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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JESSE WESLEY,

10 Plaintiff,

11 v.

12 CBS RADIO SERVICES, INC. et al.,

13 Defendants.
14

Case No. 2:18-CV-00466-RSL

ORDER ON PLAINTIFF'S
MOTION TO COMPEL,
MOTION FOR EXTENSION
OF TIME AND MOTION
FOR RECONSIDERATION

15 This matter comes before the Court on plaintiff Jesse Wesley's "Motion Regarding
16 CBS's Failure to Designate Witnesses Pursuant to Rule 30(b)(6)," Dkt. #25, "Motion to Extend
17 Time to File Response to Defendants' Motion for Protective Order Relating to Rule 30(b)(6)
18 Deposition of Defendant CBS Radio Stations, Inc.," Dkt. #40, and "Motion for Reconsideration
19 of Protective Order Re: Corporate Designee." Dkt. #47.

20 **BACKGROUND**

21 **A. Notice of Deposition**

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23 These motions concern a discovery dispute between plaintiff and defendants CBS Radio
24 Services, Inc., CBI Radio Stations (collectively, "CBS"), Michael Fashana and Cindy Johnson
25 regarding the deposition of Jennifer Baker pursuant to Federal Rule of Civil Procedure 30(b)(6)
26 on January 9, 2019. On August 25, 2018, plaintiff served CBS with his "First Amended Notice
27 of Deposition and Schedule of Documents" ("the Notice"). Dkt. #25-1; Ex. A, Dkt. #36-1.
28 Plaintiff requested CBS to "designate and fully prepare one or more officers, directors,

ORDER ON PLAINTIFF'S MOTION TO COMPEL, MOTION FOR
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1 managing agents, or other persons who consent to testify on behalf of [CBS], and whom [CBS]
2 will fully prepare to testify regarding all information that is known or reasonably available to
3 [CBS]” regarding certain topics. Id. Topic No. 13 stated, “All averments and/or pleadings made
4 by [CBS] in the instant federal case.” Id. at 6. On October 30, 2018, CBS responded with its
5 general and specific objections. Dkt. #25-2; Ex. B, Dkt. #36-2. It objected to Topic No. 13 *inter*
6 *alia* claiming the topic “[was] not set forth with ‘reasonable particularity’ as required by Rule
7 30(b)(6) to the extent ‘all averments’ [was] not defined.” Id. at 13. CBS stated that it was unable
8 to designate a Rule 30(b)(6) representative to testify regarding the topic as it was phrased. Id.

9 Plaintiff responded on November 7, 2018. Dkt. #25-2; Ex. C, Dkt. #36-3; see Dkt. #36
10 (Silke Decl.) at ¶ 5. Regarding Topic No. 13, he stated, “without conceding that the phrase
11 includes or constitutes a legal term of art or linguistic idiom, please read the phrase ‘all
12 averments’ as ‘any of the statements of fact.’” Id. at 7. On November 8, 2018, CBS indicated
13 that Jennifer Baker, who was CBS’s Human Resources Regional Director at the relevant time,
14 would be designated as CBS’s Rule 30(b)(6) witness. Dkt. #25 at 3. By emails exchanged on
15 December 18 and December 21, 2018, counsel agreed to hold depositions for plaintiff on
16 January 8 and January 9, 2019 and for defendants Michael Fashana and Cindy Johnson on
17 January 23 and 24, 2019. Ex. D, Dkt. #36-4 at 2. On January 2, 2019, plaintiff sent a “Notice of
18 Deposition of Jennifer Baker” to CBS and its attorneys.¹ Ex. E, Dkt. #36-5 at 2–3.

19 **B. Deposition of Jennifer Baker**

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21 At the start of the deposition on January 9, 2019, defense counsel expressed his
22 understanding that CBS had presented Ms. Baker to respond to the topics in the Notice, and that
23 plaintiff’s counsel would be conducting a Rule 30(b)(6) deposition based on those topics as well
24 as a fact deposition. Dkt. #36-6 at 5:15–23. When asked, Ms. Baker responded that she was
25 “prepared to answer on behalf of CBS as to [those] questions and topics.” Id. at 10:17–20.

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28 ¹ The Notice appears to erroneously refer to the testimony of Karan Kozeto instead of Jennifer
Baker in the text. Ex. E, Dkt. #36-5 at 2.

1 However, defense counsel noted that CBS had not designated anyone for certain of the topics
2 because of the nature of those requests. Id. at 10:23–11:4. Plaintiff’s counsel noted that plaintiff
3 had responded to CBS’s objections. Id. at 11:18–22. Defense counsel clarified that they “[stood]
4 by their objections” and “[could] address them as necessary as they [came] up” in the
5 deposition. Id. at 11:23–12:2.

