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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DIEN LE,  
Plaintiff,  
v.  
TRINH NGOC HUYNH, et al.,  
Defendants.

Case No. [23-cv-00914-SI](#)

**ORDER DENYING EXTENSION OF  
FACT DISCOVERY AND GRANTING  
IN PART AND DENYING IN PART  
DISCOVERY LETTER BRIEF**

Re: Dkt. Nos. 38, 40

Before the Court are numerous filings by the parties that concern a request by plaintiff to extend the close of fact discovery and various discovery disputes. Dkt. Nos. 38, 40, 41, 42, 43. For the reasons stated below, the Court DENIES plaintiff’s request to extend fact discovery but ORDERS defendants to respond to the Requests for Production (“RFPs”) contained in the December 29, 2023 deposition notices.

**BACKGROUND**

Under the Court’s September 18, 2023 pretrial preparation order, the cutoff date for non-expert discovery was January 15, 2024. Dkt. No. 29. That pretrial preparation order also set the bench trial for May 20, 2024. The bench trial was later continued to June 10, 2024. Dkt. No. 33. On November 30, 2023, the parties attended a settlement conference with Magistrate Judge Kang, but the case did not settle. Dkt. No. 32.

On January 16, 2024, a day after the close of non-expert discovery, plaintiff filed an ex parte motion to extend fact discovery. Dkt. No. 37. This filing was not processed because the signing attorney was not listed as an attorney of record. Plaintiff re-filed this ex parte motion on January 17, 2024 and requests the fact discovery cutoff be extended to February 23, 2024. Dkt. No. 38.

1           The background to this dispute is as follows. On November 17, 2023, plaintiff’s counsel  
2 served discovery requests on defendant Huynh as an individual via email. Dkt. No. 42-1 (“Heimlich  
3 Decl.”) ¶ 4. Responses to these requests were sent on December 15, 2023 via email. *Id.* ¶ 5. Plaintiff  
4 did not serve written discovery requests on defendant Huynh Dining except for those contained  
5 within the deposition notice (discussed below). *Id.* ¶ 6.

6           On December 29, 2023, plaintiff’s counsel served two deposition notices on defendants, one  
7 to Huynh as an individual and one 30(b)(6) notice to Huynh Dining that also requested document  
8 production. Dkt. No. 38-1 (“Chenette Decl.”), Ex. 2; Heimlich Decl. ¶ 7. The notices set both  
9 depositions for January 12, 2024. *Id.* Plaintiff’s counsel indicated via email on January 10, 2024  
10 that deponents were expected to be available on January 12, 2024 and that plaintiff was entitled to  
11 seven hours of deposition testimony for each deposition. Chenette Decl., Ex. 1. Defendant’s  
12 counsel responded that the two depositions could not happen on the same day or simultaneously.  
13 *Id.* Ultimately, defendants’ counsel agreed to allow plaintiff to take one of the depositions on  
14 January 17, 2024 but did not agree to extend fact discovery beyond the taking of the deposition, and  
15 did not agree to provide additional discoverable documents or information requested during the  
16 deposition after the close of discovery. Chenette Decl., Exs. 1, 3; Heimlich Decl. ¶ 9. On January  
17 12, 2024 defendant Huynh was deposed. Dkt. No. 42 at 3-4. Thi Tran for Huynh Dining was  
18 deposed on January 17, 2024. *Id.* at 4. Both parties assert improper conduct by the opposing party’s  
19 counsel during the depositions and present arguments that go to the merits of the case or the  
20 credibility of witnesses.

21           On January 19, 2024, counsel met and conferred via Zoom for 75 minutes to discuss  
22 plaintiff’s demands regarding discovery issues. Heimlich Decl. at 3. The parties followed up with  
23 further email exchanges. *Id.* at Ex. B. Outstanding discovery disputes remain.

24           Plaintiff asserts that defendants refused to appear for a “timely and properly noticed 30(b)(6)  
25 deposition before the close of fact discovery”; plaintiff did not obtain seven hours of deposition  
26 testimony for defendant Huynh and needs to complete the 30(b)(1) deposition; defendant failed to  
27 produce relevant discovery documents before or during the deposition, the witness needed an  
28 interpreter which consumed significant time, the witness refused to answer relevant questions, and

1 defendant’s counsel coached the witness through speaking objections; extending fact discovery will  
2 not affect the trial schedule; and extending the fact discovery cutoff may allow plaintiff to avoid  
3 filing a motion to compel discovery on defendant. Dkt. No. 38 at 3. Plaintiff asserts that the  
4 deposition testimony revealed that defendants failed to search for and produce critical documents,  
5 refused to answer deposition questions, and misrepresented facts under oath. Dkt. No. 43 at 2.  
6 Plaintiff acknowledges that he could have served discovery earlier but explains that he did not  
7 because he anticipated the case settling and “had uncertainty around his budget given the impact”  
8 of defendant’s restaurant directly across the street. Dkt. No. 38 at 4; Dkt. No. 43 at 9. He also points  
9 to a “very short discovery period” of four months. Dkt. No. 43 at 9. If fact discovery is not extended,  
10 plaintiff requests leave to file a motion for sanctions for “defendant’s willful refusal to provide  
11 discovery, and for providing demonstrably false deposition testimony.” Dkt. No. 43 at 10-11.

