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BEST PRACTICES IN CONDUCTING REMOTE DEPOSITIONS



MCLE Practice Materials

May 29, 2020

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15 **UNITED STATES DISTRICT COURT**
 16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 Al Otro Lado, Inc., *et al.*,

18 Plaintiffs,

19 v.

20 Chad F. Wolf,¹ *et al.*,

21 Defendants.
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 23
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Case No.: 17-cv-02366-BAS-KSC

**UNOPPOSED JOINT MOTION AND
 PROPOSED ORDER FOR ENTRY
 OF STIPULATED DEPOSITION
 PROTOCOL FOR THE
 DEPOSITION OF RULE 30(B)(6)
 REPRESENTATIVE MICHAEL
 HUMPHRIES**

27 ¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary
 28 McAleenan pursuant to Fed. R. Civ. P. 25(d).

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1 Pursuant to Fed. R. Civ. P. 1 and 29, and in response to the Court’s comments
2 during the March 27, 2020 telephonic joint status conference, the parties have met,
3 conferred, and agreed upon the following deposition protocol for the initial remote
4 deposition to take place on April 29, 2020 (subject to schedule modifications, if
5 necessary, agreed upon by counsel for both parties). The parties submit that, given
6 the ongoing COVID-19 pandemic, good cause exists for entry of the stipulated
7 deposition protocol outlined in this unopposed motion and proposed order. *See, e.g.,*
8 *Sinceno v. Riverside Church in the City of N.Y.*, 2020 U.S. Dist. LEXIS 47859, at *1
9 (S.D.N.Y. Mar. 18, 2020) (approving all depositions being taken by “telephone,
10 videoconference, or other remote means” in view of the COVID-19 pandemic); *see*
11 *also Pearlstein v. Blackberry Ltd.*, 2020 U.S. Dist. LEXIS 47032, at *2-3 (S.D.N.Y.
12 Mar. 16, 2020) (same); *Thomas v. Wallace, Rush, Schmidt, Inc.*, 2020 U.S. Dist.
13 LEXIS 46925, at *6 (M.D. La. Mar. 18, 2020) (same). *Cf. Automatic Equip. Mfg.*
14 *Co. v. Danko Mfg.*, 2020 U.S. Dist. LEXIS 47350, at *6 (D. Neb. Mar. 12, 2020)
15 (permitting parties to hold *Markman* hearing by videoconference); *ResCap*
16 *Liquidating Tr. v. Primary Residential Mortg.*, 2020 U.S. U.S. Dist. LEXIS 44607,
17 at *3 (D. Minn. Mar. 13, 2020) (COVID-19 “establish[ed] good cause for remote
18 testimony.”). If the parties’ initial remote deposition goes smoothly, they anticipate
19 asking the Court to enter a similar order governing the remaining depositions to be
20 taken in the case.

21 **IT IS HEREBY ORDERED:**

22 **I. DEFINITIONS**

23 A. “Attending counsel” shall mean any legal counsel for a party that is
24 attending the deposition of a non-party.

25 B. “Court reporter” shall mean an individual retained by the deposing
26 party to transcribe the oral testimony offered at a deposition in the litigation and who
27 is authorized to administer oaths either by federal law or by the law of the place of
28 examination.

1 C. “Deposition” shall mean any deposition upon oral examination taken
2 pursuant to Fed. R. Civ. P. 27, Fed. R. Civ. P. 30, Fed. R. Civ. P. 45, or any court
3 order.

4 D. “Deposing counsel” shall mean the legal counsel of the party or parties
5 noticing and taking a deposition in the litigation.

6 E. “Defending counsel” shall mean the legal counsel (including counsel
7 of record and agency/in-house counsel) of the party, parties, non-party, or non-
8 parties defending a deposition in the litigation.

9 F. “Document” carries its broadest meaning consistent with Fed. R. Civ.
10 P. 34 and includes both ESI and Hard Copy Document.

11 G. “Electronically Stored Information” or “ESI” carries its broadest
12 possible meaning consistent with Fed. R. Civ. P. 34(a) and Fed. R. Evid. 1001.

13 H. “Exhibit” shall mean any Document or Electronically Stored
14 Information that is marked as an exhibit during a Deposition.

15 I. “Hard Copy Document” means any document or thing discoverable
16 under Fed. R. Civ. P. 26(b)(1) and Fed. R. Civ. P. 34 that cannot be characterized as
17 ESI.

18 J. “Litigation” shall mean the case captioned above.

19 K. “Parties” shall mean Plaintiffs, Defendants, and their current and
20 former employees, executives, officers, and directors.

21 L. “Non-parties” shall mean all natural or legal persons that are not Parties
22 from whom a Party is seeking testimony at a deposition in the litigation.

23 **II. GENERAL PRINCIPLES AND DURATION OF THIS ORDER**

24 A. This Order is intended to allow the parties to continue deposition
25 discovery in light of the ongoing COVID-19 pandemic, with the goal of completing
26 discovery by the current June 19, 2020 fact discovery deadline.

27 B. The Court and counsel recognize that the COVID-19 pandemic requires
28 the parties to be flexible in completing deposition discovery in this litigation. The

1 parties are encouraged to take steps that will enable deponents, deposing counsel,
2 defending counsel, and attending counsel to complete depositions in a manner that
3 also takes into account the needs of dependent care and personal health care. In light
4 of the developing public health situation, the parties and non-parties shall meet,
5 confer, and cooperate with one another regarding the scheduling of depositions and
6 the procedures for taking depositions. In doing so, the parties and non-parties shall
7 make all reasonable efforts to accommodate reasonable requests for continuances of
8 depositions due to illnesses or dependent care needs of attorneys, deponents, or the
9 court reporter. Such continuances may include taking previously-scheduled
10 depositions after the fact discovery deadline, if necessary.

11 C. Deposing counsel and defending counsel agree to notice depositions
12 sufficiently early to allow defending counsel time to prepare the deponent to testify
13 remotely and agree to accommodate reasonable scheduling requests. Fourteen days'
14 notice shall typically be considered reasonable notice of the deposition.

15 D. Unless otherwise stated, this Order is not intended to alter, expand, or
16 limit the applicable Federal Rules of Civil Procedure, Federal Rules of Evidence,
17 and/or court orders.

18 **III. PROCEDURES FOR TAKING THE INITIAL DEPOSITION**

19 A. Pursuant to Fed. R. Civ. P. 29(a) and Fed. R. Civ. P. 30(b)(4), the
20 30(b)(6) deposition of Michael Humphries shall be taken by remote means that
21 comply with local, state and federal guidance, regulations, and orders concerning
22 social distancing and public health. "Remote means" shall include (a) telephone, (b)
23 video-conferencing platforms that allow for the deponent, attending counsel,
24 deposing counsel, defending counsel, court reporter, and videographer to participate
25 in a deposition without attending the deposition in-person, and (c) any other means
26 that the deposing counsel, defending counsel, and attending counsel agree to.

