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9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**

11  
12 KELLI ROTH, individually and on behalf of all  
others similarly situated,

13  
14 Plaintiff,

15 v.

16 PTGMB LLC D/B/A MERCEDES-BENZ OF  
FRESNO, a California limited liability company,

17 Defendant.

Case No. 1:20-cv-00231-SAB

ORDER RE STIPULATION  
CONCERNING PROTOCOL FOR  
CONDUCTING REMOTE DEPOSITIONS

(ECF No. 34)

1 Plaintiff Kelli Roth (“Plaintiff”) and Defendant PTGMB LLC d/b/a Mercedes-Benz of  
2 Fresno (“Defendant”) jointly stipulate to the following protocol for conducting depositions via  
3 remote means in the above-captioned matter:

4 1. All depositions shall be conducted remotely using videoconference technology, and  
5 each deponent shall be video-recorded.

6 2. The Parties agree to use Esquire Deposition Solutions (“Esquire”) for court reporting,  
7 videoconference and remote deposition services. The Parties agree that an Esquire employee may  
8 attend each remote deposition to video record the deposition, troubleshoot any technological issues  
9 that may arise, and administer the virtual breakout rooms.

10 3. The Parties agree that these video-recorded remote depositions may be used at a trial  
11 or hearing to the same extent that an in-person deposition may be used at trial or hearing, and the  
12 Parties agree not to object to the use of these video recordings on the sole basis that the deposition  
13 was taken remotely. The Parties reserve all other objections to the use of any deposition testimony at  
14 trial.

15 4. The deposer, deponent and court reporter will each participate in the videoconference  
16 deposition remotely and separately. Counsel for the deponent may participate remotely if they so  
17 choose. Each person attending a deposition shall be visible to all other participants, their statements  
18 shall be audible to all participants, and they should each strive to ensure their environment is free  
19 from noise and distractions.

20 5. No counsel shall initiate a private conference, including through text message,  
21 electronic mail, or the chat feature in the videoconferencing system, with any deponent while the  
22 deposition is pending. The deponent shall not communicate with anyone by text, instant message,  
23 email or any other electronic means while on the record during the deposition. The deponent shall  
24 not have any documents out of the view of the camera during the deposition, other than exhibits  
25 provided in accordance with paragraph 17 herein. A video visual of the room where the deposition is  
26 taken will be visible to the Parties upon request.

1           6.       During breaks in the deposition, the Parties may use the breakout room feature  
2 provided by Esquire, which simulates a live breakout room through videoconference. Conversations  
3 in the breakout rooms shall not be recorded. The breakout rooms shall be established by Esquire  
4 prior to the deposition and controlled by Esquire.

5           7.       Remote depositions shall be recorded by stenographic means consistent with the  
6 requirements of Rule 30(b)(3), but given the COVID-19 pandemic, the court reporter will not be  
7 physically present with the witness whose deposition is being taken. The Parties agree not to  
8 challenge the validity of any oath administered by the court reporter, even if the court reporter is not  
9 a notary public in the state where the deponent resides.

10          8.       The court reporter will stenographically record the testimony, and the court reporter's  
11 transcript shall constitute the official record. Esquire will simultaneously videotape the deposition  
12 and preserve the video recording. The court reporter may be given a copy of the video recording and  
13 may review the video recording to improve the accuracy of any written transcript.

14          9.       The Parties agree that the court reporter is an "Officer" as defined by Federal Rule of  
15 Civil Procedure 28(a)(2) and shall be permitted to administer the oath to the witness via the  
16 videoconference. The deponent will be required to provide government-issued identification  
17 satisfactory to the Parties and the court reporter, and this identification must be legible on the video  
18 record.

19          10.      The Party that noticed the deposition shall provide Esquire with a copy of this  
20 Stipulation and Order at least twenty-four hours in advance of the deposition.

21          11.      At the beginning of each deposition, consistent with Rule 30(b)(5)(A) of the Federal  
22 Rules of Civil Procedure, the Esquire employee responsible for video-recording the deposition shall  
23 "begin the deposition with an on-the-record statement that includes: (i) the officer's name and  
24 company affiliation; (ii) the date, time, and place of the deposition; (iii) the deponent's name; (iv)  
25 the officer's administration of the oath or affirmation to the deponent; and (v) the identity of all  
26 persons present."  
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1           12.     At the beginning of each segment of the deposition, consistent with Rule 30(b)(5)(B)  
2 of the Federal Rules of Civil Procedure, the Esquire employee responsible for video-recording the  
3 deposition shall begin that segment of the remote deposition by reciting (i) the officer’s name and  
4 business address; (ii) the date, time, and place of the deposition; and (iii) the deponent’s name.

