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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Joseph C. Spero, Magistrate Judge

UNITED STATES OF AMERICA ex)
rel. RONDA OSINEK,)
)
Plaintiff,)
)
vs.) No. C 13-03891-EMC
)
KAISER PERMANENTE, et al.,)
)
Defendants.)

San Francisco, California
Friday, March 31, 2023

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 9:31 - 9:47 = 16 MINUTES

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1 Friday, March 31, 2023

9:31 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: We are calling case number 13CV3891,
5 Osinek versus Kaiser Permanente.

6 Counsel, could you please raise your hands?

7 (Counsel comply.)

8 THE CLERK: Is there anybody else I've missed?

9 MR. BLALACK (via Zoom): You have the Defendants,
10 ma'am.

11 THE CLERK: Okay. I believe this is everybody,
12 Judge. So, good morning. Appearances, please, first
13 starting with Plaintiff and then the Defendants.

14 MR. CHOE (via Zoom): Good morning, your Honor.
15 Shiwon Choe on behalf of the United States.

16 MR. THROPE (via Zoom): Good morning. Jonathan
17 Thrope, as well, for the United States.

18 MS. ZEMAN (via Zoom): Good morning, your Honor.
19 This is Amy Zeman for relater, Osinek.

20 MR. BLALACK: Good morning, your Honor. Lee
21 Blalack, counsel for the Defendants.

22 MR. SULLIVAN (via Zoom): Good morning, this is
23 Stephen Sullivan, counsel for Defendants.

24 THE COURT: We're going to have to get Mr.
25 Sullivan some books, or something.

1 MR. SULLIVAN: I'm in the process of moving
2 offices. It is very depressing.

3 THE COURT: Well, thank you, all. This is about
4 docket 255, the joint letter, and let me tell you my theory
5 about this.

6 I think, in general, in a complex manner like this, the
7 idea of a -- of a limited 30(b)6 deposition on the location
8 information of documents, and on organization of complex
9 parties, is a good idea. It's a good idea, because it can
10 streamline the next phase of discovery by identifying and
11 limiting the discovery to areas that make the most sense and
12 that are most relevant.

13 So, I'm -- I'm a big fan of it. I've done it many many
14 times. It seems to be entire irrelevant that the United
15 States hasn't found some published opinion that says this is
16 a really great idea, because we do it all of the time.
17 Mostly, people don't resist it, because they understand that
18 it's a good idea.

19 It's -- I think that when you have a case like this,
20 where the organizations are so complex and the potential
21 location documents are so diverse, that interrogatories are
22 a joke. They are a complete waste of time. They take five
23 times as much time as a 30(b)6 deposition, where you've got
24 a human being where you can dive -- go back and forth and
25 say, what about this and what about that. So, I'm totally

1 in favor of it.

2 On the other hand, it's got to be limited. It can't be
3 too broad, otherwise it defeats the purpose of narrowing the
4 discovery. So, the location and storage of relevant
5 information, that's relatively obvious. Organizational
6 structure, not quite so obvious what that means, but in
7 Exhibit 1 to the joint letter, topics one, three and five
8 are a pretty good place to start a discussion of what might
9 be good topics.

10 The topic four, sounds like it's going to stray too far
11 into the merits and should be avoided. Although, they'll be
12 some overlap between discussions of organizational structure
13 and who is responsible for what, and the topics that are
14 included in topic four. But, the purpose of this is not to
15 figure out what actually happened, or what -- really what
16 generally happened, but find the organizational structure,
17 in general, and what people's responsibilities are, in
18 general.

19 So, you could ask, what's the responsibility of this
20 person on the org chart, but you couldn't go into a
21 particular situation in this situation where they do this,
22 and this situation where they do that.

