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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FITBIT, INC.,
Plaintiff,
v.
P-COVE ENTERPRISES, et al.,
Defendants.

Case No. [3:17-cv-00079-EMC](#) (KAW)
**ORDER REGARDING 5/4/18 JOINT
LETTER RE TESTIMONY OF
JONATHAN MANHAN**
Re: Dkt. No. 224

On May 4, 2018, Plaintiff Fitbit, Inc. and Defendant Jonathan Manhan filed a joint letter concerning whether Mr. Manhan must provide additional deposition testimony regarding his personal assets and the topics which Fitbit contends were improperly impeded by Mr. Manhan’s counsel at his March 21, 2018 deposition. (Joint Letter, Dkt. No. 224 at 1.)

Upon review of the joint letter, the Court finds this matter suitable for resolution without oral argument pursuant to Civil Local Rule 7-1(b), and, for the reasons set forth below, orders Mr. Manhan to provide additional testimony regarding his specific assets and any other topics noticed in the original deposition notice.

I. BACKGROUND

Defendant Jonathan Manhan appeared at his noticed deposition on March 21, 2018. (Joint Letter at 1.) On the day of the deposition, the BCS Defendants produced more than 1,600 pages of documents that they had recently discovered on a standalone computer. *Id.* During that deposition, Thomas Brown, counsel for Mr. Manhan made objections and statements on the record which Fitbit contends were improper and obstructive. *Id.* Mr. Brown, on the other hand, contends that the objections were proper and that Mr. Manhan’s deposition was not impeded at all. *Id.*

On March 29, 2018, Fitbit sent a meet and confer letter to defense counsel raising three

1 issues: (1) the document production on the day of the deposition; (2) the instruction not to answer
2 questions, including regarding Mr. Manhan’s individual assets; and (3) Fitbit’s contention that
3 counsel’s objections obstructed and impeded the deposition. *Id.* Therein, Fitbit requested an
4 additional three hours of deposition time. *Id.*

5 On April 5, 2018, the parties held a telephonic meet and confer, in which the parties
6 partially resolved their dispute. *Id.* Counsel for Mr. Manhan agreed to produce Mr. Manhan for an
7 additional three hours of testimony “on the topics of his net worth subject to the terms of the
8 Protective Order and on the documents produced on March 21, 2018, Bates Range BCS 009095-
9 BCS010767.” *Id.* Defendant did not agree to produce Mr. Manhan to answer questions on any
10 other topics.

11 On May 4, 2018, the parties filed the instant joint letter.¹

12 **II. LEGAL STANDARD**

13 Federal Rule of Civil Procedure 30(a)(1) provides that, subject to certain limitations, “[a]
14 party may, by oral questions, depose any person, including a party, without leave of court. . . .”
15 During a deposition, an attorney may properly state objections “concisely in a nonargumentative
16 and nonsuggestive manner.” Fed. R. Civ. P. 30(c)(2). Generally, instructions not to answer are
17 improper. *Detoy v. City and County of San Francisco*, 196 F.R.D. 362, 365 (N.D. Cal. 2000)
18 (citation omitted). “A person may instruct a deponent not to answer only when necessary to
19 preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule
20 30(d)(3).” Fed. R. Civ. P. 30(c)(2); *see also Shapiro v. Paul Revere Life Ins. Co.*, 1997 WL
21 601430, at *1 (N.D. Cal. Sept. 18, 1997). “If a party believes that a particular question asked of a
22 deponent is improper for any other reason, that party may object; however, ‘the examination still
23 proceeds; the testimony is taken subject to any objection.’” *Mendez v. R+L Carriers, Inc.*, 2012
24 WL 1535756, at *1 (N.D. Cal. Apr. 30, 2012) (quoting Fed. R. Civ. P. 30(c)(2)) (citing *Universal*

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26 ¹ The parties did not structure the joint letter in the format outlined in the undersigned’s standing
27 order. (*See* Judge Westmore’s General Standing Order ¶ 13.) The required format ensures that the
28 parties are addressing the same issues, which enables the Court to timely resolve any remaining
disputes. Here, the parties should have formatted the letter by deposition topic. The parties are
advised that the failure to file a properly formatted letter in the future will result in the termination
of the letter without resolution and without regard for any applicable case deadlines.

1 *Trading & Inv. Co. v. Kiritchenko*, 2007 WL 2300740, at * 3 (N.D. Cal. Aug. 2, 2007)).

2 **III. DISCUSSION**

3 Since the parties have agreed to have Mr. Manhan appear for three additional hours to
4 testify on his net worth and the documents produced on the day of his deposition, the undersigned
5 need only address whether Mr. Manhan must testify in detail regarding his individual assets, and
6 whether Fitbit may depose him on other topics that it contends were impeded by defense counsel’s
7 objections and coaching.

8 **A. Whether Mr. Manhan may be deposed regarding his specific assets.**

9 Fitbit contends that Mr. Manhan may be deposed regarding his specific assets, because he
10 is named as an individual defendant, and has testified that he is the sole officer and director of
11 corporate defendants BCS and ELI. (Joint Letter at 3.)