5           13.     The Parties agree to work collaboratively and in good faith with Esquire to assess  
6 each deponent’s technological abilities and to troubleshoot any issues at least 48 hours in advance of  
7 the deposition so any adjustments can be made. The Parties also agree to work collaboratively to  
8 address and troubleshoot technological issues that arise during a deposition and make such  
9 provisions as are reasonable under the circumstances to address such issues. This provision shall not  
10 be interpreted to compel any Party to proceed with a deposition where the deponent cannot hear or  
11 understand the other participants or where the participants cannot hear or understand the deponent.

12           14.     Every deponent shall endeavor to have technology sufficient to appear for a  
13 videotaped deposition (e.g., a webcam and computer or telephone audio), and bandwidth sufficient  
14 to sustain the remote deposition. Counsel for each deponent shall consult with the deponent prior to  
15 the deposition to ensure the deponent has the required technology. If not, counsel for the deponent  
16 shall endeavor to supply the required technology to the deponent prior to the deposition. In the case  
17 of third-party witnesses, counsel noticing the deposition shall supply any necessary technology that  
18 the deponent does not have. Every deponent shall participate in any necessary test runs to confirm  
19 the functionality of their technology.

20           15.     The Parties agree that this Stipulation and Order may apply to remote depositions of  
21 non-parties under Rule 45. The Party noticing any third-party deposition shall provide this  
22 Stipulation and Order to the non-party or counsel for any non-party under Rule 45 a reasonable time  
23 before the date of the deposition.

24           16.     The Parties agree that any of the following methods for administering exhibits may be  
25 employed during a remote deposition, or a combination of one or more methods:

26           a.     Counsel noticing the deposition may choose to mail physical copies of documents  
27 that may be used during the deposition to the deponent, the deponent’s counsel, the other Party’s  
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1 counsel, and the court reporter. In that event, noticing counsel shall so inform the deponent's  
2 counsel, the other Party's counsel, and the court reporter prior to mailing the documents and shall  
3 provide tracking information for the package. Such documents shall be delivered by 12:00 pm PST  
4 the business day before the deposition. Counsel for the deponent, the other Party's counsel, and the  
5 court reporter shall confirm receipt of the package by electronic mail to Counsel noticing the  
6 deposition. If physical copies are mailed, every recipient of a mailed package shall keep the package  
7 sealed until the deposition begins and shall only unseal the package on the record, on video, and  
8 during the deposition when directed to do so by the counsel taking the deposition. This same  
9 procedure shall apply to any physical copies of documents any other counsel intends to use for  
10 examining the witness.

11           b. Counsel noticing the deposition may choose to send a compressed .zip file of the  
12 documents that may be used during the deposition via electronic mail to the deponent, the  
13 deponent's counsel, the other Party's counsel, and the court reporter. The .zip file shall be delivered  
14 by 12:00 pm PST the business day before the deposition. Counsel for the deponent, the other Party's  
15 counsel, and the court reporter shall confirm receipt of the .zip file by electronic mail to Counsel  
16 noticing the deposition. The .zip file shall be password protected, and counsel taking the deposition  
17 shall supply the password via electronic email immediately prior to the commencement of the  
18 deposition. Every recipient of a .zip file shall not open the .zip file until the deposition begins and  
19 when directed to do so by the counsel taking the deposition. If sending documents by electronic  
20 mail, counsel will be mindful of file size limitations, which presumptively should be less than 50  
21 MB.

22           c. Counsel may introduce exhibits electronically during the deposition, by using  
23 Esquire's document-sharing technology, by using the screensharing technology within the  
24 videoconferencing platform, or by sending the exhibit to the deponent and all individuals on the  
25 record via electronic mail.

1 17. All deponents receiving documents before or during a deposition, pursuant to  
2 Paragraph 17 above, shall return the documents to the counsel who sent them originally, within two  
3 business days following the completion of the deposition, and shall not retain them in any manner.

4 18. Counsel for the Parties may keep any document or exhibit used during the deposition,  
5 consistent with the Stipulated Protective Order entered in this case. Counsel for the Parties shall  
6 return any documents not used during the deposition to the counsel who sent them originally, within  
7 two business days following the completion of the deposition, or shall destroy them, and shall not  
8 retain them in any manner.

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: September 10, 2020 EISENBAND LAW, P.A

11  
12 By: /s/ Scott Edelsberg  
13 Scott Edelsberg  
Attorney for Plaintiff  
KELLI ROTH

14 DATED: September 10, 2020 BLANK ROME LLP

15  
16 By: /s/ Ana Tagvoryan  
17 Ana Tagvoryan  
Harrison Brown  
Dustin Moaven  
18 Attorneys for Defendant  
PTGMB LLC

19 **Local Rule 131(e)**

20 I certify that approval of the filing of this document has been obtained from each of the other  
21 counsel-signatories and that each of the other counsel-signatories have authorized submission of this  
22 document on their behalf.

23  
24 By: /s/ Harrison Brown  
Harrison Brown

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**ORDER**

Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that the stipulation concerning the protocol for conducting remote depositions is entered.

IT IS SO ORDERED.

Dated: **September 10, 2020**

  
UNITED STATES MAGISTRATE JUDGE