UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA ex rel. RONDA OSINEK, Plaintiffs, v. KAISER PERMANENTE, et al., Defendants.	Case No. 13-cv-03891-EMC San Francisco, California Friday, June 30, 2023 ZOOM WEBINAR PROCEEDINGS

TRANSCRIPT OF DISCOVERY HEARING
BEFORE THE HONORABLE JOSEPH C. SPERO
UNITED STATES MAGISTRATE JUDGE

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SAN FRANCISCO, CALIFORNIA FRIDAY, JUNE 30, 2023 9:31 A.M.

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THE CLERK: We are calling Case Number 13-cv-3891, Osinek v. Kaiser Permanente. Counsel, could you please raise your hands.

(Pause.)

THE CLERK: Okay. Good morning. Appearances, please, first starting with the Plaintiff and then Defendant.

MR. CHOE: Good morning, Your Honor. Shiwon Choe and Laurie Oberembt for the United States.

THE COURT: Good morning.

MR. SULLIVAN: Stephen Sullivan and Adam Levine for the Defendants.

THE COURT: Good morning.

MR. SULLIVAN: Good morning.

THE COURT: Another bizarre discovery dispute in this case. I -- you know, I'm done lecturing you on this stuff, but this is another one where you people are just standing your ground in places where you should be compromising.

So here's what I think. I guess we've narrowed it to the 19 contention Requests for Admissions that have been propounded by the Defendants about whether the United States contends that various medical providers at various entities knowingly did certain things.

I have two opinions about that. My first is that it's

relevant information; that is to say, the underlying information is relevant. Whether or not -- you know, it may not be necessary for the United States to ultimately prove that any particular individual medical provider knowingly provided a fake diagnosis in an addendum or whatever, but I can't say that it's not relevant. And, indeed if the United States wanted discovery into -- on some basis into the knowledge of providers, I think Defendants would be hard-pressed to resist that. So I can't say that it's not relevant.

On the other hand, it's framed in a way that is both peculiar and I think premature. I don't think it's a proper Request for Admission. The proper Request for Admission is admit that the medical provider did not knowingly do X. That's a Request for Admission. This is a contention interrogatory. So it can be done. It can be done as a contention interrogatory. We can easily convert them into, "Do you contend that" instead of admit that you can -- that sort of thing.

So it can be done. It should be done -- if you want to do it as a Request for Admission, you should do it the way I suggest, as a fact inquiry. If you want to figure out whether or not they contend X, you can do that. I think it's premature. I think that there's no utility in having them go through this exercise more than once about figuring out, based on all of the discovery, whether they ultimately are going to contend.

I think it's perfectly fine to pin them down on the

contention. I disagree with this sort of, Oh, well, you can't -- your doing this in some way may impinge on our trial strategy or whatever it is. I think it's perfectly fine to pin down the contentions of the other side's (indiscernible) before trial, in most cases -- and in this case, in this particular case with these particular contentions. But I think that has to be done when the fact discovery is almost all done so that the United States can look at it and say, Well, based on all the facts that have been discovered, yes, we are going to contend this, or the United States can say, We are not going to contend this. That would be useful information, but it's useful information to get at once.

So my tentative is to allow you to reframe these as these 19 contention Requests for Admissions as 19 contention interrogatories and propound them 45 days before the close of discovery.

Comments, anyone? I guess the -- we'll hear from the United States and then from the Defendants.

MR. CHOE: Your Honor, that makes sense to us. Our issue here is that these were oddly framed and not proper under Rule 36, and reframed as contention interrogatories toward the end of fact discovery would be a different issue altogether, so what Your Honor said makes sense to us.

THE COURT: And I'll hear from Defendants.

MR. SULLIVAN: Thank you, Your Honor. Our perspective is, you know -- and I think we pointed to several in-circuit

district court cases that pointed out RFAs, you know, that are appropriate tools for --

THE COURT: But it's an irrelevancy. Fine. If I thought you could do it properly today as an interrogatory, I would just reframe them myself as an interrogatory and you would get an answer. The real question is when.

MR. SULLIVAN: And the other -- the other point I would make is, you know, there's no burden associated with having them respond to the RFAs, at least the ones that they informed -- they agreed to and formally respond to. The issue here and why we brought this to Your Honor for consideration is that they were only willing to do so informally ad then that places, you know, a burden upon the Defendants improperly to routinely follow up as to whether their informal position which they offered to us has changed.

THE COURT: But why do you say there's no burden? First of all, they'd have to do it at least twice.

MR. SULLIVAN: Well, because they've already -- they've already said in the meet-and-confer process that they do not contend that the providers acted knowingly.

THE COURT: That's today and it's not -- and it's more complicated than that. They spent pages writing on it. But they have some contentions. Yes, they could convert their letter into a response, but they'd still have to do it, you know, whatever -- 30 days or at the close of discovery, they'd have to do it again

based on what all the evidence was at the time and what their thinking was at the time. Why isn't that a burden?

MR. SULLIVAN: Well, because at that time, you know, we would agree that they would -- they would have to supplement but, by then, you know, there would be many more claims in play and there's, you know, a whole host of additional facts that are going to have to have been developed. This is about framing discovery from here, from this point forward to narrow the issue. So they are not --

THE COURT: That's cart before the horse. That's cart before the horse. You cannot force them by virtue of narrowing their contentions to narrow the discovery at this point in the case. I'm not going to allow that. And you should have known that.

I've got to tell you this whole thing is ridiculous. You all should have worked this out. I think the United States is plainly wrong when it says this material is not relevant and we're only going to respond informally -- plainly wrong. And you're plainly wrong when you're supposedly saying, "Tell us now and then tell us again in three months." Both of you are being ridiculous -- I've got to tell you.

You know, I have great respect for lawyers on both sides of this case, but I'm losing my patience. So don't come back to me again with something that needs to be worked out, because I will do more than just be irritated.

So here's what we're going to do. The motion will be granted in part. The minutes will reflect that the -- that the Defendants can reframe the 19 Requests for Admission at issue as contention interrogatories and may propound them 45 days before the close of fact discovery. And the United States shall answer them fully, in addition to whatever else interrogatories you want to ask. But those can be done 45 days before the close of fact discovery.

Okay. Thank you very much.

MR. SULLIVAN: Thank you, Your Honor.

MR. CHOE: Thank you, Your Honor.

THE CLERK: Court stands in recess.

(Proceedings adjourned at 9:41 a.m.)

I, Peggy Schuerger, certify that the foregoing is a correct transcript from the official electronic sound recording provided to me of the proceedings in the above-entitled matter.

Peggy Schuerger July 17, 2023

Signature of Approved Transcriber Date

Peggy Schuerger

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