

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SCRIPPS HEALTH,

Plaintiff,

v.

NAUTILUS INSURANCE COMPANY,

Defendant.

Case No.: 21-CV-1634-AJB(WVG)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT’S EX PARTE MOTION FOR PROTECTIVE ORDER

[ECF No. 47]

On December 29, 2022, Plaintiff Scripps Health (“Plaintiff”) filed an Ex Parte Motion for Protective Order (“Ex Parte Motion”). (ECF No. 47.) The Ex Parte Motion seeks an order from the Court requiring (1) the depositions of Plaintiff’s personnel be conducted remotely or, in the alternative, requiring that all attendees of any in-person deposition wear protective masks; and (2) precluding Defendant Nautilus Insurance Company (“Defendant”) from taking more than 15 depositions. *Id.*

Pursuant to Judge Gallo’s Civil Chamber Rule VI, Defendant had until 5:00 p.m. on December 30, 2022 to file an opposition brief. Since Defendant did not file an opposition brief, the Court construes Plaintiff’s Ex Parte Motion as unopposed.

Accordingly, Plaintiff’s Ex Parte Motion is **GRANTED in part** and **DENIED in part.**

1 **I. LEGAL STANDARD**

2 Rule 26(c) of the Federal Rules of Civil Procedure (“Rule 26(c)”) governs when a
3 court may issue a protective order. Rule 26(c)(1) provides: “A party or any person from
4 whom discovery is sought may move for a protective order in the court where the action is
5 pending—or as an alternative on matters relating to a deposition, in the court for the district
6 where the deposition will be taken.” Fed. R. Civ. P. 26(c)(1). The party seeking issuance
7 of a protective order bears the burden of demonstrating good cause. *Grano v. Sodexo*
8 *Management, Inc.*, 335 F.R.D. 411, 414 (S.D. Cal. 2020). “The [C]ourt has wide discretion
9 to determine what constitutes a showing of good cause and to fashion a protective order
10 that provides the appropriate degree of protection.” *Id.*; *see also Seattle Times Co. v.*
11 *Rhinehart*, 467 U.S. 20, 36 (1984) (noting “Rule 26(c) confers broad discretion on the trial
12 court to decide when a protective order is appropriate and what degree of protection is
13 required.”).

14 **II. DISCUSSION**

15 **a. Request for Remote Depositions**

16 Plaintiff’s Ex Parte Motion argues a protective order is warranted as Defendant has
17 denied Plaintiff’s requests that any depositions for Plaintiff’s personnel be conducted
18 remotely, or in the alternative, requiring all attendees to wear protective facemasks
19 throughout any in-person depositions due to COVID-19. (ECF No. 47 at 3.) Plaintiff argues
20 its personnel have a legitimate basis for this request as Plaintiff is a health care system that
21 operates five hospitals and 19 outpatient facilities, subject to regulation by the California
22 Department of Public Health, among other agencies. *Id.* Plaintiff argues its facilities
23 implemented a COVID-19 Prevention Program governing all of its facilities and personnel
24 to ensure compliance with heightened standards disseminated by these agencies during the
25 COVID-19 pandemic, as well as the safety of its patients and employees, and one of the
26 core protocols requires personnel to practice social distancing and wear FDA-approved
27 protective facemasks in various situations, and the COVID-19 Prevention Program
28 requires that indoor meeting participants be afforded a virtual attendance option. *Id.*

1 The Ex Parte Motion asserts that Defendant has stated the basis for denying
2 Plaintiff's request has been that "there are no federal, state, or local mask mandates
3 currently in place". (ECF No. 47 at 7.) Plaintiff also argues Defendant has not made a
4 particularized showing for why remote depositions or masks would be prejudicial to
5 Defendant. *Id.* Plaintiff asserts Defendant has not objected on the ground that masks hide
6 the expressions of the deponent. *Id.*

7 The Court finds Plaintiff's request to conduct its personnel's depositions remotely
8 to be appropriate. In light of the COVID-19 Pandemic, courts in the Ninth Circuit have
9 routinely authorized depositions to proceed remotely. *See, e.g. Grano v. Sodexo*
10 *Management, Inc.*, 335 F.R.D. 411, 415 (S.D. Cal. 2020) ("Attorneys and litigants all over
11 the country are adapting to a new way of practicing law, including conducting depositions
12 and deposition preparation remotely."); *Swenson v. GEICO Cas. Co.*, 336 F.R.D. 206, 210
13 (D. Nev. 2020) (observing "courts within the Ninth Circuit routinely highlight remote
14 depositions as an effective and appropriate means to keep cases moving forward
15 notwithstanding pandemic-related restrictions"). The Southern District of California to this
16 day continues to operate pursuant to the emergency declaration announced under the
17 CARES Act. Remote depositions continue to be a prudent and effective way to conduct
18 discovery.

19 Accordingly, Plaintiff's Ex Parte Motion's request that the depositions of Plaintiff's
20 personnel be conducted remotely is **GRANTED**.

21 **b. Request to Limit Depositions**

22 The Ex Parte Motion represents that Defendant intends to take more than twenty fact
23 depositions total – six Rule 30(b)(6) depositions (of Plaintiff and five third parties) and
24 sixteen individual depositions. (ECF No. 47 at 3-4.) Plaintiff contends a protective order is
25 warranted as Defendant has construed the Court's language in an order issued on December
26 21, 2022 (ECF No. 45) to an illogical extreme which would allow Defendant to conduct an
27 unlimited number of depositions. (ECF 47.) According to Plaintiff, Defendant contends the
28 Court already ruled that the parties agreed to more than ten depositions per side, allowing

1 each side to take as many depositions as it wants. *Id.* Plaintiff disagrees with Defendant’s
2 interpretation of the Court’s December 21, 2022 Order – arguing the nature of this
3 insurance coverage dispute does not warrant “anywhere near 20 depositions by a single
4 party” (ECF No. 47 at 9:1-8) and the Court’s Order did not afford Defendant carte blanche
5 to take an unlimited number of depositions. (ECF No. 47-2 at 2-3.)