23 So, my -- what I think what I would do, my tentative
24 would be to give you that guidance. I'm going to allow an
25 initial 30(b)6 on -- of any party, the location of relevant

1 documents and the organization of the relevant parts of that
2 party, but that won't foreclose a further 30(b)6 of that
3 party on other topics later. And, that I would order the
4 parties to meet and confer on the appropriate topics for
5 this initial 30(b)6, because I'm not looking at, for
6 example, Exhibit 1, and all of the divisions listed in
7 topics one and two. It's not clear to me that every single
8 one of those divisions, organizational structure, is
9 relevant to the -- or significant in the case. I would
10 expect the parties to narrow it to an appropriate list.

11 But -- so that's my tentative. I'd be happy to hear
12 from anybody who wants to comment on that. Maybe we'll
13 start with the United States.

14 MR. THROPE: Sure. Thank you, your Honor, for
15 those comments. I think you saw, as reflected in our
16 letter, we don't think this is appropriate and we think
17 that's particularly true, given all of the information we
18 have already provided. We've worked hard to provide
19 directory, functional statements, power points that get them
20 this information. We understand that you think that there's
21 maybe some additional use to the 30(b)6, and if you go that
22 route, we get it.

23 We think there needs to be clear perimeters, as to what
24 this deposition would be, if you allow it, because we think
25 we did provide them this information and that --

1 THE COURT: So, I don't care whether you've
2 provided them the information. The information you
3 provided, the documents, are the starting point for those
4 deposition, not the ending point. Someone is going to have
5 to explain those documents to people and how they fit
6 together, et cetera, et cetera.

7 So, I read everything you submitted and it's a scatter
8 shot. I mean, yes, I suppose somebody studying, who is not
9 familiar intimately by being on the inside, could figure it
10 all out eventually, but that's a waste of time. We can do
11 it much more efficiently if we have somebody who actually
12 knows what is going on, to say, no no no, that's not what
13 this means, this is what it means.

14 So I don't -- I think it's just a -- I mean, I
15 appreciate that you've done all of the work to produce the
16 information. That's a starting point. I expect the parties
17 to work to figure out where -- what parts of the
18 organization are going to be the subject of this
19 organizational structure deposition order, storage of
20 relevant information deposition, so you can get the topics
21 down together, but that should be relatively easy.

22 And then, they're just going to -- they're going to ask
23 about what the organizational structure is. I don't want
24 them to go into what happened in a particular situation. I
25 want them to talk about, what's the responsibility of this

1 person, what's the responsibility of that person, and you
2 know, and how do they -- and they'll be nuances, of course.
3 So, I don't want you to -- I get the concern that if you go
4 too far, you're really going to ask questions about whether
5 or not they followed the procedures they were supposed to,
6 or the procedures that they followed were the right ones.
7 And we're not going to get too far -- we're not going to get
8 into the merits, but there's going to be some overlap.

9 So, I think the way to deal with this is by figuring
10 out the topics and limiting by time so that they can't go
11 endlessly in these depositions. So, you have some time
12 perimeter so it makes them focus on what they need to know
13 in order to do the next round of discovery. That's what I
14 think, but I think the United -- I've got to tell you, I'm
15 stunned at the United States' position. I thought it was
16 totally inappropriate. Especially for an organization as
17 complex and as intricate as the organizations that we're
18 talking about. I thought it was totally inappropriate.
19 It's -- we're -- I won't go into it in any detail, but in
20 any event, I think you've got to do it.

21 MR. THROPE: Right.

22 THE COURT: So, meet and confer, figure out what
23 the topics are. I want you to agree on time limits and the
24 topics and this shouldn't be -- you know, this shouldn't
25 take 30 hours of depositions to elucidate this. It should

1 be relatively compact depositions.

2 And, you know, there are limits in the case that
3 involve (indiscernible), in terms of hours, and so the
4 Defendants have an incentive to try to keep it short, but I
5 think you ought to agree on a short length of time so that
6 there's no disputes about it. And, within that length of
7 time, you know, I think that you'll get a sense when you
8 think they're straying into something that is more about
9 things that would bear directly on the merits, but be a
10 little generous about it. As long as they're just keeping
11 within the time limits, you're going to train your person up
12 about -- presumably they'll be people that know about the
13 area to begin with, and they'll have the documents on top of
14 that and that will be the starting point for the
15 depositions.