27 B. Pursuant to Fed. R. Civ. P. 30(f)(2), deposing counsel shall be
28 responsible for ensuring that any exhibits that they wish to mark and use at the

1 deposition can be shown to the witness in a manner that enables the witness to review
2 the exhibits during the course of the deposition. Such means of marking and using
3 exhibits for the initial deposition shall include (a) sending via Fed Ex, U.S. Postal
4 Service, or UPS pre-marked exhibits to the deponent, defending counsel, attending
5 counsel, and the court reporter in advance of the deposition; (b) emailing pre-marked
6 exhibits to the deponent, defending counsel, attending counsel, and the court reporter
7 in advance of the deposition, (c) using a video conferencing platform that enables
8 deposing counsel to share exhibits with the deponent, court reporter, defending
9 counsel, and attending counsel, and (d) any other means that the deposing counsel,
10 defending counsel, and attending counsel agree to. The parties reserve the right to
11 request exhibits be emailed sufficiently in advance of the deposition to enable the
12 deponent or counsel to print them out for use during the deposition. If the remote
13 means utilized does not permit for the court reporter to mark exhibits remotely,
14 deposing counsel shall be responsible for pre-marking exhibits.

15 C. As used in Fed. R. Civ. P. 28(a)(1)(A), the “place of examination” is
16 the location of the deponent. A court reporter may administer an oath concerning a
17 deposition via remote means.

18 D. The Fed. R. Civ. P. 30(b)(6) deposition of Michael Humphries on
19 30(b)(6) Topics 2 and 15 will be limited to 4 hours on the record, unless Plaintiffs
20 elect to notice Mr. Humphries as a 30(b)(1) witness.

21 E. Deposing counsel and defending counsel shall meet, confer, and
22 cooperate to ensure that the deponent has technology sufficient to attend a deposition
23 via remote means. If necessary, this shall include arranging for the deponent to
24 participate in a “test run” of the deposition video conferencing software being
25 utilized at the expense of the deposing party.

26 F. Deposing counsel is responsible for ensuring that the remote means
27 utilized for a deposition allow for the court reporter to accurately record the
28 deponent’s testimony. Either deposing counsel or defending counsel may elect to

1 have a technical specialist attend a deposition taken by remote means to ensure that
2 technical issues are dealt with in a timely manner.

3 G. Deposing counsel shall bear the cost of ensuring that the deponent has
4 the proper software, hardware and other relevant equipment to attend a deposition
5 by video conference.

6 H. Should technical issues prevent the court reporter from reliably hearing
7 or transcribing the testimony at any deposition taken pursuant to this order and such
8 technical issue cannot be remedied in a timely manner, deposing counsel, defending
9 counsel, and attending counsel shall meet, confer, and cooperate with one another
10 regarding the rescheduling of the deposition.

11 I. In addition to recording deposition testimony by stenographic means,
12 the deposing party may record the deposition via video.

13 J. All objections to the use and admissibility of the transcript or video of
14 a deposition taken pursuant to this order based on the fact that the deposition was
15 taken by remote means are deemed waived.

16 K. Deposing counsel and defending counsel shall be responsible for
17 ensuring that they have a means of communicating with co-counsel or the deponent,
18 as the case may be, during breaks in the deposition; the parties agree not to oppose
19 reasonable accommodations to allow such conferences during breaks, as well as
20 communications between co-counsel during the deposition.

21 L. All persons attending depositions taken by remote means are reminded
22 that the typical rules of professionalism and etiquette during depositions still apply.
23 All persons attending depositions taken pursuant to this order who do not have an
24 immediate need to speak shall ensure that their telephone or video conference lines
25 are muted. In addition, all persons attending depositions taken pursuant to this order
26 shall ensure that they can do so in a space that is relatively free from distractions that
27 would inhibit the course of the deposition.

28

1 **IV. SCHEDULING OF DEPOSITION**

2 A. The parties shall cooperate in the scheduling of an initial deposition of
3 30(b)(6) representative Michael Humphries, which will take place on April 29, 2020
4 (subject to schedule modifications, if necessary, that are agreed upon by counsel for
5 both parties). This deposition shall be a trial run of the parties' chosen video
6 conferencing platform.

7 B. After the completion of this initial deposition, the parties shall meet,
8 confer, and cooperate on the scheduling of other pending depositions and on a
9 remote deposition protocol to govern remaining depositions.

10 **V. MODIFICATION**

11 This order may be modified by a Stipulated Order of the Parties or by the
12 Court for good cause shown.

13

14 Dated: April 13, 2020

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COUNCIL
Karolina Walters

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By: /s/ Stephen M. Medlock
Stephen M. Medlock

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Counsel for Defendants

IT IS SO ORDERED.

Dated April , 2020

Hon. Karen S. Crawford
United States Magistrate Judge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 13, 2020 a copy of the foregoing documents was served on all counsel of record via CM/ECF.

s/Stephen M. Medlock
Stephen M. Medlock

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Al Otro Lado, Inc., *et al.*,

Plaintiffs,

v.

Chad F. Wolf,¹ *et al.*,

Defendants.

Case No.: 17-cv-02366-BAS-KSC

**ORDER GRANTING JOINT
MOTION FOR ENTRY OF
STIPULATED DEPOSITION
PROTOCOL FOR THE
DEPOSITION OF RULE 30(B)(6)
REPRESENTATIVE MICHAEL
HUMPHRIES**

Pursuant to Fed. R. Civ. P. 1 and 29, and in response to the Court’s comments during the March 27, 2020 telephonic joint status conference, the parties have met, conferred, and agreed upon the following deposition protocol for the initial remote deposition to take place on April 29, 2020 (subject to schedule modifications, if necessary, agreed upon by counsel for both parties). The parties submit that, given the ongoing COVID-19 pandemic, good cause exists for entry of the stipulated deposition protocol outlined in this unopposed motion and proposed order. *See, e.g., Sinceno v. Riverside Church in the City of N.Y.*, 2020 U.S. Dist. LEXIS 47859, at *1

¹ Acting Secretary Wolf is automatically substituted for former Acting Secretary McAleenan pursuant to Fed. R. Civ. P. 25(d).

1 (S.D.N.Y. Mar. 18, 2020) (approving all depositions being taken by “telephone,
2 videoconference, or other remote means” in view of the COVID-19 pandemic); *see*
3 *also Pearlstein v. Blackberry Ltd.*, 2020 U.S. Dist. LEXIS 47032, at *2-3 (S.D.N.Y.
4 Mar. 16, 2020) (same); *Thomas v. Wallace, Rush, Schmidt, Inc.*, 2020 U.S. Dist.
5 LEXIS 46925, at *6 (M.D. La. Mar. 18, 2020) (same). *Cf. Automatic Equip. Mfg.*
6 *Co. v. Danko Mfg.*, 2020 U.S. Dist. LEXIS 47350, at *6 (D. Neb. Mar. 12, 2020)
7 (permitting parties to hold *Markman* hearing by videoconference); *ResCap*
8 *Liquidating Tr. v. Primary Residential Mortg.*, 2020 U.S. U.S. Dist. LEXIS 44607,
9 at *3 (D. Minn. Mar. 13, 2020) (COVID-19 “establish[ed] good cause for remote
10 testimony.”). If the parties’ initial remote deposition goes smoothly, they anticipate
11 asking the Court to enter a similar order governing the remaining depositions to be
12 taken in the case.

13 **IT IS HEREBY ORDERED:**

14 **I. DEFINITIONS**

15 A. “Attending counsel” shall mean any legal counsel for a party that is
16 attending the deposition of a non-party.

17 B. “Court reporter” shall mean an individual retained by the deposing
18 party to transcribe the oral testimony offered at a deposition in the litigation and who
19 is authorized to administer oaths either by federal law or by the law of the place of
20 examination.

