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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 TERRY DOUBT, an individual,

7 Plaintiff,

8 vs.

9 NCR CORPORATION, a Maryland  
10 Corporation and DOES 1 through 100,  
inclusive,

11 Defendants.

Case No: C 09-5917 SBA

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RELIEF FROM  
NON-DISPOSITIVE PRETRIAL  
ORDER**

Dkt. 94

12  
13 Plaintiff Terry Doubt brings the instant action against his former employer, NCR  
14 Corporation ("NCR"), alleging that he was wrongfully terminated. The parties are  
15 presently before the Court on Plaintiff's Motion for Relief from Non-Dispositive Pretrial  
16 Order of Magistrate Judge. Dkt. 84. Having read and considered the papers filed in  
17 connection with this matter and being fully informed, the Court hereby DENIES the motion  
18 for the reasons set forth below. The Court, in its discretion, finds this matter suitable for  
19 resolution without oral argument. See Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

20 **I. BACKGROUND**

21 On February 18, 2011, Plaintiff served NCR with a thirty-eight page "person most  
22 knowledgeable" deposition notice, pursuant to Federal Rule of Civil Procedure 30(b)(6).  
23 Joint Letter at 2, Dkt. 82. The notice listed fifty-six categories (denoted as categories A-  
24 BB) upon which Plaintiff intended to depose NCR. Id. Ex. 2, Dkt. 82-2. Plaintiff noticed  
25 the deposition for March 1, 2011, but later rescheduled the deposition for April 15, 2011.  
26 Joint Letter at 2. NCR met and conferred with Plaintiff to narrow the scope of the  
27 deposition. Id. NCR did not appear for its deposition on April 15, apparently believing  
28 that it had been continued during their meet and confer process. Id. However, NCR's

1 counsel misunderstood Plaintiff's counsel's email, which conditioned continuing the  
2 deposition on NCR's filing of a motion for protective order. Id. In response to NCR's non-  
3 appearance for its deposition, Plaintiff filed a motion for sanctions with this Court, which  
4 was referred to Magistrate Judge Spero ("the Magistrate"). Dkt. 66, 95. In turn, NCR filed  
5 a motion for protective order to narrow the scope of its Rule 30(b)(6) deposition. Dkt. 82.  
6 The motion was briefed through the submission of a joint letter, filed September 12, 2011.  
7 Id.

8 On October 14, 2011, the Magistrate held a hearing in connection with NCR's  
9 motion for protective order. Plaintiff argued that the motion was untimely because NCR  
10 did not bring its motion prior to the date of the deposition. The Magistrate rejected this  
11 argument, stating:

12 You know, I won't buy the argument, because this is the single  
13 most abusive 30(b)(6) notice I have ever seen in 19 years of  
14 practice, and 13 years on the bench. I wouldn't—I would, sua  
15 sponte, strike the sections I struck.

16 Regardless of any deadlines, this is entirely inappropriate. So,  
17 you can try to argue with me about the substance and I'm happy  
18 to hear your argument on that.

19 But, I will not hear your timeliness argument. I think that it is  
20 abusive, and so prejudicial, and requires so much work that is  
21 inappropriate and I won't allow it.

22 \*\*\*\*\*

23 Obviously, they disagree on the timeliness issue. But leaving  
24 that aside, I'd rather you address the substance.

25 Pl.'s Request for Judicial Notice ("RJN") Ex. B at 4:21-51 Dkt. 94-1. Ultimately, the  
26 Magistrate limited the deposition to the categories listed in section E, items 1-3, in the joint  
27 letter, and categories AT, AU and AV, and categories AN, AO and AP (limited to the 750b  
28 territory). Dkt. 88.

Pursuant to Civil Local Rule 72-2, Plaintiff has now filed a motion seeking relief  
from the Magistrate's ruling to the extent it limits the scope of NCR's Rule 30(b)(6)  
deposition. Plaintiff first contends that the Magistrate erred in refusing to consider his  
argument that NCR's motion for protective order was untimely. Alternatively, Plaintiff

1 argues that Magistrate should have limited the scope of the Rule 30(b)(6) deposition. The  
2 Court discusses these contentions in turn.

## 3 **II. LEGAL STANDARD**

4 Local Rule 72-2 provides that a district judge shall set aside any portion of a  
5 magistrate judge's order found to be clearly erroneous or contrary to law. See Civ. L.R. 72-  
6 2; see also 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Grimes v. City and County of  
7 San Francisco, 951 F.2d 236, 241 (9th Cir. 1991) ("A non-dispositive order entered by a  
8 magistrate must be deferred to unless it is 'clearly erroneous or contrary to law.'). With  
9 regard to discovery disputes and other non-dispositive matters, a magistrate judge's  
10 decision is entitled to great deference. United States v. AbonceBarrera, 257 F.3d 959, 969  
11 (9th Cir. 2001). A magistrate judge's ruling on discovery issues is clearly erroneous only  
12 when the district court is left with a "definite and firm conviction that a mistake has been  
13 committed." Burdick v. Comm'r Internal Rev. Serv., 979 F.2d 1369, 1370 (9th Cir. 1992).  
14 The district judge may not simply substitute his or her judgment for that of the magistrate  
15 judge. See Grimes, 951 F.2d at 241.

