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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA *ex rel.*
BRIAN MARKUS, individually,

Relator,

vs.

AEROJET ROCKETDYNE HOLDINGS,
INC., a corporation and AEROJET
ROCKETDYNE, INC., a corporation,

Defendants.

CASE NO. 2:15-cv-02245-WBS-AC

**[PROPOSED] ORDER REGARDING REMOTE
DEPOSITION PROTOCOL**

1 As a result of the COVID-19 pandemic, governmental authorities have imposed travel
2 restrictions, “stay at home” directives, and other social distancing measures designed to slow the
3 communal spread of the disease. These measures, as well as the potential health issues affecting counsel,
4 witnesses, court reporters and videographers, may militate in favor of conducting depositions in this
5 action remotely. Federal Rule of Civil Procedure 30(b)(4) authorizes this Court to permit the taking of
6 depositions by remote means, including by videoconference (“Videoconference Deposition”).

7 The following protocol shall apply to all Videoconference Depositions, unless otherwise agreed
8 to by the parties or ordered by the Court:

9 1. Any Videoconference Deposition taken pursuant to this Court’s Orders must comply
10 with the requirements in Fed. R. Civ. P. 30(b)(5). This includes the requirements that, (1) “[u]nless the
11 parties stipulate otherwise, a deposition must be conducted before an officer appointed or designated
12 under Rule 28,” and (2) that officer must administer the oath or affirmation to the deponent. A
13 Videoconference Deposition taken pursuant to this Order will be deemed to have been taken before an
14 appropriate officer despite the court reporter not being in the same physical location as the witness, as
15 long as the court reporter attends the deposition by the same remote means as the other participants and
16 is able to hear and communicate with other attendees. The witness may be sworn in remotely with the
17 same effect as an oath administered in person.

18 2. At least one week before the deposition, the party noticing the deposition must identify
19 the company that will host and record the remote deposition (the “Remote Deposition Vendor”) and
20 contain a general description of how those attending may access the remote connection being utilized
21 (*e.g.*, GoToMeeting, Zoom, WebEx). The party noticing the deposition must provide the witness and
22 all other attendees with detailed instructions regarding how to participate in the Videoconference
23 Deposition at least three business days before the deposition. The parties will meet and confer to arrive
24 at a mutually agreeable process should any issues arise.

25 3. To host a remote deposition, a Remote Deposition Vendor must have implemented
26 adequate security measures to ensure the confidentiality of the remote deposition (*e.g.*, video and audio
27 feeds, exhibits). These security measures must include password protection and tools such as a “virtual

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1 waiting room” that allows the court reporter to admit only individuals authorized to attend the
2 deposition.

3 4. At least 24 hours before the Videoconference Deposition is scheduled to start, counsel,
4 the witness, and the Remote Deposition Vendor must conduct a test of the system, equipment, and
5 internet connection that will be used to conduct the remote deposition (the “Remote Deposition
6 Technology”).

7 5. At the time of the deposition, the witness must advise the court reporter of his or her
8 physical location. The witness should endeavor to participate in the deposition from a quiet, well-lit,
9 indoor location, while seated in front of a neutral background, and facing the camera being used to
10 record the witness. Other than the application required to conduct the deposition, the witness shall not
11 have any other applications open or running on the electronic device being used for the deposition.

12 6. The microphones and video feeds for certain attendees (such as the witness, the court
13 reporter, the attorney taking the deposition, and the attorney defending the deposition) must remain on
14 when the deposition is on the record. Other remote attendees should mute microphones when not
15 speaking. The Remote Deposition Technology must be able to show in real-time a list of all persons
16 attending the Videoconference Deposition. The participating attorneys may be visible to all other
17 participants during the deposition. Only individuals who would be entitled to attend a live deposition in
18 this litigation may participate in or observe the remote deposition. All individuals participating in or
19 observing any deposition must announce themselves for the record.

20 7. Only the witness’s counsel is permitted to be in the same physical location as the witness
21 during a Remote Deposition. No other individuals are permitted to be in the same room as the witness
22 during a Remote Deposition. If the witness’s counsel intends to be in the same physical location as the
23 witness during a Remote Deposition, they must provide notice to counsel for the noticing party prior to
24 the start of the Remote Deposition. If the witness’s counsel or in-house counsel is present in the same
25 physical location as the witness during a Remote Deposition, such counsel shall separately log in to the
26 remote deposition platform so that all Deposition Participants can both see and hear such counsel, but
27 may mute his or her audio if leaving audio on causes feedback or other issues due to proximity to the
28 witness’s microphone. If any person enters the room where the witness is located during the deposition,

1 other than the witness's counsel, the witness shall immediately notify the examining attorney of the
2 additional persons in the room.