21 C. “Deposition” shall mean any deposition upon oral examination taken
22 pursuant to Fed. R. Civ. P. 27, Fed. R. Civ. P. 30, Fed. R. Civ. P. 45, or any court
23 order.

24 D. “Deposing counsel” shall mean the legal counsel of the party or parties
25 noticing and taking a deposition in the litigation.

26 E. “Defending counsel” shall mean the legal counsel (including counsel
27 of record and agency/in-house counsel) of the party, parties, non-party, or non-
28 parties defending a deposition in the litigation.

1 F. “Document” carries its broadest meaning consistent with Fed. R. Civ.
2 P. 34 and includes both ESI and Hard Copy Document.

3 G. “Electronically Stored Information” or “ESI” carries its broadest
4 possible meaning consistent with Fed. R. Civ. P. 34(a) and Fed. R. Evid. 1001.

5 H. “Exhibit” shall mean any Document or Electronically Stored
6 Information that is marked as an exhibit during a Deposition.

7 I. “Hard Copy Document” means any document or thing discoverable
8 under Fed. R. Civ. P. 26(b)(1) and Fed. R. Civ. P. 34 that cannot be characterized as
9 ESI.

10 J. “Litigation” shall mean the case captioned above.

11 K. “Parties” shall mean Plaintiffs, Defendants, and their current and
12 former employees, executives, officers, and directors.

13 L. “Non-parties” shall mean all natural or legal persons that are not Parties
14 from whom a Party is seeking testimony at a deposition in the litigation.

15 **II. GENERAL PRINCIPLES AND DURATION OF THIS ORDER**

16 A. This Order is intended to allow the parties to continue deposition
17 discovery in light of the ongoing COVID-19 pandemic, with the goal of completing
18 discovery by the current June 19, 2020 fact discovery deadline.

19 B. The Court and counsel recognize that the COVID-19 pandemic requires
20 the parties to be flexible in completing deposition discovery in this litigation. The
21 parties are encouraged to take steps that will enable deponents, deposing counsel,
22 defending counsel, and attending counsel to complete depositions in a manner that
23 also takes into account the needs of dependent care and personal health care. In light
24 of the developing public health situation, the parties and non-parties shall meet,
25 confer, and cooperate with one another regarding the scheduling of depositions and
26 the procedures for taking depositions. In doing so, the parties and non-parties shall
27 make all reasonable efforts to accommodate reasonable requests for continuances of
28 depositions due to illnesses or dependent care needs of attorneys, deponents, or the

1 court reporter. Such continuances may include taking previously-scheduled
2 depositions after the fact discovery deadline, if necessary.

3 C. Deposing counsel and defending counsel agree to notice depositions
4 sufficiently early to allow defending counsel time to prepare the deponent to testify
5 remotely and agree to accommodate reasonable scheduling requests. Fourteen days'
6 notice shall typically be considered reasonable notice of the deposition.

7 D. Unless otherwise stated, this Order is not intended to alter, expand, or
8 limit the applicable Federal Rules of Civil Procedure, Federal Rules of Evidence,
9 and/or court orders.

10 **III. PROCEDURES FOR TAKING THE INITIAL DEPOSITION**

11 A. Pursuant to Fed. R. Civ. P. 29(a) and Fed. R. Civ. P. 30(b)(4), the
12 30(b)(6) deposition of Michael Humphries shall be taken by remote means that
13 comply with local, state and federal guidance, regulations, and orders concerning
14 social distancing and public health. "Remote means" shall include (a) telephone, (b)
15 video-conferencing platforms that allow for the deponent, attending counsel,
16 deposing counsel, defending counsel, court reporter, and videographer to participate
17 in a deposition without attending the deposition in-person, and (c) any other means
18 that the deposing counsel, defending counsel, and attending counsel agree to.

19 B. Pursuant to Fed. R. Civ. P. 30(f)(2), deposing counsel shall be
20 responsible for ensuring that any exhibits that they wish to mark and use at the
21 deposition can be shown to the witness in a manner that enables the witness to review
22 the exhibits during the course of the deposition. Such means of marking and using
23 exhibits for the initial deposition shall include (a) sending via Fed Ex, U.S. Postal
24 Service, or UPS pre-marked exhibits to the deponent, defending counsel, attending
25 counsel, and the court reporter in advance of the deposition; (b) emailing pre-marked
26 exhibits to the deponent, defending counsel, attending counsel, and the court reporter
27 in advance of the deposition, (c) using a video conferencing platform that enables
28 deposing counsel to share exhibits with the deponent, court reporter, defending

1 counsel, and attending counsel, and (d) any other means that the deposing counsel,
2 defending counsel, and attending counsel agree to. The parties reserve the right to
3 request exhibits be emailed sufficiently in advance of the deposition to enable the
4 deponent or counsel to print them out for use during the deposition. If the remote
5 means utilized does not permit for the court reporter to mark exhibits remotely,
6 deposing counsel shall be responsible for pre-marking exhibits.

7 C. As used in Fed. R. Civ. P. 28(a)(1)(A), the “place of examination” is
8 the location of the deponent. A court reporter may administer an oath concerning a
9 deposition via remote means.

10 D. The Fed. R. Civ. P. 30(b)(6) deposition of Michael Humphries on
11 30(b)(6) Topics 2 and 15 will be limited to 4 hours on the record, unless Plaintiffs
12 elect to notice Mr. Humphries as a 30(b)(1) witness.

13 E. Deposing counsel and defending counsel shall meet, confer, and
14 cooperate to ensure that the deponent has technology sufficient to attend a deposition
15 via remote means. If necessary, this shall include arranging for the deponent to
16 participate in a “test run” of the deposition video conferencing software being
17 utilized at the expense of the deposing party.

18 F. Deposing counsel is responsible for ensuring that the remote means
19 utilized for a deposition allow for the court reporter to accurately record the
20 deponent’s testimony. Either deposing counsel or defending counsel may elect to
21 have a technical specialist attend a deposition taken by remote means to ensure that
22 technical issues are dealt with in a timely manner.

23 G. Deposing counsel shall bear the cost of ensuring that the deponent has
24 the proper software, hardware and other relevant equipment to attend a deposition
25 by video conference.

26 H. Should technical issues prevent the court reporter from reliably hearing
27 or transcribing the testimony at any deposition taken pursuant to this order and such
28 technical issue cannot be remedied in a timely manner, deposing counsel, defending

1 counsel, and attending counsel shall meet, confer, and cooperate with one another
2 regarding the rescheduling of the deposition.

3 I. In addition to recording deposition testimony by stenographic means,
4 the deposing party may record the deposition via video.

5 J. All objections to the use and admissibility of the transcript or video of
6 a deposition taken pursuant to this order based on the fact that the deposition was
7 taken by remote means are deemed waived.

8 K. Deposing counsel and defending counsel shall be responsible for
9 ensuring that they have a means of communicating with co-counsel or the deponent,
10 as the case may be, during breaks in the deposition; the parties agree not to oppose
11 reasonable accommodations to allow such conferences during breaks, as well as
12 communications between co-counsel during the deposition.

