrate—the Protective Order resolves any claim of confidentiality the City might have.

C. Plaintiff has a right to discover the emails sent between Harvey and Papasodora

In RFP 10, Plaintiff requested "emails or text messages between John Papasodora and Nicholas Harvey sent or received during Nicholas Harvey's employment with NPD." Ex. 4 at 6. The City refused to produce these records, saying simply that Plaintiff "is not entitled" to them, and claiming that the request is overly broad.

Plaintiff has alleged that Defendants' failure to investigate her report of sexual assault is based in part on Mr. Harvey's and Chief Papasodora's animus against Alaska Native women. Complaint (Docket 1) at ¶¶ 24-28. Plaintiff has discovered evidence that Mr. Harvey's animus is demonstrated in the way he communicates to others. Ex. 17. For example, Mr. Harvey has publicly implied that a woman "should go to prison for falsely accusing a man of rape." *Id.* Furthermore, Defendant Papasodora has said that, "[a]t times members of the [Nome

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Police] Department expressed their frustration in policing [Alaska Native] individuals under the same circumstances; or in circumstances where the client engaged in the same behaviors repeatedly without any change to their overall behavior." Ex. 18 at 2. Mr. Papasodora further said, "[i]f in fact Lt. Harvey made derogatory comments about a client that was Alaska Native, the comment was generally about the behavior, not the race or gender of the client. *Id.*

This evidence demonstrates that Defendant Harvey has expressed derogatory opinions about women who make allegations of sexual assault, as well as Alaska Natives. Although Mr. Papasodora prefers to characterize Mr. Harvey's views as non-discriminatory, neither Plaintiff, nor the Court, is obliged to accept this characterization, and Plaintiff has a right to test the validity of his conclusion. Derogatory terms or statements used by police are evidence used to demonstrate discriminatory animus. *Usher v. City of Los Angeles*, 828 F.2d 556, 562 (9th Cir. 1987) (relying on the use of racially derogatory terms by police to find an equal protection violation); *Cole v. Oravec,* 465 F. App'x 687 (9th Cir. 2012) (finding that allegations stated a claim for an equal protection violation based on discriminatory

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animus where FBI agent was alleged to have consistently closed cases involving Native American victims without adequate investigation and was heard to make improper remarks about female Native American victims of sexual assault). In addition, police officers minimizing female victims' assault complaints suggests "an animus against abused women." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir. 1988).

Plaintiff's requests for email or text communications between Defendants Harvey and Papasodora, calculated to discover evidence of further animus, is supported by the facts and the law, and the Court should order Defendants to produce them.

D. Plaintiff has a right to discover evidence of the investigation Defendants conducted, if any, into why Harvey failed to investigate Plaintiff's sexual assault report

Plaintiff seeks, in Interrogatories 14 and 15, evidence of any investigation Defendant Papasodora conducted into Defendant Harvey's failure to investigate Plaintiff's, or others', sexual assault reports. As the Court has recognized, Plaintiff's complaint includes a "custom and practice" claim against the Defendants. Order Denying Motion to Strike (Docket 33) at 2 (noting that Plaintiff's complaint "has

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to do with the alleged failure of defendants to properly handle sexual assault cases. This kind of 'custom and practice' allegation, as well as plaintiff's 'failure to train' allegation, have to do with and are relevant to plaintiff's Section 1983 cause of action.") To prove custom and practice, as the Ninth Circuit has explained, a plaintiff is entitled to rely *both* on expressly stated policies *and* on actions taken by supervisors after a subordinate has engaged in misconduct that help show that the supervisors acquiesced to or ratified those actions. *Gomez v. Vernon*, 255 F.3d 1118, 1127 (9th Cir. 2001), *cert. denied*, 534 U.S. 1066 (2001). Whenever a supervisor is placed on notice that a subordinate may be engaging in serious misconduct, the supervisor has a duty to investigate that complaint. Therefore, a failure to investigate permits the presumption that the misconduct was committed consistent with the supervisor's existing policy or custom. *Id.* at 1127

Here, Plaintiff has a right to discover whether Chief Papasodora and the City of Nome took appropriate remedial steps after learning that Mr. Harvey had failed to investigate Plaintiff's report of sexual assault. If it turns out, as Plaintiff Hardy suspects, that these Defendants (1) did not *adequately investigate* Harvey's failure, and/or

(2) did not *adequately discipline* Harvey following their investigation to ensure that his misconduct would not be repeated by others, this would provide strong evidence of policy and custom, to wit, Defendants' policy and custom of failing to investigate claims made by Alaska Native women that they had been sexually assaulted.