12 In opposition, Mr. Manhan argues that he should only have to testify regarding his net
13 worth, which is the only substantive topic on which counsel instructed him not to answer. *Id.* He
14 further contends that, “[a]bsent a particular factual relevance of a particular asset (Fitbit concedes
15 there is none), questioning regarding overall net worth is all that is permitted, because questions
16 regarding specific assets would not be reasonably likely to lead to the development of relevant
17 evidence.” (Joint Letter at 4.) Defendant cites *LL B Sheet 1, LLC v. Loskutoff*, Case No. 16-cv-
18 02349 BLF (HRL), 2016 WL 7451632, at *3 (N.D. Cal. Dec. 28, 2016), in support of his position,
19 but that reliance is misplaced. *See id.* at 4. In *LL B Sheet 1*, the court permitted discovery regarding
20 the defendants’ net worth and financial condition as it related to their current assets and liabilities,
21 including the accounting of profits, income, losses, and expenses for the past two years. 2016 WL
22 7451632, at *3. The court reasoned that the “[d]iscovery of Defendants’ net worth and financial
23 condition should be limited to information about [his] current assets and liabilities, given that ‘past
24 earnings and net worth cannot reasonably lead to relevant information on the issue of punitive
25 damages.’” *Id.* (quoting *Vieste, LLC v. Hill Redwood Dev.*, No. C-09-cv-04024 JSW (DMR), 2011
26 WL 855831, at *3 (N.D. Cal. Mar. 9, 2011)(other citations omitted)).

27 Here, however, Fitbit maintains that “Mr. Manhan’s testimony regarding his personal
28 financial condition and assets are essential to ascertaining his profits from the sale of scrap Fitbit

1 branded products, addressing potentially severe wrongdoing by the BCS Defendants, and ensuring
2 enforcement of Fitbit’s rights.” (Joint Letter at 3.) The Court agrees. Defendant’s narrow
3 interpretation of financial condition, which appears to be limited to net worth, is simply not
4 tenable, particularly given that the knowledge of Mr. Manhan’s individual assets are in his
5 possession rather than Fitbit’s. (See Joint Letter at 4.) Also, relevancy is generally not an
6 appropriate objection during a deposition. As such, an instruction not to answer based on
7 relevancy is entirely improper. (Manhan Tr., Joint Letter, Ex. 1 at 20:21-21:1.)

8 Moreover, like the *LL B Sheet 1* court, the undersigned finds that the current stipulated
9 protective order in effect ameliorates any concerns that the financial information disclosed would
10 be used for purposes beyond prosecuting, defending, or attempting to settle this litigation. See *LL*
11 *B Sheet 1, LLC*, 2016 WL 7451632, at *3.

12 Accordingly, Mr. Manhan is ordered to testify regarding his specific assets subject to the
13 stipulated protective order.

14 **B. Whether Fitbit may depose Mr. Manhan on other topics that were impeded by**
15 **counsel.**

16 Fitbit contends that “the scope of examination should not be limited because Mr. Manhan’s
17 counsel’s objections, coaching, and instructions were plainly inappropriate.” (Joint Letter at 2.)
18 Mr. Manhan argues that he should only have to testify regarding his net worth and financial
19 condition and the newly-produced documents. (Joint Letter at 5.)

20 Based upon a review of the transcript excerpts provided, the undersigned finds that Mr.
21 Brown impeded Mr. Manhan’s deposition testimony and improperly coached the witness. For
22 example, in making an objection to a question regarding whether former co-Defendant Mr. Kelvin
23 “lived up to the terms of the agreement that [Mr. Manhan] said [was] reached verbally,” Mr.
24 Brown objected on the impermissible grounds of lack of personal knowledge, lacks foundation
25 and calls for speculation, and then suggested that his client not “guess” as to the answer. (Manhan
26 Tr. at 108:4-109:11.)

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1 involved. *See id.*

2 While counsel's defense of his witness was replete with improper objections, suggestive
3 instructions, and obstructive tactics, the parties did not properly format their joint letter, making it
4 difficult to determine which topics Fitbit believes were impeded by defense counsel and require
5 additional testimony. Given the improper nature of Mr. Brown's conduct, the undersigned
6 declines to limit the noticed deposition topics, and, instead finds that the agreed upon three hours
7 of additional time serves as an adequate temporal limit to the breadth of the testimony sought.
8 The parties are reminded that they should not impede nor obstruct questioning, or seek to coach
9 the witness during the deposition, and should refrain from asking questions that are unnecessarily
10 argumentative. The parties, and in particular Mr. Brown, are directed to review the Northern
11 District's Guidelines for Professional Conduct ¶ 9, as it pertains to depositions. (*Available at:*
12 https://cand.uscourts.gov/professional_conduct_guidelines.) Future conduct that violates the
13 Guidelines will not be tolerated and may result in the imposition of sanctions.

14 **IV. CONCLUSION**

15 For the reasons set forth above, Mr. Manhan is ordered to testify regarding his specific
16 assets and the scope of the additional three hours of testimony is limited only to the topics in the
17 original deposition notice.

18 **IT IS SO ORDERED.**

19 Dated: May 15, 2018

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21 KANDIS A. WESTMORE
22 United States Magistrate Judge
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