13 L. All persons attending depositions taken by remote means are reminded
14 that the typical rules of professionalism and etiquette during depositions still apply.
15 All persons attending depositions taken pursuant to this order who do not have an
16 immediate need to speak shall ensure that their telephone or video conference lines
17 are muted. In addition, all persons attending depositions taken pursuant to this order
18 shall ensure that they can do so in a space that is relatively free from distractions that
19 would inhibit the course of the deposition.

20 **IV. SCHEDULING OF DEPOSITION**

21 A. The parties shall cooperate in the scheduling of an initial deposition of
22 30(b)(6) representative Michael Humphries, which will take place on April 29, 2020
23 (subject to schedule modifications, if necessary, that are agreed upon by counsel for
24 both parties). This deposition shall be a trial run of the parties' chosen video
25 conferencing platform.

26 B. After the completion of this initial deposition, the parties shall meet,
27 confer, and cooperate on the scheduling of other pending depositions and on a
28 remote deposition protocol to govern remaining depositions.

1 **V. MODIFICATION**


2 This order may be modified by a Stipulated Order of the Parties or by Order
3 of the Court.

4

5 **IT IS SO ORDERED.**

6 Dated April 13, 2020

7



Hon. Karen S. Crawford
United States Magistrate Judge

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 10 THE KROGER COMPANY
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12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA
 14

15 SHAVONDA HAWKINS, on behalf of
 16 herself and all others similarly situated,
 17 Plaintiff,
 18 vs.
 19 THE KROGER COMPANY,
 20 Defendant.

Case No. 3:15-cv-2320-JM-AHG
 Hon. Allison H. Goddard

**STIPULATION REGARDING
 CONDUCTING DEPOSITIONS BY
 REMOTE MEANS**

Action Filed: October 15, 2015

1 Plaintiff Shavonda Hawkins and defendant The Kroger Company jointly
2 stipulate pursuant to Federal Rule of Civil Procedure 30(b)(4) as follows:

3 WHEREAS:

4 1. Under the operative Scheduling Order in this action, the expert
5 discovery cutoff is May 1, 2020, Dkt. 58 ¶ 8;

6 2. Kroger seeks to depose Ms. Hawkins's three expert witnesses—
7 Beatrice Golomb, Ph.D; Nathan Wong, Ph.D; and Robert Bowen, Ph.D—who all
8 reside in California;

9 3. As a result of the COVID-19 pandemic, risk of infection exists to
10 persons who come into close contact during April 2020, during which time the
11 depositions of Plaintiff's expert witnesses are scheduled in this action;

12 4. Government and judicial orders require that residents stay at home,
13 practice social distancing, and otherwise have required judicial proceedings to be
14 conducted remotely; and

15 5. The parties and witnesses wish to and are prepared to proceed with
16 depositions remotely to eliminate the risk of infection and to abide by the orders in
17 effect;

18 IT IS HEREBY STIPULATED AND AGREED, by and between the parties
19 and the witnesses, through their respective undersigned counsel as follows:

20 1. The depositions of Nathan Wong, Ph.D; and Robert Bowen, Ph.D shall
21 be conducted remotely by an accredited court reporting service, such as Veritext,
22 using the reporting service's remote deposition software and guidelines.

23 2. The parties have agreed to depositions on following dates:

24 a. Nathan Wong: April 27, 2020 (recorded transcription, audio,
25 and video);

26 b. Robert Bowen: April 29, 2020 (recorded transcription, audio,
27 and video);
28

1 3. The parties have agreed the deposing party will advance fees in
2 advance of the deposition as follows;

3 a. Nathan Wong: \$3,650 (\$350 hourly rate x (7 hours deposition
4 time + 3.5 hours preparation time))

5 b. Robert Bowen: \$4,750 (\$500 hourly rate x (7 hours deposition
6 time + 2.5 hours preparation time))

7 4. The parties, the witnesses, and their counsel (the “**Attendees**”) will
8 abide by the remote court reporting service’s guidelines, including but not limited to
9 the following:

10 5. At least two days prior to the deposition, counsel for the parties and the
11 witness will exchange a complete list of the Attendees, and attendance at the
12 deposition will be limited to these individuals (excluding any staff from Veritext
13 required for the administration of the deposition);

14 a. Attendees will connect to the secure video platform at least 15
15 minutes prior to the scheduled time for the deposition with a webcam equipped
16 laptop, desktop or mobile device and a stable internet connectio ;

17 b. The witness will position his or her webcam to provide a wide
18 angle sufficient to capture his or her hand and other movements, and to provide a
19 clear picture of the witness, to the witness’s best ability. The witness shall not
20 communicate with plaintiff, plaintiff’s counsel or any third party while the
21 deposition is in session by electronic or telephonic means other than as provided in
22 this stipulation;

23 c. The deposition will be recorded through the video conference
24 software;

25 d. No other participants in the deposition will be recorded on video
26 and only their audio will be recorded;

27 e. Real time transcription will be provided to counsel;
28

1 f. The court reporter or stenographer will not be physically present
2 in the same room as the deponent. The oath will be administered and the
3 stenographic record will be taken remotely;

4 g. In lieu of an oath administered in-person, the witness will orally
5 declare his/her testimony in this matter under penalty of perjury as directed by the
6 remote court reporter;

7 h. The court reporter will at all times have access to the same
8 interface as the witness;

9 i. All Attendees other than the witness, court reporter, deposing
10 attorney and the objecting attorney will set their audio connection to mute to avoid
11 unintentional noise;

12 j. If and to the extent that the witness brings documents with him
13 or her to the deposition that the deposing party wishes to have marked as exhibits,
14 the witness will email the court reporter and the parties' counsel a full and complete
15 copy of those documents one day in advance of the deposition;

16 k. To the greatest extent possible, the parties will mark and share
17 exhibits using the court reporter's exhibit sharing technology, Exhibit Share, which
18 facilitates the sharing and review of exhibits through document or screen share
19 features;

20 l. The deposing party may direct the witness to a certain part of an
21 exhibit during the deposition by using a pointer, drawing or highlighting function as
22 provided by the deposition software or other electronic means;

23 m. Any private communication, such as via phone, private chat, text
24 message or other electronic or virtual means, between the witness and counsel is
25 strictly prohibited while the deposition is in session;

26 n. Any attorney-client conversations should be held outside the
27 presence of the audio/video interface;

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Unless otherwise stated, all other rules contained in the Federal Rules of Civil Procedure and Civil Local Rules govern the deposition.

SO STIPULATED.

DATED: April 20, 2020

DAVIS WRIGHT TREMAINE LLP

/s/ Jacob M. Harper

JACOB M. HARPER
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Los Angeles, CA 90017-2566
Telephone: (213) 633-6800
Facsimile: (213) 633-6899
Counsel for The Kroger Company

DATED: April 20, 2020

THE WESTON FIRM

/s/ Gregory S. Weston

GREGORY S. WESTON
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San Diego, CA 92110
Telephone: (619) 798-2006
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

Shavonda Hawkins v. The Kroger Company

U.S.D.C. Southern District of California Case No. 3:15-cv-2320-JM-BLM

I the undersigned, declare:

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 865 S. Figueroa Street, Suite 2400, Los Angeles, CA 90017.

On April 20, 2020, I served true copies of the following documents described as:

STIPULATION REGARDING CONDUCTING DEPOSITIONS BY REMOTE MEANS

on the interested parties in this action as follows:

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the documents with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 20, 2020, at Los Angeles, California.