12 Defendants oppose an extension of fact discovery on the grounds that plaintiff has  
13 disregarded the Local Civil Rules and Federal Rules of Civil Procedure and has not been diligent in  
14 pursuing the case or observing the discovery deadlines set by the Court. Dkt. No. 42 at 1.  
15 Defendants also maintain that the deposition notice for Huynh Dining that requested documents was  
16 improper because the requisite 30 days’ notice was not provided. *See* Chenette Decl., Ex. 1.

## 18 DISCUSSION

### 19 I. Plaintiff’s Request to Extend the Fact Discovery Cutoff

20 Under Civil Local Rule 7-10, “[u]nless otherwise ordered by the assigned Judge, a party may  
21 file an ex parte motion . . . only if a statute, Federal Rule, local rule, or Standing Order authorizes  
22 ex parte filing. The motion must include a citation to the statute, rule, or order which permits the  
23 use of an ex parte motion to obtain the relief sought.” Plaintiff did not cite any authority authorizing  
24 the ex parte motion initially filed on January 16, 2024, after the cutoff date for fact discovery.

25 Under Federal Rule of Civil Procedure 16(b)(4), a scheduling order “may be modified only  
26 for good cause and with the judge’s consent.” The Court does not find good cause to extend the  
27 fact discovery cutoff date. The parties had sufficient time to issue the necessary discovery requests  
28 and plaintiff has not provided a persuasive explanation as to why there is good cause for an extension

1 of fact discovery.

2 Plaintiff's Ex Parte Application at Dkt. No. 38 is therefore DENIED.

3 Under Civil Local Rule 37-3, "no motions related to fact discovery may be filed more than  
4 7 days after the fact discovery cut-off." Plaintiff did not file a motion to compel discovery within  
5 this time frame. The Court DENIES plaintiff's alternative request for leave to file a motion for  
6 sanctions as the Court sees no basis for sanctions on these facts.

7

8 **II. Discovery Disputes**

9 Plaintiff filed a discovery letter brief on January 25, 2024 concerning purported discovery  
10 deficiencies discovered during the depositions of defendants. Dkt. No. 40. Defendants respond in  
11 part that the document requests contained in the deposition notices issued on December 29, 2023  
12 were not timely. Defendants do not cite any legal authority for this assertion.

13 Federal Rule of Civil Procedure 30(b) by its terms only requires that "reasonable" notice of  
14 a deposition be provided. Rule 34 allows a party to serve requests for production of documents on  
15 another party, so long as the request falls within the scope of Rule 26(b). The party who has been  
16 served with a request for production has 30 days to respond or object to each request. Fed. R. Civ.  
17 P. 34(b)(2). Deposition notices of party deponents may be accompanied by a request under Rule 34  
18 to produce documents at the deposition. Fed. R. Civ. P. 30(b)(2). Courts have held that when a  
19 deposition notice includes document requests, 30 days' notice is required. *See, e.g., Young v. Client*  
20 *Services, Inc.*, No. 5:20-cv-01741-GW (SPx), 2022 WL 1599844, at \*2 (C.D. Cal. March 21, 2022);  
21 *Hahn v. Massage Envy Franchising, LLC*, No. 12cv153-DMS (BGS), 2014 WL 12899290, at \*3  
22 (S.D. Cal. July 24, 2014) (reasoning that "parties may not circumvent the allotted time to respond  
23 set forth in Rule 34 by couching a document request as a Rule 30(b)(6) deposition notice").<sup>1</sup>

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25 <sup>1</sup> Moore's Federal Practice provides additional guidance. It confirms that the "deposing  
26 party may require the deponent to bring documents and other materials to the deposition." 7 Moore's  
27 Federal Practice - Civil § 30.22 (2023). If the deponent is a party, "the notice may be accompanied  
28 . . . by a request made in compliance with Rule 34 for the production of documents." *Id.* The treatise  
goes on to explain that a party "will not be permitted to use a document request in connection with  
a deposition to circumvent court-imposed discovery deadlines. For example, if the deadline for  
serving documentary discovery requests has passed, a party cannot avoid the expiration of the  
deadline by serving an extensive document request in connection with a notice of deposition." *Id.*

1           The Court agrees with defendants that the document requests contained within the December  
2 29, 2023 deposition notices were not timely noticed, but under all the circumstances of this case the  
3 Court ORDERS defendants to respond to the document requests contained within the November 29,  
4 2023 deposition notices. The Court addresses specific disputes raised by the parties below.