6 Following a question about plaintiff’s shift from a base salary plus commission
7 compensation model to a commission only compensation model, plaintiff’s counsel clarified that
8 he was asking Ms. Baker questions as a CBS designee, and would indicate when he switched to
9 asking her questions in her individual capacity. Id. at 30:24–31:2. Defense counsel objected as
10 follows: “I would just interject the same objections to the extent that these questions are not
11 within the scope of the 30(b)(6) topics. So when she testifies, ‘I don’t know,’ that’s not an
12 admission that she’s not properly prepared for the topics within the notice, but I believe she is
13 fully prepared for the topics to the extent we’ve designated her for these topics.” Id. at 31:12–19.
14 Counsel then agreed that plaintiff’s counsel would indicate the topic from the Notice that a
15 question pertained to for the remainder of the deposition. Id. at 32:13–33:19.

16 Plaintiff’s counsel moved on to Topic No. 13. Id. at 34:18–24. Defense counsel noted that
17 CBS had already lodged objections because Topic No. 13 was too broad and had communicated
18 to plaintiff that it was unable to designate a Rule 30(b)(6) representative for Topic No. 13. Id. at
19 35:4–21. Plaintiff’s counsel stated that the parties would need to take the matter up with the
20 Court and that CBS should have sought a protective order. Id. at 35:22–36:11. Plaintiff’s
21 counsel disagreed. Id. at 36:12–37:5. A discussion ensued about how to proceed with Ms.
22 Baker’s deposition. Id. at 37:6–39:9. Plaintiff’s counsel suggested that, in the interest of moving
23 forward, defense counsel could lodge his objection, Ms. Baker could continue to respond to
24 questions, and they could “seek a protective order . . . or seek the court’s guidance” afterward. Id.
25 at 41:7–14. Defense counsel responded, “the problem with doing a combined fact witness
26 deposition and 30(b)(6) deposition is that you’re asking to bind her on behalf of the company on
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1 certain topics for which we have no clarification about the scope in order to find out if she
2 actually has knowledge about them or prepare [*sic*] her for that topic.” Id. 43:14–20.

3 Counsel conferred with their clients. Id. at 45:20–46:1. Defense counsel then proposed
4 that Ms. Baker would answer questions to the extent she knew the answers, and “after the
5 deposition if plaintiff’s counsel believe[d] that the witness did not testify on certain topics on
6 behalf of the company in a way that gives him the information he needs, [they] could address
7 what to do about that,” including filing a motion for protective order. Id. at 46:1–18. Defense
8 counsel clarified again that Ms. Baker had not been designated for all topics. Id. at 47:5–9. He
9 reiterated CBS’s objections regarding the “definitions and nature of the particular topics.” Id. at
10 47:15–19. The deposition continued. Ms. Baker provided answers to some questions but
11 indicated that she did not know the answers to others, like whether plaintiff was doing
12 satisfactory work, the reasons for his demotion, alleged preferential treatment given to plaintiff’s
13 coworkers, and plaintiff’s alleged failure to mitigate damages. See Dkt. #25-4.

14 **C. Procedural History**

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16 According to defendants, the parties “disagreed on whether CBS was required to
17 designate a corporate representative to Topic 13 and whether CBS would be legally bound to
18 Ms. Baker’s responses to certain factual questions that might fall within the purview of Topic
19 13” and “agreed to file counter motions on these issues.” Dkt. #35 at 4. Plaintiff filed his
20 “Motion Regarding Defendant CBS’s Failure to Designate Witnesses Pursuant to Rule 30(b)(6)”
21 (“Motion to Compel”) on February 1, 2019. Dkt. #25. He requested that CBS be bound by Ms.
22 Baker’s testimony or be required to designate proper witnesses and be sanctioned for additional
23 expenses and attorney’s fees. Id. at 6. Defendants responded on February 15, 2019. Dkt. #35.
24 Plaintiff filed a reply in support of his Motion to Compel on February 22, 2019. Dkt. #37.