/s/ Jacob Harper
Jacob Harper

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SHAVONDA HAWKINS, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

THE KROGER COMPANY,

Defendant.

Case No.: 3:15-cv-02320-JM-AHG
**ORDER GRANTING JOINT
MOTION REGARDING
CONDUCTING DEPOSITIONS BY
REMOTE MEANS**

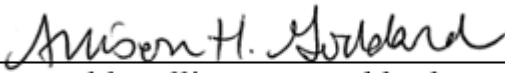
[ECF No. 135]

1 On April 20, 2020, the parties filed a Joint Stipulation Regarding Conducting
2 Depositions by Remote Means (ECF No. 135), pursuant to Fed. R. Civ. P. 30(b)(4). Good
3 cause appearing, the Court **GRANTS** the Motion in its entirety. Therefore, the Court
4 permits the depositions of Plaintiff's experts Nathan Wong, Ph.D and Robert Bowen,
5 Ph.D to be conducted remotely by the means set forth in the stipulation. The Court also
6 approves the other stipulations set forth regarding the advancement of fees and
7 compliance with the court reporting service's guidelines.

8 As previously ruled, the expert discovery deadline remains stayed as to the
9 deposition of Plaintiff's remaining expert, Dr. Beatrice Golomb. ECF No. 138.

10 **IT IS SO ORDERED.**

11
12 Dated: April 22, 2020

13 
14 _____
15 Honorable Allison H. Goddard
16 United States Magistrate Judge
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SAMPLE DECISIONS

2020 WL 1975057

Only the Westlaw citation is currently available.
United States District Court, S.D. California.

Vincent GRANO, Plaintiff,

v.

SODEXO MANAGEMENT, INC., et al., Defendants.
And Related Cases

Case Nos.: 18cv1818-GPC(BLM)

|
Signed 04/24/2020

Attorneys and Law Firms

Bruce Trumbull Clark, Pro Hac Vice, Robert Drew Falkenstein, Pro Hac Vice, Marler Clark, LLP, Seattle, WA, Frederic L. Gordon, San Diego, CA, for Plaintiff Vincent Grano.

Frederic L. Gordon, San Diego, CA, for Plaintiffs Tristan Abbott, Frank Miller, Conner Lader, Chase Evers, Hunter Browning.

Barry Lewis Rodolff, Rodolff Law Firm, APC, Irvine, CA, Julia Lance Bergstrom, Scott Aaron Davis, Robert Carl Carlson, Jr., Koeller Nebeker Carlson & Haluck LLP, San Diego, CA, for Defendant Sodexo Management, Inc.

Elsa Marn Bullard, Pro Hac Vice, Faegre Drinker Biddle & Reath LLP, Minneapolis, MN, Jacob Daniel Bylund, Pro Hac Vice, Faegre Baker Daniels LLP, Des Moines, IA, Joan A. Akalaonu, Pro Hac Vice, Faegre Drinker Biddle & Reath LLP, Chicago, IL, Karen M. Firstenberg, Faegre Drinker Biddle & Reath LLP, Los Angeles, CA, for Defendant Cargill Meat Solutions Corp.

Frederic L. Gordon, San Diego, CA, for Defendants Michael Baker, Bailey Anderson.

ORDER DENYING DEFENDANT SODEXO'S MANAGEMENT INC.'S EX PARTE MOTION FOR PROTECTIVE ORDER STAYING DEPOSITIONS

[ECF No. 116]

Hon. Barbara L. Major, United States Magistrate Judge

*1 Currently before the Court is Defendant Sodexo Management Inc.'s April 17, 2020 Ex Parte Motion for Protective Order Staying Depositions [ECF No. 116 ("Mot.")], Defendant Cargill Meat Solutions Corp.'s April 20, 2020 opposition to the motion [ECF No. 120 ("Cargill Oppo.")], and Plaintiffs' April 20, 2020 opposition to the motion [ECF No. 119 ("P.s' Oppo.")]. For the reasons set forth below, Sodexo's motion is **DENIED**.

RELEVANT BACKGROUND

On March 4, 2020 Governor Gavin Newsom proclaimed a state of emergency in California as the result of COVID-19. See <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/>.

On March 17, 2020, Chief Judge Larry A. Burns issued an Order in response to the COVID-19 public emergency ("CJO #18"). See CJO #18. The Order was "predicated on the following: The President of the United States of America, the Governor of the State of California, and the Mayor of the City of San Diego have declared states of emergency in response to the spread of the coronavirus (COVID-19)." Id.

On March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20 ordering individuals in California to stay at home or their place of residence. See <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

On March 26, 2020, the Court conducted a telephonic Case Management Conference ("CMC") to address the status of discovery. ECF No. 99. Messrs. Carlson, Rodoloff, and Davis appeared on behalf of Defendant Sodexo, Messrs. Falkenstein, Clark, and Gordon appeared on behalf of Plaintiffs, and Mr. Bylund and Misses Bullard and Akalaonu appeared on behalf of Defendant Cargill. Id. Plaintiffs expressed a desire to conduct depositions and indicated a willingness to do so remotely. After hearing arguments from the parties, the Court authorized the parties to conduct depositions even though additional parties and claims may subsequently be added to the case and denied Defendant Cargill's Motion to Amend the Scheduling Order by at least 90 days. ECF No. 100.

After the telephonic CMC, Plaintiffs' counsel noticed the depositions of Sodexo fact witnesses Andrew Jassick and Testitit Almedom for April 23rd and 24th 2020. P.s' Oppo.

at 3 &; see also ECF No. 119-1, Declaration of Bruce T. Clark (“Clark Decl.”) at ¶ 3. On April 13, 2020, counsel for Plaintiffs and Sodexo conferred telephonically and Sodexo’s counsel stated that he did not feel the depositions could proceed due to the COVID-19 outbreak and requested that Plaintiffs agree to delay all depositions for 30 to 60 days. *Id.*; see also Clark Decl. at ¶ 4. On April 15, 2020, Sodexo’s counsel wrote a letter to counsel for Cargill and Plaintiffs again expressing Sodexo’s desire to stay the depositions for 30 to 60 days and its plan to file an ex parte motion seeking such relief. Cargill Oppo. at 5. Plaintiffs and Sodexo agreed to continue Mr. Jassick’s deposition to April 30, 2020 and to indefinitely postpone Ms. Almedom’s deposition.¹ *Id.*; Clark Decl. at ¶ 5. Sodexo filed the instant motion on April 17, 2020 and Cargill and Plaintiffs opposed the motion on April 20, 2020. See Mot.; see also Cargill Oppo., and P.s’ Oppo.

