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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOANNE SIEGEL, ET AL.,

Plaintiffs,

vs.

WARNER BROS. ENTERTAINMENT, INC., ET AL.,

Defendants.

CASE NO. CV 04-08400 MMM (RZx)

ORDER DENYING DEFENDANTS' MOTION TO COMPEL PLAINTIFFS TO REAPPEAR FOR DEPOSITION

This matter came before the Court on November 6, 2006 on the motion of Defendants to compel the Plaintiffs to reappear for additional deposition. Roger L. Zissu appeared for the moving parties. Marc Toberoff appeared for the Plaintiffs. The Court heard extensive argument of counsel and took the matter under submission.

Defendants move to compel a further deposition of the two plaintiffs. Defendants argue that Plaintiffs' counsel made invalid objections, including as to attorney-client privilege and the work product doctrine, and made so-called speaking objections in violation of FED. R. CIV. P. 30(b). They ask the Court to permit further deposition into four specified areas of inquiry, as well as allowing follow-on questioning.

FED. R. CIV. P. 30(d)(2) limits a deposition to seven hours, but provides that the Court must allow additional time if needed for a fair examination of a deponent, or if a deponent or another person impedes the examination. FED. R. CIV. P. 30(a)(2)(B)

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provides that leave of court is needed to depose someone who has been deposed before, and that leave shall be granted consistent with the principles stated in Rule 26(b)(2), principles which generally talk of limitations to avoid burden, expense and repetitiveness. These rules govern the disposition of this motion.

Defendants did not, as required by Local Rule 37, set forth *seriatim* particular disputed discovery responses, with each side's arguments following thereafter. Thus, the Court cannot and does not rule on the appropriateness of any particular objection, because Defendants have not made the validity of particular objections the basis of the motion. The parties have, however, submitted three and a half inches of paper, principally transcripts of the depositions at issue (a volume which would double or triple if each deposition page were transcribed on a single page, rather than being represented on only one-fourth of a page). From this mass of material, Defendants ask the Court to conclude that Plaintiffs' counsel's objections entitle them to a further deposition of each of the Plaintiffs.

The problem, however, is that the sum is, in this case, no bigger than its parts. The Court cannot say that, *in general*, objections based on the attorney-client privilege or the work product privilege were improper, or that, *overall*, Plaintiff's counsel made improper "speaking objections." To determine if an objection was asserted improperly, the Court would have to look at the specific question, and also would have to look at whether the question ultimately was answered, perhaps after the question was re-phrased, perhaps after the area of questioning was abandoned but later resurrected. The attorney-client privilege and work-product doctrine pose complicated issues, and it is quite likely that, viewed individually, some objections were well taken while others were not. But the Court cannot conclude on a broad-scale basis that Plaintiffs' counsel has, by asserting the objections, impeded the deposition. Nor can the Court conclude that an additional deposition is needed.

It does appear to the Court that, at least on occasion, the objections have strayed from the mandate of the federal rules that they be succinct and non-argumentative.

It also appears, however, that much time was spent by Defendants' counsel, trying to argue with Plaintiffs' counsel about particular objections. At oral argument, the moving parties' counsel suggested that this was a one-way street; he had the privilege to try and dissuade the objecting party that the objections were improper, but the objecting party had no right to respond. In the Court's view, both parties are better served by leaving colloquies of counsel, or soliloquies, as the case may be, off the record, and getting on with the deposition. The Court expects that the parties will abandon such methods of conducting their depositions in the future. Objections are to be stated simply, without argument, introduction or conclusion. Any attempts to argue the objections by the questioning attorney simply decrease the amount of time to take the deposition.

Nevertheless, on this motion, Defendants have not carried their burden of showing that, when all is said and done, they did not have the full opportunity to inquire or that they were impeded from obtaining answers to which they were entitled. The Court does not rule that there were no instances of improper objections, but rather that the moving parties have not established their case for a reappearance of the deponents.

In their Supplemental Memorandum, Defendants raise an issue different from that addressed in the motion itself, and the Joint Stipulation of the parties. The supplemental memorandum is supposed to be a supplemental memorandum of *law*, not the vehicle for raising a new issue of fact. *See* L.R. 37-2.3. The Court makes no ruling on the matters addressed by Defendants' Supplemental Memorandum, which was not the focus of the parties' briefing.

In accordance with the foregoing, Defendants' motion is denied.

DATED: November 7, 2006

RALPH ZAREFSKY
UNITED STATES MAGISTRATE JUDGE