25 Defendants filed a “Motion for Protective Order Relating to Rule 30(b)(6) Deposition of
26 Defendant CBS Radio Stations, Inc.” (“Motion for PO”) a week later, on February 28, 2019.
27 Dkt. #38. They requested a Court order ruling that they was not required to produce a witness to
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1 testify on Topic No. 13 because the topic was not described with reasonable particularity
2 pursuant to Rule 30(b)(6). *Id.* at 9. Plaintiff was required to respond by March 6, 2019. *See* LCR
3 7(d)(2). He failed to do so. Defendants accordingly filed a reply on March 8, 2019, requesting
4 that the motion be granted. Dkt. #39. On March 21, 2019, plaintiff filed a “Motion to Extend
5 Time to File Response to Defendants’ Motion for Protective Order Relating to Rule 30(6)(B)
6 Deposition of Defendant CBS Radio Stations, Inc.” (“Motion for Extension”) pursuant to
7 Federal Rule of Civil Procedure 6(b)(1)(B). Dkt. #40. Plaintiff argued that he was entitled to an
8 extension of time more than two weeks after the deadline because defendants’ Motion for PO
9 was untimely and did not list the date, manner and participants of the meet and confer. *Id.* at 2.
10 The Court granted the Motion for PO on March 25, 2019. Dkt. #45. Plaintiff then filed a
11 “Motion for Reconsideration of Protective Order Re Corporate Designee” (“Motion for
12 Reconsideration”) on April 8, 2019. Dkt. #47.

13 DISCUSSION

14 **A. Motion for Extension**

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16 “When an act may or must be done within a specific time, the court may, for good cause,
17 extend the time ... on motion made after the time has expired if the party failed to act because of
18 excusable neglect.” Fed. R. Civ. P. 6(b)(1). To determine whether a failure to meet a deadline
19 constitutes excusable neglect, the Court must consider “(1) the danger of prejudice to the non-
20 moving party, (2) the length of delay and its potential impact on judicial proceedings, (3) the
21 reason for the delay, including whether it was within the reasonable control of the movant, and
22 (4) whether the movant acted in good faith.” *PLU Investments, LLC v. Intraspect Grp., Inc.*, No.
23 C10-626RSL, 2011 WL 1376192, at *1 (W.D. Wash. Apr. 12, 2011) (quoting *Comm. for*
24 *Idaho’s High Desert, Inc. v. Yost*, 92 F.3d 814, 825 (9th Cir. 1996)) (alterations omitted).

25 Plaintiff’s Motion for Extension stated only that defendants’ Motion for PO was untimely
26 and that defendants did not comply with Local Civil Rule 26(c)(1) in listing the date, manner
27 and participants of the meet and confer. Dkt. #40 at 2. This is not excusable neglect. *See Sorrels*
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1 v. Nw. Tr. Servs., Inc., No. 15-CV-05146-RJB, 2015 WL 4577722, at *2 (W.D. Wash. July 28,
2 2015). In any case, the Motion for Extension is moot because the Court has already granted
3 defendants' Motion for PO. See Dkt. #45. It is therefore denied.²

4 **B. Motion for Reconsideration of Order Granting Defendants' Motion for PO**

5 a. Legal Standard

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7 "A party or any person from whom discovery is sought may move for a protective order."
8 Fed. R. Civ. P. 26(c). "The Court may, for good cause, issue an order to protect a party or person
9 from annoyance, embarrassment, oppression, or undue burden or expense." Id. The Court has
10 "broad discretion to manage discovery." Avila v. Willits Env'tl. Remediation Tr., 633 F.3d 828,
11 833 (9th Cir. 2011).

12 In general, "[p]arties may obtain discovery regarding any nonprivileged matter that is
13 relevant to any party's claim or defense and proportional to the needs of the case." Fed. R. Civ.
14 P. 26(b)(1). Even so, courts "have limited discovery where the breadth of subjects and number
15 of topics identified in a 30(b)(6) deposition notice renders a responding party's efforts to
16 designate a knowledgeable person unworkable." Luken v. Christensen Grp. Inc., No. C16-5214
17 RBL, 2018 WL 1994121, at *2 (W.D. Wash. Apr. 27, 2018) (citing Apple Inc., v. Samsung
18 Elec. Co., Ltd., 2012 WL 1511901, at *2 (N.D. Cal. Jan. 27, 2012)). Rule 30(b)(6) "does not
19 extend to burdening the responding parties with production and preparation of a witness on
20 every facet of the litigation ... the discovery rules also require that deposition notices be
21 proportional and describe with reasonable particularity the matters of examination." Id. (internal
22 citations omitted).

23 Motions for reconsideration are generally disfavored. LCR 7(h). The Court will
24 "ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling
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27 ² However, for the sake of completeness, the Court will consider plaintiff's arguments as
28 expressed in his response to the Motion for PO, see Dkt. #40-2, in deciding plaintiff's Motion for
Reconsideration. See Section B, infra.

1 or a showing of new facts or legal authority which could not have been brought to its attention
2 earlier with reasonable diligence.” Id.

