

1. An order from the U.S. District Court for the Eastern District of California granting a motion to compel deposition testimony pursuant to Federal Rule of Civil Procedure 30(b)(6) related to certain “discovery on discovery” topics.

In *Puckett v. Cnty. of Sacramento*, No. 22-CV-0350 (KJM DB), 2024 WL 418187 (E.D. Cal. Feb. 5, 2024), U.S. Magistrate Judge Deborah Barnes addressed the standards for compelling a deposition pursuant to Rule 30(b)(6) regarding “discovery on discovery” topics.

In this action under 42 U.S.C. § 1983, Plaintiff alleged that Defendants deprived him of his constitutional rights by withholding or ignoring exonerating evidence in prosecuting him on robbery and murder charges. *Id.* at *1. During discovery, Defendants stated repeatedly that various documents never existed or were not maintained, and Defendants therefore could not produce documents in response to Plaintiff’s requests for production of documents.

Plaintiff served Defendants with notices of depositions pursuant to Rule 30(b)(6) seeking testimony regarding (1) Defendants’ preservation or destruction policies, procedures, or practices governing the requested documents; (2) any searches Defendants conducted to locate the documents; and (3) any actions Defendants took to respond to Plaintiff’s document requests. Defendants refused to produce any witnesses to testify on these topics, and Plaintiff moved to compel the depositions.

Magistrate Judge Barnes began her analysis by explaining that “[t]he general purpose of a Rule 30(b)(6) deposition is to permit the examining party to discover the entity’s position via a witness designated by the entity to testify on its behalf.” She further explained that “parties are entitled to test assertions in questioning witnesses during depositions, and it is fundamental that parties may simultaneously utilize any or all of the discovery mechanisms authorized by the rules.”

Magistrate Judge Barnes next addressed the standards for relevance under Federal Rule 26(b)(1), pursuant to which “[p]arties may obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense and 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.” She noted that “relevancy” is defined broadly, “although it is not without ultimate and necessary boundaries,” and that the party resisting discovery “has the burden to show that discovery should not be allowed, and the burden of clarifying, explaining, and supporting its objections.” Magistrate Judge Barnes also noted that objections to discovery are waived if raised

for the first time in a discovery motion or if “asserted in discovery responses but not raised in briefing on a discovery motion.”

In light of these standards, Magistrate Judge Barnes rejected Defendants’ assertion that requests for information on document storage and retention were impermissible. *Id.* at *2. Indeed, she noted that courts “recogniz[e] the value of Rule 30(b)(6) depositions in dealing with issues such as those presented here.” *Id.* at *3. She distinguished two cases relied on by Defendants, *Ford Motor Co. v. Edgewood Properties, Inc.*, 257 F.R.D. 418 (D. N.J. 2009) and *Brand Energy & Infrastructure Services, Inc. v. Irex Corporation*, 2018 WL 806341 (E.D. Pa. Feb. 9, 2018). Magistrate Judge Barnes explained that the Ford court addressed a request for “a substantial reconstruction of the document collection process” but expressly blessed exploration of discovery issues through depositions of “fact witnesses who have knowledge in these areas.”

Magistrate Judge Barnes found that the Brand case was similarly unhelpful to Defendants because the court in Brand dealt with requests for production of documents at a “late stage,” which was not the case here. She also noted that the plaintiffs in Brand had apparently taken a Rule 30(b)(6) deposition related to certain discovery issues.

Magistrate Judge Barnes also rejected Defendants’ argument that the deposition topics prematurely sought “‘discovery on discovery’ without any evidence of bad faith.” She noted that “‘discovery on discovery’ is sometimes warranted” and that “where a party makes some showing that a producing party’s production has been incomplete, a court may order discovery designed to test the sufficiency of that party’s discovery efforts in order to capture additional relevant material.” Magistrate Judge Barnes noted in this context that Defendants’ production “has been less than incomplete, it has been essentially nonexistent,” and Plaintiff sought discovery that could ascertain whether Defendants’ production was, in fact, incomplete.

Magistrate Judge Barnes similarly rejected Defendants’ arguments based on particularity and burden. With respect to Defendants’ arguments that the first deposition topic was not reasonably particular, Magistrate Judge Barnes disagreed in light of the fact that the topic was focused on policies, procedures, or practices “concerning the preservation or destruction of documents that would be relevant to this action.” With respect to burden, Magistrate Judge Barnes noted that Defendants failed to satisfy the requirement that they “justify[] their objection by demonstrating that the time or expense involved in responding to requested discovery is unduly burdensome” by providing “sufficient detail in terms of time, money and procedure required to produce the requested documents.”

Last, Magistrate Judge Barnes addressed Defendants' request for a protective order quashing Plaintiff's deposition notices. *Id.* at *4. She explained that a court "may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" pursuant to Rule 26(c)(1), which was "enacted as a safeguard for the protection of parties and witnesses in view of the broad discovery rights authorized in Rule 26(b)." But the party seeking to limit discovery through a protective order must show "good cause" and bears the burden of showing that "specific prejudice or harm will result if no protective order is granted." But she explained that "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test."

Applying this test, Magistrate Judge Barnes found that Defendants failed to substantiate any specific prejudice or harm because Defendants argued simply that they "would be harmed in requiring to expend additional defense costs on matters only tangentially and vaguely related to the issues in this case, or are so vague that if forced to produce on such little information would end up wasting all parties' time." She found this argument to be "a broad allegation of harm, unsubstantiated by a specific example or articulated reasoning." She therefore denied Defendants' motion to quash.