PARTIES’ POSITIONS

*2 Defendant Sodexo seeks a protective order pursuant to [Federal Rule of Civil Procedure \(“Fed. R. Civ. P.”\) 26\(c\)](#) postponing the April 30, 2020 deposition of Mr. Jassick and staying all future depositions for thirty to sixty days.² Mot. at 3. Sodexo argues that the relief is necessary to prevent the undue burden and prejudice it will experience if it is required to go forward with depositions that it is unable to meaningfully prepare for and participate in. *Id.* Sodexo argues that there is good cause for the requested relief because (1) circumstances have changed since the CMC and the worsening of the COVID-19 pandemic has led to additional restrictions on businesses and individuals throughout the country, (2) not granting the relief would unfairly prejudice Sodexo as Sodexo is the only party “that must prepare for depositions with one hand tied behind its back[,]” (3) preparing for and conducting depositions via videoconference “is unworkable[,]” (4) Ms. Almedom requires an interpreter, does not have reliable Wi-Fi access or a device with a camera, and does not have a private space at her place of employment where she can meet, (5) Mr. Bowser’s deposition preparation will be document intensive, he is in a vulnerable demographic, and refuses to meet with counsel in person, (6) Ms. Snyder is exceptionally busy right now responding to the COVID-19 pandemic, (7) Sodexo’s lead counsel are all in a vulnerable demographic, (8) “gathering, reviewing, and providing pertinent documents to the witnesses ha[s] become very difficult in the current climate[,]” and (9) conducting depositions via videoconference will be “cumbersome.” Mot. at 5-11. Sodexo further argues that “there is no plausible

justification for forcing these terms and conditions on Sodexo, and only Sodexo, and that a reasonable compromise is in order.” *Id.* at 11.

Defendant Cargill contends that (1) this issue has already been ruled on and Sodexo’s motion is essentially a motion for reconsideration that should be denied, (2) circumstances have not materially changed since the Court’s ruling and in-person meetings may still be unsafe in 30-60 days, (3) Sodexo will not be unfairly prejudiced as “[a]ll parties are facing these same circumstances[]” and additional deposition notices will be issued and (4) further delay of the depositions will leave the parties with insufficient time to prepare for trial. Cargill Oppo. at 3-10.

Plaintiffs state that they are prepared to conduct Mr. Jassick’s deposition via videoconference and that they should be permitted to do so. Pl.s’ Oppo. at 2. Plaintiffs contend that Sodexo “overstates the effect of limitations under current public health orders” and attorneys all over the country are having to adjust to conducting depositions via videoconference. *Id.* at 4-5. Plaintiff notes that Veritext, the deposition service being used for Mr. Jassick’s deposition “made it clear it would reach out to any counsel and witness involved in one of their depositions to ensure they were fully comfortable with the process.” *Id.* at 5; see also Clark Decl. at ¶ 9.

LEGAL STANDARD

[Fed. R. Civ. P. 26\(c\)](#) allows a party from whom discovery is sought to “move for a protective order in the court where the action is pending -- or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken.” [Fed. R. Civ. P. 26\(c\)\(1\)](#). “The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *Id.* The burden is on the person seeking the protective order to demonstrate good cause. [U.S. v. \\$160,066.98 from Bank of America, 202 F.R.D. 624, 626 \(S.D. Cal. 2001\)](#) (citing [Wilson v. Olathe Bank, 184 F.R.D. 395, 397 \(D. Kan. 1999\)](#)). “For good cause to exist, the party seeking protection bears the burden of showing specific prejudice or harm will result if no protective order is granted.”

[Phillips ex rel. Estates of Byrd v. General Motors Corp., 307 F.3d 1206, 1210–12 \(9th Cir. 2002\)](#), citing [Beckman Indus., Inc. v. Int’l Ins. Co., 966 F.2d 470, 476 \(9th Cir. 1992\)](#)

(holding that “broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the [Rule 26\(c\)](#) test”). The court has wide discretion to determine what constitutes a showing of good cause and to fashion a protective order that provides the appropriate degree of protection. [Seattle Times Co. v. Rhinehart](#), 467 U.S. 20, 36 (1984). If the motion “is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.” [Fed. R. Civ. P. 26\(c\)\(2\)](#).

ANALYSIS

*3 Sodexo has failed to establish good cause for a protective order staying the pending April 30, 2020 deposition and all future depositions.³ As an initial matter, Sodexo’s motion is a motion for reconsideration as this Court heard argument on this issue and rendered a decision in March 2020. ECF No. 100. Pursuant to Civil Local Rule 7.1(i)(1), a party may apply for reconsideration “[w]henver any motion or any application or petition for any order or other relief has been made to any judge and has been refused in whole or in part....” CivLR 7.1(i)(1). The party seeking reconsideration must show “what new or different facts and circumstances are claimed to exist which did not exist, or were not shown, upon such prior application.” *Id.* Sodexo fails to satisfy this burden and show new or different circumstances that did not exist previously. The Court’s order requiring that depositions go forward was issued after President Trump declared a national emergency, after governor Newsom declared a state of emergency in California, after governor Newsom issued a stay-at-home order for the state of California, and after Chief Judge Larry Burns issued an Order in Response to the COVID-19 Public Emergency. Accordingly, the overall state of the COVID-19 pandemic, as well as the related health concerns, are not new or different facts or circumstances meriting reconsideration.

Even evaluating Sodexo’s motion on the merits, rather than as a failed motion for reconsideration, the Court finds that the facts and circumstances dictate denial. First, Sodexo argues that is being unfairly prejudiced because it is the only party that has to prepare deponents for a **remote deposition**. Mot. at 8-9. While the only noticed depositions at the moment are for Sodexo’s witnesses, fact discovery does not close until November 20, 2020 [[see](#) ECF No. 61] and it is likely that other depositions will be noticed prior to that time. As it is unknown how long the COVID-19 crisis will impact depositions and

other in person meetings, it is likely that future noticed depositions for other parties’ witnesses also will be conducted by remote technology. In addition, it is important to note that 1) Plaintiffs wanted to depose Sodexo’s witnesses months ago, which would have involved in person depositions, and Sodexo refused to allow those depositions to go forward; and 2) Sodexo has deposed all of the Plaintiffs. The incident underlying these cases occurred in October 2017, the first case was filed in August 2018, the remaining cases were filed in October 2019, discovery closes in November 2020, and yet Plaintiffs have not deposed a single Sodexo employee or witness. Discovery, including depositions, must go forward and Sodexo is not being unfairly targeted by the Court’s order.

Second, Sodexo argues that a protective order should issue because **remote depositions** are “unworkable” and will be “cumbersome”. The Court rejects this argument.⁴ Attorneys and litigants all over the country are adapting to a new way of practicing law, including conducting depositions and deposition preparation remotely. [See De Lench v. Archie](#), 2020 WL 1644226, at *2 (D. Mass., Apr. 2, 2020) (“reminding the parties that the April 5, 2021 trial date remains firm” [and] [i]n light of the current coronavirus pandemic, [] encourag[ing] the parties to avail themselves of video technology for meetings, depositions, and other communication and interactions arising in the discovery process”).⁵ There are numerous resources and training opportunities available throughout the legal community to assist Sodexo’s counsel in the operation and utilization of the new technology. Plaintiffs’ counsel has noted that Veritext, the company that will be used to carry out the deposition of Mr. Jassick, has training and informational videos online and is willing and able to communicate with counsel and witness “to ensure that they [are] fully comfortable with the process.” Clark Decl. at ¶ 9.

CONCLUSION

*4 Sodexo’s motion is **DENIED**. The deposition of Mr. Jassick will go forward as scheduled on April 30, 2020 via remote technology. [See Fed. R. Civ. P. 30\(b\)\(4\)](#) (“the court may on motion order—that a deposition be taken by telephone or other remote means.”). The parties also may continue to notice and conduct other depositions. Pursuant to [Fed. R. Civ. P. 28](#), “a deposition will be deemed to have been conducted “before” an officer so long as that officer attends the deposition via the same remote means (e.g., telephone conference call or video conference) used to connect all

other remote participants, and so long as all participants (including the officer) can clearly hear and be heard by all other participants.” [Sinceno v. Riverside Church in City of New York](#), 2020 WL 1302053, at *1 (S.D.N.Y., Mar. 18, 2020). The Court expects all parties to work together in good faith in the scheduling and coordinating of Mr. Jassick’s deposition as well as any future depositions.