3 b. Plaintiff’s Topic No. 13

4 Defendants argued in their Motion for PO that plaintiff’s Topic No. 13 in the Notice was
5 vague and overly broad. Dkt. #38 at 8. Plaintiff disputes this. Dkt. #40-2 at 2. Topic No. 13 was
6 for “[a]ll averments and/or pleadings made by [CBS] in the instant federal case.” Dkt. #25-1 at
7 6. In response to CBS’s objection, plaintiff clarified only that “all averments” meant “any of the
8 statements of fact.” Dkt. #25-3 at 7. This fails to “describe with reasonable particularity the
9 matters for examination.” Fed. R. Civ. P. 30(b)(6); see Luken, 2018 WL 1994121 at *2; see TV
10 Interactive Data Corp. v. Sony Corp., No. C 10-475 PJH MEJ, 2012 WL 1413368, at *1 (N.D.
11 Cal. Apr. 23, 2012) (“The Court agrees that [the topic] is too vague since it seeks the production
12 of a corporate witness regarding all facts and contentions for each of [the party]’s affirmative
13 defenses and counterclaims. Such a broad request is not proper.”).

14 c. Compliance with LCR 26

15 Plaintiff also argues that defendants were required to file their Motion for PO before the
16 deposition, and that their Motion for PO did not list the date, manner and participants to the
17 meet and confer conference in compliance with Local Civil Rule 26(c)(1). Id. at 4; Dkt. #47 at 3.

18 Defendants were not required to file their Motion for PO before Ms. Baker’s deposition.
19 “Unless a party or witness files a motion for a protective order and seeks and obtains a stay prior
20 to the deposition, a party or witness has no basis to refuse to attend a properly noticed
21 deposition.” Charm Floral v. Wald Imports, Ltd., No. C10-1550-RSM, 2012 WL 424581, at *2
22 (W.D. Wash. Feb. 9, 2012); accord Matson v. United Parcel Serv., Inc., No. C10-1528 RAJ,
23 2012 WL 12941741, at *2 (W.D. Wash. Mar. 28, 2012). However, Ms. Baker attended her
24 deposition. The record indicates that counsel agreed to proceed with the deposition on the
25 understanding that CBS’s objections regarding the scope of Topic No. 13 were preserved, and
26 they would settle the legal issues later. Dkt. #36-6 at 45:22–47:20. CBS had already responded
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1 to the Notice with its objections, and plaintiff was not unfairly surprised. Dkt. #36-2; see
2 Pioneer Drive, LLC v. Nissan Diesel Am., Inc., 262 F.R.D. 552, 559 (D. Mont. 2009)
3 (“Defendant did not object to the Notice. If it was ambiguous or overly broad, Defendant could
4 have sought a protective order under Rule 26(c). By *failing to object prior to (or even at) the*
5 *deposition*, Defendant cannot now attempt to excuse its inadequate preparation of the designee
6 by pointing to problems it now sees in the Notice.”) (emphasis added); Hi-Tech Rockfall
7 Constr., Inc. v. Cty. of Maui, No. CV 08-00081 DAE-LEK, 2009 WL 10676564, at *5 (D. Haw.
8 May 20, 2009), order aff’d in part, vacated in part, No. CV 08-00081 DAE/LEK, 2009 WL
9 10676565 (D. Haw. July 6, 2009), and order clarified sub nom. Hi-Tech Rockfall Constr., Inc. v.
10 Cty. of Maui, No. CV08-00081DAE-LEK, 2009 WL 2700276 (D. Haw. Aug. 25, 2009) (“First,
11 although [the party] now argues that [the opposing party]’s notice of deposition was oppressive
12 and unduly burdensome because some of the identified topics were overly broad and irrelevant,
13 [the party] waived such arguments by failing to *either object to the notice or seek a protective*
14 *order.*”) (emphasis added).

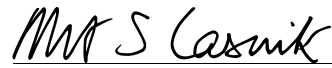
15 In their Motion for PO, defendants stated that they had “conferred in good faith with
16 plaintiff’s counsel about this issue.” Dkt. #38 at 1–2. A party seeking a protective order “must
17 include a certification ... that the movant has engaged in a good faith meet and confer
18 conference with other affected parties in an effort to resolve the dispute without court action.
19 The certification must list the date, manner, and participants to the conference. If the movant
20 fails to include such a certification, the court *may deny* the motion without addressing the merits
21 of the dispute.” LCR 26(c)(1) (emphasis added). The Court was not required to deny the motion.
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23 **C. Motion to Compel**

24 a. Legal Standard

25 If a corporation is named as a deponent, it must designate a witness to testify on its
26 behalf. Fed. R. Civ. P. 30(b)(6). “The person designated must testify about information known
27 or reasonably available to the organization.” Id. “The duty to produce a prepared witness on
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1 DATED this 17th day of June, 2019.

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4 Robert S. Lasnik
5 United States District Judge
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