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6           **A. Plaintiff’s Requests to Complete Depositions**

7           Plaintiff requests additional time to complete defendant Huynh’s 30(b)(1) deposition and the  
8 30(b)(6) deposition because of the following issues: documents not produced, there was not a full  
9 seven hours of deposition testimony, the witness “repeatedly refused to answer basic questions,”  
10 there was “extensive witness coaching by counsel,” some deposition time was consumed by a  
11 translator, there were “numerous lengthy speaking objections,” and defendant “refused to answer  
12 many questions and/or provided evasive answers.” Dkt. No. 40 at 2; Chenette Decl. ¶ 6. According  
13 to defendants, the deposition of Huynh started at 10am and ended at 5:51pm with a 30-minute lunch  
14 break. Dkt. No. 42 at 3-4. The deposition of Huynh Dining went from 9am to 5pm with an hour  
15 lunch break. *Id.* at 4. The Court sees no basis to permit more deposition time. Under Federal Rule  
16 of Civil Procedure 30(d), a deposition is limited to one day of seven hours unless otherwise  
17 stipulated or ordered by the court. It appears that the depositions of defendants ran for seven hours  
18 each, excluding lunch breaks. If plaintiff disputes the times provided by defendants as to when the  
19 depositions started and ended, plaintiff may notify the Court.

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21           **B. Defendants’ Lease Agreement**

22           Plaintiff requested any and all documents relating to the lease of defendants’ restaurant in  
23 RFP No. 4 issued on November 17, 2023 and again in the December 29, 2023 deposition notices.  
24 Dkt. No. 41, Ex. 1. Plaintiff asserts that he owns his restaurant space and that he believes  
25 defendants’ lease restricts defendants from operating a restaurant in Paloma Plaza in San Jose. Dkt.  
26 No. 40 at 2. Plaintiff further contends that the lease is relevant to unfair competition and trademark  
27 infringement because it goes to proximity, advertising, purchaser’s degree of care, defendants’  
28 intent, and likelihood of expansion. *Id.* The Court finds that the lease is relevant to plaintiff’s pled

1 claims, and given the broad scope of discovery, ORDERS defendants to produce it.

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3 **C. Wholesaler Information**

4 Plaintiff sought wholesaler information during the depositions; it was not included in any of  
5 the RFPs. *See* Dkt. Nos. 40, 41. Consequently, the Court will not order defendants to produce this  
6 information.

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8 **D. Most Popular Dishes**

9 Plaintiff indicates that defendants were unable to state which dishes were most popular  
10 during their depositions. Dkt. No. 40 at 3. Information about most popular dishes was not sought  
11 in the RFPs. Consequently, the Court will not order defendants to produce this information.

12

13 **E. Responsive Business Records**

14 Plaintiff indicates that during the depositions, plaintiff learned of “relevant responsive emails  
15 and business records, which Defendants had not provided to counsel.” Dkt. No. 40 at 3. To the  
16 extent defendants have not produced business records requested in RFPs issued prior to the close of  
17 fact discovery, including the RFPs contained in the deposition notices, defendants are ordered to  
18 produce all responsive nonprivileged documents.

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20 **F. Names of Defendants’ Employees and Agreements with Their Employees**

21 Plaintiff requests the names of defendants’ employees to confirm whether any work or  
22 worked for plaintiff, along with any agreements with these employees, indicating that plaintiff asked  
23 for this information during the depositions and defendants refused to answer. Dkt. No. 40 at 3.  
24 Defendant responds that there are no trade secret claims at issue. Dkt. No. 41 at 2. To the extent  
25 plaintiff requested this information in interrogatories or RFPs, defendants are order to produce all  
26 responsive nonprivileged information.

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1 **CONCLUSION**

2 As explained above, the Court denies plaintiff's request to extend the close of fact discovery.  
3 However, the parties must fully comply with discovery requests issued prior to the close of fact  
4 discovery, including the RFPs contained in the December 29, 2023 deposition notices. If  
5 outstanding discovery disputes remain regarding documents requested prior to the close of fact  
6 discovery, the parties are ordered to meet and confer in accordance with the Local Rules and submit  
7 any remaining disputes to the Court in a joint discovery letter in accordance with the Local Rules.  
8 The Court again urges the parties to pursue settlement to save the expense and time of going to trial.

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10 **IT IS SO ORDERED.**

11 Dated: February 16, 2024

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14 SUSAN ILLSTON  
15 United States District Judge  
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