IT IS SO ORDERED.

All Citations

Slip Copy, 2020 WL 1975057

Footnotes

- 1 Plaintiffs and Cargill agreed to indefinitely postpone Ms. Almedom’s deposition based upon Sodexo’s representation that English is not her primary language and she does not have ready access to a home computer. Clark Decl. at ¶ 4; Mot. at 4, 9; Cargill Opp. at 5.
- 2 In addition to the depositions of Ms. Almedom and Mr. Jassick, Plaintiffs “have demanded depositions of eight additional Sodexo witnesses: David Bowser, Jason Boothe, Adam Godlove, Nancy Torres Espinosa, 30(b)(6) witness, Vice President (contracts) Charles Veigel, Brian Schaefer, and Heidi Snyder.” Mot. at n.4 (citing ECF No. 116-1, Declaration of Robert C. Carlson in Support of Sodexo’s Ex Parte Motion for Protective Order Staying Deposition (“Carlson Decl.”) at ¶ 6.)
- 3 Because Plaintiffs and Defendant Cargill have agreed to indefinitely postpone the deposition of Ms. Tegistit Almedom, the Court **DENIES AS MOOT** Sodexo’s request to postpone her deposition. Clark Decl. at ¶ 5; see also Cargill Opp. at 5.
- 4 The Court also rejects Sodexo’s argument regarding the age of its attorneys and Mr. Bowser, as well as the health concerns associated with COVID-19, as the **remote deposition** structure eliminates those concerns.
- 5 See also [SAPS, LLCs v. EZCARE CLINIC, INC.](#), 2020 WL 1923146, at *2 (E.D. La., Apr. 21, 2020) (denying plaintiff’s request for a protective order and motion to quash a [Fed. R. Civ. P. 30\(b\)\(6\)](#) deposition notice after noting that the “court will not require parties to appear in person with one another in the midst of the present pandemic. Nor is it feasible to delay the depositions until some unknown time in the future” and, given the June 15, 2020 trial date, finding that “the depositions to be taken in this case will satisfy Rule 28’s requirement that they be ‘taken before ... an officer authorized to administer oaths either by federal law or by the law in the place of examination’ so long as that officer attends the deposition via the same remote means (e.g., video conference) used to connect all other remote participants, and so long as all participants (including the officer) can clearly hear and be heard by all other participants); [Sinceno v. Riverside Church in City of New York](#), 2020 WL 1302053, at *1 (S.D.N.Y., Mar. 18, 2020) (ordering that “all depositions in this action may be taken via telephone, videoconference, or other remote means, and may be recorded by any reliable audio or audiovisual means” and noting that “a deposition will be deemed to have been conducted “before” an officer so long as that officer attends the deposition via the same remote means (e.g., telephone conference call or video conference) used to connect all other remote participants, and so long as all participants (including the officer) can clearly hear and be heard by all other participants”); and [Mark Velicer, et al., v. Falconhead Capital LLC](#), 2020 WL 1847773, at *2 (W.D. Wash., Apr. 13, 2020) (concluding that the parties did not establish good cause for extending case deadlines where discovery is not set to close until November 2020 and the “parties assert that the pandemic impacts their ability to take depositions in person, but they do not discuss why they cannot conduct such depositions by telephone or other remote means” and urging the parties to consider alternatives to in person depositions).

2020 WL 2631444

Only the Westlaw citation is currently available.
United States District Court, S.D. California.

UNITED STATES OF AMERICA, for the use and
benefit of ANDREW C. CHEN, an individual,
doing business as TECTONICS, Plaintiff,

v.

K.O.O. CONSTRUCTION, INC., a
California corporation, Defendant.

K.O.O. CONSTRUCTION, INC., a
California corporation, Counter Claimant,

v.

ANDREW C. CHEN, an individual, doing
business as TECTONICS, Counter Defendant.

Case No.: 19cv1535-JAH-LL

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Filed 05/08/2020

**ORDER GRANTING IN PART AND
DENYING IN PART JOINT MOTION TO
CONTINUE FACT DISCOVERY [ECF No. 30]**

Honorable [Linda Lopez](#) United States Magistrate Judge

*1 Currently before the Court is the parties' joint motion requesting that the Court continue the deadline to complete fact discovery from June 10, 2020 to August 10, 2020. ECF No. 30. The parties state that this is their first request to modify the Scheduling Order, they have been working diligently to complete discovery, and they only require additional time for depositions to be taken. *Id.* at 2–3. The parties contend that some depositions need to be taken in person because (1) some depositions will include reference and review of extremely voluminous project plans, which “would be nearly impossible to reference” and “use them effectively as exhibits via a teleconference deposition”; and (2) the “architectural plans are far too detailed to be referenced and followed remotely” even if videoconference is used. *Id.* at 3; ECF No. 30-1, Declaration of Lauren B. Stec (“Stec Decl.”), ¶ 6. The parties further claim that of the eleven witnesses who need to be deposed, six are Defendant's former employees and serving subpoenas “is expected to be difficult” during “the Coronavirus lockdown and the requirement to maintain social distancing.” ECF No. 30 at 3; Stec Decl. ¶ 7.

“The district court has wide discretion in controlling discovery.” [Little v. City of Seattle](#), 863 F.2d 681, 685 (9th Cir. 1988). In employing the Federal Rules of Civil Procedure, courts and parties are required “to secure the just, speedy, and inexpensive determination of every action and proceeding.” *Fed. R. Civ. P. 1*. Pursuant to Rule 16, the Court is required to issue a scheduling order that “must limit the time to join other parties, amend the pleadings, complete discovery, and file motions.”¹ See *Fed. R. Civ. P. 16(b)(3)(A)*. “A schedule may be modified only for good cause and with the judge's consent.” *Fed. R. Civ. P. 16(b)(4)*. “Rule 16(b)'s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” [Johnson v. Mammoth Recreations, Inc.](#), 975 F.2d 604, 609 (9th Cir. 1992). If the moving party fails to demonstrate diligence, “the inquiry should end.” *Id.*

The Court fails to find good cause to extend the fact discovery deadline for sixty days. One reason for the requested extension is that serving subpoenas to six deponents will be difficult at this time, but the Court is not convinced by this vague and unsubstantiated claim. The primary reason the parties seek the continuance is because they hope the physical distancing and stay-at-home orders required by the current pandemic will be lessened to allow for in-person depositions in the near future. This, however, is pure speculation. It is not feasible for the Court to extend deposition deadlines until a time when they can be safely conducted in person because no one knows when that will occur and there are alternatives. Rule 30(b)(4) allows depositions to “be taken by telephone or other remote means.” *Fed. R. Civ. P. 30(b)(4)*. The Court authorizes the use of **remote depositions** by videoconference in this action, which will help secure a “just, speedy, and inexpensive determination.” *Fed. R. Civ. P. 1*; see also [Velicer v. Falconhead Capital LLC](#), No. C19-1505 JLR, 2020 WL 1847773, at *2 (W.D. Wash. Apr. 13, 2020) (finding no good cause to extend scheduling order deadlines by ninety days and urging the parties to consider **remote depositions**); [Sinceno v. Riverside Church in City of New York](#), No. 18-CV-2156 (LJL), 2020 WL 1302053, at *1 (S.D.N.Y. Mar. 18, 2020) (authorizing **remote depositions** “[i]n order to protect public health while promoting the ‘just, speedy, and inexpensive determination of every action and proceeding’ ” (citation omitted)).