The City's responses to Interrogatories 14 and 15 are wholly inadequate. As the Court will see, in response to both Interrogatories, the City refers back to its response to Interrogatory No. 4, a four-sentence response that does *not* describe *any* investigation but merely refers to four emails or letters. Although these emails and letters indicate that some *correspondence* occurred, they do not "describe in detail" the kind of investigation that was conducted or address, for instance, whether Harvey had also failed to investigate other complaints of sexual assault. If the City did not conduct any further investigation than what is portrayed in these letters, it should say so. Clearly, the City's response to Interrogatories 14 and 15 are insufficient and the City should be instructed to respond properly.

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E. Plaintiff has a right to discover communications between NPD and the City of Nome regarding sexual assault investigations

Plaintiff has a right to discover communications between the City and Chief Papasodora discussing Plaintiff's report of sexual assault and Harvey's failure to investigate it and other similar reports. Plaintiff therefore seeks, in Interrogatory 4 and RFP 11, communications between Defendant Papasodora and Defendant City of Nome about Plaintiff's case. Ex. 4 at 7-8. Plaintiff also seeks, in Interrogatory 7 and RFP 14, communications between Papasodora and the City about Harvey's other sexual assault investigations. *Id.*

Defendants' responses to these requests are patently insufficient, incomplete, and evasive. While they identify certain written records, they do not reference telephonic or in-person communications, which are included in the request. Furthermore, they do not address communications regarding Defendant Harvey's other sexual assault investigations. The City should be ordered to fully respond to these requests.

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F. Plaintiff has a right to discover information related to the City's investigation into allegations of assaults that were not sexual assaults

Plaintiff's complaint accuses the City of Nome of having discriminated against her because she is an Alaska Native and a woman. *See* Complaint (Docket 1) at ¶¶ 83-84. Ms. Hardy has a right under Rule 26 to engage in reasonable discovery related to her equal protection claim. In order to decide this claim, the Court may need to compare how the City responded to sexual assault complaints made by Alaska Native women with how the City responded to one or more other categories of criminal complaints. The burden of proof is on Ms. Hardy, of course, but the only way she can obtain such comparative information is by receiving it from the City. Ms. Hardy decided to compare how the City responds to *sexual* assaults with how it responds to *all* assaults. *See, e.g., Bryant v. Armstrong*, 285 F.R.D. 596, 609 (S.D. Cal. 2012) (allowing a prisoner who alleged that the prison was engaging in race discrimination to obtain documents and video tapes that would show how the prison treated African-Americans as compared with Hispanic prisoners). Therefore, it is reasonable for Plaintiff to seek, as she has done in RFP 3, calls for service to NPD

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relating to assaults as well as sexual assaults. Ex. 4 at 3. The City, however, has refused to produce assault records, claiming they are not relevant. The City should be ordered to reasonably respond to this discovery.

G. Plaintiff Hardy has a right to discover information on whether the City adequately trains law enforcement staff on how to conduct sexual assault investigations

Plaintiff's complaint alleges that she suffered constitutional injury as a result of the City's failure to adequately train its law enforcement personnel. Complaint (Docket 1) ¶ 85 ("Defendants' failure to investigate Ms. Hardy's reported sexual assault was the result of Defendant City of Nome's failure to train its law enforcement personnel to conduct sexual assault investigations in the face of obvious need for such training and to properly supervise them, resulting in deliberate indifference to Ms. Hardy's rights.") These allegations set forth a "hornbook" claim of unconstitutional training. *See City of Canton v. Harris*, 489 U.S. 378, 387-88 (1989).

Ms. Hardy has a right under Rule 26 to engage in reasonable discovery related to her claim of inadequate training. Accordingly, RFP 6 requests records relating to sexual assault training that NPD staff

received. Ex. 4 at 4-5. The City has refused to produce any of these records, claiming the request is overbroad, or that it does not have access to "centralized training records." *Id.* The City's response is improper—it cannot avoid responding to a relevant request simply because it does not keep "centralized" records. The City's response should be compelled.

CONCLUSION

For the foregoing reasons, Defendant City of Nome should be ordered to fully respond to the discovery identified in this Motion. Defendant's numerous objections are unfounded, and all of the discovery sought is relevant or reasonably calculated to lead to the discovery of relevant evidence, and necessary for Plaintiff to develop and prosecute her claims.

Dated May 18, 2021.

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WORD COUNT CERTIFICATION

I hereby certify that the foregoing document, exclusive of caption and signatures, contains less than 5,700 words typed in Century Schoolbook, 13-point font.

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