## 16 **III. DISCUSSION**

### 17 **A. TIMELINESS**

18 Federal Rule of Civil Procedure 26(c)(1) provides that "[a] party or any person from  
19 whom discovery is sought may move for a protective order in the court where the action is  
20 pending--or as an alternative on matters relating to a deposition, in the court for the district  
21 where the deposition will be taken." The Court may grant a protective order "to protect a  
22 party or person from annoyance, embarrassment, oppression, or undue burden or expense."  
23 Id. As a general rule, a party seeking shelter under Rule 26(c)(1) should obtain a protective  
24 order before the date of the deposition. See Schwarzer, Tashima & Wagstaffe, Fed. Civ. P.  
25 Before Trial, ¶ 11:1166 at 11-144 (TRG 2010). However, Rule 26(c) does not expressly  
26 limit the district court's consideration of a motion for protective order only to those cases  
27 where the motion is filed before the date of the deposition. Rather, the movant only need  
28 establish "good cause" for its request. See Fed. R. Civ. P. 26(c)(1). In this case, the

1 Magistrate, in effect, found that the deposition notice was plainly abusive, and therefore,  
2 chose to limit the scope of the deposition. Moreover, the record shows that NCR did not  
3 seek a protective order before the date of the deposition due to the mistaken belief that the  
4 deposition had been continued. Given these particular circumstances, the Court finds no  
5 error in the Magistrate’s decision to consider NCR’s motion for protective order on the  
6 merits, even if it was submitted after the date noticed for the deposition.

7 **B. MERITS**

8 Plaintiff challenges the Magistrate’s decision to preclude him from questioning NCR  
9 on the meaning of various statements contained in emails between different NCR  
10 employees, as set forth in categories D, M, N, O, P, Q, R, S, T, U, V, W, X, Y, AA, BB,  
11 AC, AF, AF, AH, AK, AL, AM, AW, AZ and BA. Dkt. 82 at 3. NCR took the position  
12 that it would be inappropriate to have any person other than the drafter of the email to offer  
13 testimony regarding the intent behind the words used in those emails. Id. The Magistrate  
14 agreed and concluded that Plaintiff’s request was “radically overbroad and burdensome”  
15 and “completely inappropriate.” RJN Ex. B at 2:17-25. Plaintiff contends, as he did before  
16 the Magistrate, that aggregating his requests in a Rule 30(b)(6) deposition is an efficient  
17 and acceptable method of working within the ten-deposition-per-side limit imposed by Rule  
18 30(a)(2)(A)(i). Nonetheless, the Court finds nothing “clearly erroneous” with the  
19 Magistrate’s conclusion that Plaintiff’s request was inefficient and inappropriate. See  
20 Grimes, 951 F.2d at 241.

21 Equally without merit are Plaintiff’s ancillary assertions that NCR failed to  
22 specifically quantify the actual “burden or oppression” likely to be caused by compliance  
23 with Plaintiff’s extensive deposition notice, and that it would have taken “little” effort by  
24 NCR to prepare its representatives on the matters rejected by the Magistrate. Mot. at 4-5.  
25 This argument misses the point. In support of its request for protective order, NCR  
26 specifically pointed out that a number of the fifty-six subject matter areas identified by  
27 Plaintiff pertained to matters not likely to lead to the discovery of admissible information.  
28 Joint Letter, Dkt. 82 at 2-5. The Magistrate considered the parties’ arguments in their joint

1 letter and held a hearing in connection with NCR's motion, and ultimately was persuaded  
2 by NCR's arguments that Plaintiff was seeking to conduct a deposition beyond the  
3 reasonable bounds of a Rule 30(b)(6) deposition. Having reviewed the record, the Court  
4 finds nothing clearly erroneous or contrary to law in the Magistrate's decision to limit the  
5 scope of NCR's deposition. See Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988)  
6 (noting that district courts have "wide discretion in controlling discovery.").

7 **IV. CONCLUSION**

8 For the reasons stated above,

9 IT IS HEREBY ORDERED THAT Plaintiff's Motion for Relief from  
10 Nondispositive Order of Magistrate Judge is DENIED. This Order terminates Docket 94.

11 IT IS SO ORDERED.

12 Dated: November 22, 2011

  
13 SAUNDRA BROWN ARMSTRONG  
14 United States District Judge  
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