*2 The Court is not convinced that voluminous and highly detailed exhibits are a bar to remote videoconference depositions. Other courts have found that exhibits can be managed in **remote depositions** by sending Bates-stamped

exhibits to deponents prior to the depositions or using modern videoconference technology to share documents and images quickly and conveniently. See [Kaseberg v. Conaco, LLC](#), No. 15cv01637-JLS-DHB, 2016 WL 8729927, at *6 (S.D. Cal. Aug. 19, 2016) (requiring a copy of exhibits intended to be used at a **remote deposition** to be sent to deponent's attorney at least twenty-four hours in advance of the deposition); [Carrico v. Samsung Elecs. Co.](#), No. 15-CV-02087-DMR, 2016 WL 1265854, at *2 (N.D. Cal. Apr. 1, 2016) (approving methods such as exchanging Bates-stamped documents in advance of a **remote deposition** or using modern videoconference software to share documents and images); [Lopez v. CIT Bank, N.A.](#), No. 15CV00759BLFHRL, 2015 WL 10374104, at *2 (N.D. Cal. Dec. 18, 2015) (disagreeing that reviewing complicated exhibits remotely would be impracticable because exhibits can be shared with modern videoconference software or by distributing Bates-stamped copies); [Lott v. United States](#), No. C-07-3530 PJH (EMC), 2008 WL 2923437, at *1 (N.D. Cal. July 25, 2008) (finding no prejudice incurred in **remote depositions** that require reference to critical exhibits such as photographs, diagrams, and drawings because the exhibits may be sent to the deponent in advance of the deposition).

While the Court is sympathetic to the challenges to the legal community during this pandemic, attorneys and litigants are

adapting to new ways to practice law, including preparing for and conducting depositions remotely. [Grano v. Sodexo Mgmt., Inc.](#), No. 18cv1818-GPC(BLM), 2020 WL 1975057, at *3 & n.5 (S.D. Cal. Apr. 24, 2020) (collecting cases). In addition to finding no good cause to extend fact discovery for sixty days, the Court also finds the parties have not diligently sought to complete depositions because they are rejecting the use of remote videoconference depositions for reasons of convenience and not true prejudice. However, the Court, in its discretion, will allow a short continuance for the parties to complete depositions remotely “to secure the just, speedy, and inexpensive determination” of this action. See [Fed. R. Civ. P. 1](#); [Little v. City of Seattle](#), 863 F.2d at 685. Accordingly, the Court **GRANTS IN PART AND DENIES IN PART** the joint motion as follows:

The fact discovery deadline of June 10, 2020 will be extended to **July 10, 2020** for the sole purpose of completing depositions remotely.

IT IS SO ORDERED.

All Citations

--- F.Supp.3d ----, 2020 WL 2631444

Footnotes

1 The word “Rule” in this order refers to the Federal Rules of Civil Procedure, unless specified otherwise.

LINKS TO ARTICLES

TITLE OF THE ARTICLE	WEB ADDRESS
<p><i>North Carolina Paves the Way for Remote Depositions: Some Practical Considerations</i></p> <p>By: Jeff MacHarg, John Reis, Jon Heyl Dated: May 4, 2020</p>	<p>https://www.foxrothschild.com/publications/north-carolina-paves-the-way-for-remote-depositions-some-practical-considerations/</p>
<p><i>Tips for Remote Depositions in the Era of Social Distancing</i></p> <p>By: Will Cooper Dated: April 2, 2020</p>	<p>https://www.conradmetlitzky.com/firm-news-and-notes/2020/4/2/tips-for-remote-depositions-in-the-era-of-social-distancing</p>
<p><i>Not Remotely Law as Usual: Remote Depositions – The Same But Different</i></p> <p>By: Victor Zarrilli, Robert Devine, Michael Horner Dated: March 31, 2020</p>	<p>https://www.whiteandwilliams.com/resources/alerts-Not-Remotely-Law-as-Usual-Remote-Depositions-The-Same-But-Different.html</p>
<p><i>Time to Reconsider Remote Depositions in the Age of COVID-19</i></p> <p>By: Edward T. Kang Dated: March 19, 2020</p>	<p>https://www.law.com/thelegalintelligencer/2020/03/19/time-to-reconsider-remote-depositions-in-the-age-of-covid-19/</p>
<p><i>Remote Depositions Bring Ethics Considerations For Lawyers</i></p> <p>By: Lindsey Mann, Alison Grounds, Christopher Kelleher Dated: May 5, 2020</p>	<p>https://www.law360.com/articles/1269933/remote-depositions-bring-ethics-considerations-for-lawyers</p>
<p><i>Remote Depositions In The Era Of COVID-19IB</i></p> <p>By: Robbins Kaplan LLP Dated: April 5, 2020</p>	<p>https://www.jdsupra.com/legalnews/remote-depositions-in-the-era-of-covid-59845/</p>
<p><i>No Excuses: Remote Depositions Required in the Age of COVID-19</i></p> <p>By: The National Law Review Dated: May 14, 2020</p>	<p>https://www.natlawreview.com/article/no-excuses-remote-depositions-required-age-covid-19</p>

TITLE OF THE ARTICLE	WEB ADDRESS
<p><i>The Remote Deposition Practice Guide</i></p> <p>By: Veritext Legal Solutions Posted: Currently as of May 29, 2020</p>	<p>https://www.veritext.com/remote-practiceguide/</p>
<p><i>A Litigator's Guide to Remote Deposition Basics</i></p> <p>By: U.S. Legal Support Posted: March 29, 2020</p>	<p>https://www.uslegalsupport.com/blog/a-litigators-guide-to-remote-deposition-basics/</p>
<p><i>Navigating Remote Depositions: A Practitioners' Guide</i></p> <p>By: Baker Donelson Posted: April 24, 2020</p>	<p>https://www.jdsupra.com/legalnews/navigating-remote-depositions-a-74166/</p>
<p><i>Information Security Basics While Lawyering From Home</i></p> <p>By: Esquire Deposition Solutions Posted: May 18, 2020</p>	<p>https://www.esquiresolutions.com/information-security-basics-lawyering-from-home/</p>
<p><i>Effectively Preparing and Defending Your Remote Deposition Witness</i></p> <p>By: Esquire Deposition Solutions Posted: May 11, 2020</p>	<p>https://www.esquiresolutions.com/preparing-and-defending-remote-deposition-witness/</p>
<p><i>Fear Factor: The Remote Deposition Episode</i></p> <p>By: Esquire Deposition Solutions Posted: April 30, 2020</p>	<p>https://www.esquiresolutions.com/fear-factor-remote-deposition-episode/</p>
<p><i>Technology's Role in Responding to the Coronavirus Pandemic</i></p> <p>By: Esquire Deposition Solutions Posted: March 17, 2020</p>	<p>https://www.esquiresolutions.com/technology-role-responding-coronavirus-pandemic/</p>