16 MR. THROPE: Okay. Understood. I think we will
17 plan on doing the same to them. I'm not sure if you said
18 that in your opening, but it seems like --

19 THE COURT: Oh yeah, it's mutual. It's mutual.

20 MR. THROPE: Okay.

21 THE COURT: Absolutely. Any party. A 30(b)6 of
22 any party of those -- on those areas. Absolutely.

23 MR. THROPE: Okay. Understood.

24 THE COURT: Does anyone want to add anything?

25 MR. BLALACK: Your Honor, this is Lee Blalack for

1 the Defense. We understand your admonition and it's very
2 consistent with the message we communicated to the
3 Government, in multiple meet and confers.

4 We understand the difference between a merits
5 deposition on the substantive claims and issues related to
6 organizational, and reporting the issues and document
7 preservation, and we're -- you know, this is a good-faith
8 effort to map out the next phase of discovery, not to get
9 into the merits of discovery, because frankly we don't know
10 enough yet to do that effectively.

11 So, that's our plan. We get it. And, as I indicated
12 in our filing, we offered to reciprocate by --

13 THE COURT: No, I know. I know.

14 MR. BLALACK: So, we're glad -- if they need it, I
15 don't -- I'm not clear they do, given the eight-year
16 investigation, but if they do, that's fine. We'll be glad
17 to accommodate them and we'll take your guidance to heart.

18 I don't think this -- certainly, this is not going to
19 be a 30 hour deposition, in our view, unless they surprise
20 us with some massive number of designees. If it's just one
21 or two people that -- you know, talking about these topics,
22 I certainly think it's doable in a single day or less than a
23 day. So, that's --

24 THE COURT: All right.

25 MR. BLALACK: -- would be our expectation.

1 THE COURT: So, here's what I'd like you to do.
2 Within the next -- I don't know that the schedule is in the
3 case, so tell me if I'm being unrealistic -- within the next
4 two weeks, I'd like you all to agree on what the topics are
5 and the time limits, so that the United States can locate
6 the people involved that they're going to --

7 MR. BLALACK: That certainly works for the
8 Defendants, your Honor. I mean, one of the urgent factors
9 for us -- to answer your question -- we've been over a year
10 now in discovery and the fact discovery deadline is, I
11 believe, next January. We have a lot of other targeted
12 discovery to serve, once we figure out where it needs to be
13 focused on. So, the sooner we can get the testimony, the
14 better, in our view, and we can get it done on our side in
15 two weeks.

16 THE COURT: Great. Mr. Thorpe (sic) -- Thrope.

17 MR. THROPE: Yeah, we'll work hard to agree on
18 topics and time limits and work this out in the next two
19 weeks. I think that's doable.

20 THE COURT: Great. Okay. So, for the minutes,
21 I'm allowing an initial 30(b)6 of any party on the location
22 of relevant documents, and the organization of the relevant
23 parts of that party. That initial 30(b)6 will not foreclose
24 a further 30(b)6 of that party on other topics later. The
25 parties shall agree on time limits and topics for the

1 initial 30(b)6 deposition, or depositions, within two weeks
2 from today.

3 MR. BLALACK: Thank you, your Honor.

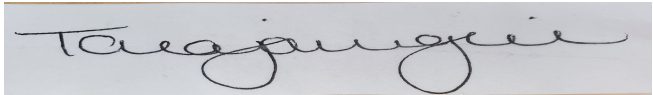
4 THE COURT: Great. Thanks.

5 (Proceedings adjourned at 9:47 a.m.)
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1 CERTIFICATE OF TRANSCRIBER

2
3 I certify that the foregoing is a true and correct
4 transcript, to the best of my ability, of the above pages of
5 the official electronic sound recording provided to me by
6 the U.S. District Court, Northern District of California, of
7 the proceedings taken on the date and time previously stated
8 in the above matter.

9 I further certify that I am neither counsel for,
10 related to, nor employed by any of the parties to the action
11 in which this hearing was taken; and, further, that I am not
12 financially nor otherwise interested in the outcome of the
13 action.

14 

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