3 8. A videographer employed by the Remote Deposition Vendor will record the witness's
4 deposition testimony by reasonable technological means, including remote video capture/recording. The
5 video recording of the deposition may only be suspended during the deposition upon stipulation by
6 counsel conducting and defending the deposition. With the exception of the videographer and the court
7 reporter, the deposition may not otherwise be recorded electronically without the consent of the parties.
8 The videographer must only record (1) the audio and video of the witness's testimony; (2) the video of
9 any documents being displayed or annotated for the witness during the deposition; and (3) the audio of
10 the questioning and defending attorneys. The fact that a deposition was noticed to take place remotely,
11 and was recorded remotely, will not, by itself, be a sufficient basis for preventing the remote deposition
12 from being admitted at trial with the same effect as a deposition video that was recorded in-person.

13 9. Any document that may be used as an exhibit during the deposition shall be transmitted
14 by the examining attorney to all Deposition Participants: (i) in sealed envelopes in advance of the
15 Remote Deposition; (ii) in real time or in advance electronically through the Remote Deposition
16 Vendor's remote deposition platform, secure file transfer, or email, before or during the course of the
17 Remote Deposition; or (iii) some combination of (i) and (ii) or an alternative means agreed to by the
18 parties. If documents that may be used as exhibits are transmitted to Deposition Participants in sealed
19 envelopes, all Deposition Participants will not open the sealed envelopes or otherwise access such
20 documents unless and until specifically requested to do so by the examining attorney. All sealed
21 envelopes must be opened on camera. The witness shall not review documents during the deposition,
22 other than those marked by the examining attorney as exhibits or otherwise used by the examining
23 attorney, without notifying the examining attorney.

24 10. During the deposition examination, no person is permitted to communicate with the
25 witness by any means not recorded in the same manner as the deposition itself (e.g., no text or email
26 exchanges with the witness). All private chat features on the remote connection being utilized shall be
27 disabled. All applications on the witnesses' device other than the applications being utilized to conduct
28 the deposition shall be closed. No witness shall communicate with any person (verbally, in writing, or

1 by conduct) while on the record at the deposition in a manner that the examining attorney cannot
2 personally observe through the videoconference technology. However, the witness's counsel may
3 communicate with the witness telephonically or by other electronic means (including, but not limited to,
4 the use of the remote connection software) during breaks in the deposition, consistent with the Federal
5 Rule of Civil Procedure and the Local Rules of the Eastern District of California.

6 11. During breaks in the deposition, the parties may use any breakout room feature provided
7 by the Remote Deposition Vendor, which simulates a live breakout room through videoconference.
8 Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by
9 the Remote Deposition Vendor prior to the deposition and controlled by the Remote Deposition
10 Vendor.

11 12. Any pauses, lags, and/or disruptions in technology, including but not limited to
12 interruptions in Internet connection, will not result in waiver of objections by any party. If a technical
13 issue prevents any person from being able to see or hear one or more of the other persons clearly or to
14 access published exhibits, the person encountering such technical issue shall promptly notify the other
15 participants.

16 13. Nothing in this Order prevents a party from moving for a protective order under Fed. R.
17 Civ. P. 26(c) to require that a given individual deposition proceed in person. Further, nothing in this
18 Order precludes counsel for a witness from being in the same room as the witness, if the witness
19 consents and such attendance is consistent with social distancing restrictions.

20 14. The Protective Order entered in this action shall apply to any confidential testimony
21 and/or documents used as exhibits during the taking of any remote deposition to the same extent it
22 would to an in-person deposition.

23 15. The parties may agree on ad hoc modifications to this protocol to accommodate the needs
24 of a particular witness or to resolve any issues that arise with respect to a particular deposition. Such
25 modifications may be agreed in writing or memorialized on the record at a deposition. In the event that
26 any issues in connection with a Deposition Participant or these Remote Deposition Protocols cannot be

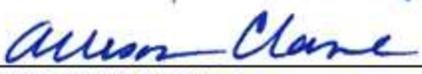
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1 resolved consensually, subject to the Court's availability, the parties may seek a telephonic hearing with
2 this Court on an expedited basis if necessary.

3 **IT IS SO ORDERED.**

4 DATED: November 16, 2020

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6 ALLISON CLAIRE
7 UNITED STATES MAGISTRATE JUDGE

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