

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DAT THANH LUONG, et al.,  
Plaintiffs,  
v.  
NAPA STATE HOSPITAL, et al.,  
Defendants.

Case No. [17-cv-06675-EMC](#) (JSC)

**ORDER RE: LATE-NOTICED 30(B)(6)  
DEPOSITION NOTICE**

Re: Dkt. Nos. 210, 211

Now before the Court is a letter brief from Defendants regarding Plaintiffs’ September 4, 2019 notice of a 30(b)(6) deposition of a “person most knowledgeable” from Alameda County, (Dkt. No. 210), and Plaintiffs’ response, (Dkt. No. 211). The fact discovery cut off in this case was June 20, 2019. As Plaintiffs noticed the deposition well after that deadline, Defendants seek a protective order preventing the deposition from going forward. Plaintiffs counter that they designated the witness as an unretained expert and therefore the deposition notice constitutes timely expert discovery.

Plaintiffs have not demonstrated that the Alameda County 30(b)(6) witness is an expert witness rather than or even in addition to a fact witness. Assuming that Plaintiffs did not need to provide an expert report from the Alameda County 30(b)(6) witness, they still needed to disclose “a summary of the facts *and opinions* to which the witness is expected to testify.” Fed. R. Civ. P. 26(a)(2)(C)(ii) (emphasis added). Plaintiffs disclosed the following as to their Alameda County 30(b)(6) unretained expert witness:

Alameda County’s Person(s) Most Knowledgeable about the County’s relationship and contracts with the State of California, Department of State Hospitals, concerning the State’s Conditional Release Program (“CONREP”) and communications with the County about delays in admission and the possibility of psychiatric acuity

1 review.

2 (Dkt. No. 210-3.) While this disclosure identifies the facts to which this witness will testify, it  
3 does not identify any opinions. In other words, the witness appears to be a typical 30(b)(6)  
4 deponent, not an expert. *See Brown v. Grinder*, No. 2:13-cv-01007-KJM-KJN, 2019 WL  
5 2337107, at \*5 (E.D. Cal. June 3, 2019) (holding that disclosure that did not identify any opinions  
6 whatsoever did not satisfy Rule 26(a)(2)(C)(ii)). If Plaintiffs wanted the facts preserved by  
7 deposition, the deposition should have been noticed to occur before the close of fact discovery.  
8 *See United States ex. rel. McLean v. Cty. of Santa Clara*, No. C05-01962 HRL, 2009 WL 189175,  
9 \*1 (N.D. Cal. Jan. 2, 2009) (stating that a party cannot use the expert discovery period to seek fact  
10 discovery).

11 Plaintiffs' insistence that Defendants have no right to challenge the deposition of a  
12 different party is not persuasive; Defendants have standing to object that the deposition is strictly  
13 fact discovery, not expert discovery, and thus noticed too late. And Plaintiffs' challenge to  
14 Defendants' reliance on the fact-discovery cut-off, (*see* Dkt. No. 211 at 2), is baffling. The district  
15 court ordered a specific fact discovery cut-off and an expert discovery cut-off. (Dkt. No. 53.) All  
16 parties are bound by these deadlines unless and until the district court orders otherwise.

17 The cases Plaintiffs' cite are unpersuasive because they involved the opposing party's  
18 disclosure of the opinions of the non-retained 30(b)(6) witness. *See, e.g., Cepero v. Las Vegas*  
19 *Metro. Police Dep't*, 2019 WL 2616170 \*3 (N. Nev. June 26, 2019) (noting that the defendants'  
20 disclosure identified the opinions of the witness). Here, despite the issue being squarely presented  
21 by Defendants' letter brief, Plaintiffs have not identified any opinion testimony being sought from  
22 Alameda County's 30(b)(6) witness. Accordingly, Defendants' motion for a protective order is  
23 GRANTED on the grounds that the 30(b)(6) testimony sought should have been obtained during  
24 the fact-discovery period.


25 Finally, going forward, no party may file a unilateral discovery dispute letter brief with the  
26 Court; instead, the party must first arrange an informal telephone call with the Court through the  
27 Court's courtroom deputy.

28 This Order disposes of Docket Nos. 210, 211.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IT IS SO ORDERED.**

Dated: September 13, 2019

  
JACQUELINE SCOTT CORLEY  
United States Magistrate Judge