6 Plaintiff represents it has repeatedly offered to stipulate to more than the ten
7 depositions presumptively allowed by Rule 30, but Defendant’s counsel is unwilling to
8 limit itself to any number of depositions. Plaintiff’s Ex Parte Motion contends Defendant
9 failed to seek leave of the court, as required by Rule 30(a)(2) and has already noticed, or
10 stated an intent to notice, twenty-two depositions. (ECF No. 47 at 8; Soto Declaration, ¶
11 7.)

12 The Court agrees that its December 21, 2022 Order (ECF No. 45) clearly was not an
13 open-ended invitation commencing the start of a free-for-all regarding depositions. By no
14 means was the Court’s December 21, 2022 Order issued to allow an unlimited number of
15 depositions to either party. This is clearly not aligned with the Federal Rules of Civil
16 Procedure.

17 However, the Court disagrees with Plaintiff’s contention that the Parties’ prior
18 contemplations for twenty or twenty-five depositions imposes upon Defendant the need to
19 seek leave of court to conduct more than the presumptive ten depositions allowed by Rule
20 30. As the Court’s December 21, 2022 Order states “the Parties long ago contemplated and
21 agreed numerous depositions, beyond ten, would occur in this case.” (ECF #45 at 5:13–
22 14.) Although Rule 30(a)(2) states parties must obtain leave of court when the parties have
23 not stipulated to depositions that may exceed ten depositions, the Court does not find leave
24 of court required in this instance because Plaintiff and Defendant made an implicit
25 agreement that at least twenty depositions would be required in this case.

26 The Court also finds Plaintiff’s representations that it has never stipulated to
27 allowing Defendant more than ten depositions to be disingenuous. On more than one
28 occasion, in filings jointly submitted to the Court, the Parties made representations that the

1 combined total number of depositions would surpass the ten presumptive depositions
2 allowed by Rule 30. Specifically, on February 16, 2022 in Joint Motion Requesting
3 Continuance of Fact Discovery Cut-Off Date, counsel wrote “Based on the Parties’ Rule
4 26 Disclosures of witnesses with discoverable information to support the Parties’ claims
5 and defenses, approximately 25 depositions will need to be taken in this case.” (ECF No.
6 13, 3 at ¶8, 10.) Then on April 22, 2022 in a Joint Discovery Plan signed and submitted by
7 Plaintiff’s current counsel, a second representation was made: “The Parties anticipate
8 needing an additional 90 to 120 days to notice and complete depositions after written
9 discovery is completed as this case will potentially require approximately 20 depositions.”
10 (ECF No. 24, 4 at ¶5.)

11 In both instances, counsel for both Parties jointly signed and submitted these filings
12 but did not delineate the number of depositions apportioned to each side. In the Ex Parte
13 Motion, Plaintiff represents it intends to take four depositions, which have been noticed.
14 (ECF No. 47 at 8). Although the joint filings did not specify the number of depositions
15 allowed by each side, at the time Plaintiff’s counsel met and conferred with Defendant’s
16 counsel and then drafted the document, Plaintiff’s counsel presumably knew of the number
17 of depositions she anticipated to take (four) and that the combined total of twenty
18 depositions necessarily would entail Defendant exceeding the ten deposition limit. While
19 Plaintiff’s current counsel may not have entered into an explicit agreement to allow
20 Defendant more than ten depositions, through the submission of the Joint Discovery Plans
21 and failure to apportion the number of depositions per party, Plaintiff acquiesced to a tacit
22 understanding and agreement that Defendant would be allowed to conduct more than ten
23 depositions. The Court finds an implicit agreement and stipulation existed between the
24 Parties as early as February 2022 and was later confirmed in the Joint Discovery Plan filed
25 on April 22, 2022.

26 Plaintiff’s Ex Parte Motion’s request to limit the number of depositions Defendant
27 may conduct is **DENIED in part** and **GRANTED in part**. Since the Parties implicitly
28 agreed to and made representations to the Court that twenty depositions would be required

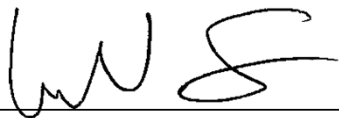
1 for this case, and Plaintiff has noticed four of its own depositions, the Court **ORDERS** the
2 following: Defendant is limited to a total of sixteen allowed depositions. All depositions
3 remaining in this case shall be noticed, conducted, and completed by the January 18, 2023
4 fact discovery deadline.

5 **III. CONCLUSION**

6 Plaintiff's Ex Parte Motion's request that the depositions of Plaintiff's personnel be
7 conducted remotely is **GRANTED**. Plaintiff's Ex Parte Motion's request to limit the
8 number of depositions Defendant may conduct is **GRANTED in part** and **DENIED in**
9 **part**. The Court **ORDERS** that Defendant shall conduct no more than a total of sixteen
10 depositions by the fact discovery deadline of January 18, 2023.

11 **IT IS SO ORDERED.**

12 DATED: December 31, 2022

13 
14 _____
15 Hon. William V. Gallo
16 United States Magistrate Judge
17
18
19
20
21
22
23
24
25
26
27
28