



1 argues that Plaintiff's deposition notice is impermissible because Plaintiff has already  
2 reached the ten deposition limit established under Federal Rule of Civil Procedure ("FRCP")  
3 30(a)(2).

4 In support of its position, Defendant states that Plaintiff individually noticed and  
5 deposed Rose Nwaturuocha, Brad Ganskow, William Schiefler, Dan Begich, Michael  
6 Aylsworth, Matthew Westphalen, Ken Klug, Davis<sup>2</sup> Fortenberry, and Michael Johnson, and  
7 served a separate deposition notice pursuant to FRCP 30(b)(6) for the deposition of  
8 Defendant for a total of ten depositions. According to Defendant, Plaintiff is not entitled  
9 to take an additional deposition without leave of court or stipulation of the parties. In  
10 further support, Defendant notes that *after* notifying Plaintiff of the identities of each of its  
11 designees for the FRCP 30 (b)(6) deposition, Plaintiff served individual deposition notices  
12 for each designee pursuant to FRCP 30(a) and took the individual depositions  
13 simultaneously with the 30(b)(6) deposition. Defendant argues that because Plaintiff  
14 individually noticed the deposition of each corporate designee, the depositions count as  
15 separate depositions. Defendant seeks to have the Court issue an order stating that  
16 Plaintiff has noticed and taken the maximum of ten depositions allowed under FRCP 30(a),  
17 Plaintiff is not entitled to notice an eleventh deposition without leave of court, and that the  
18 subpoena that Plaintiff served on February 20, 2013 for the deposition of Mr. Stewart is  
19 impermissible and *void ab initio*.

20 In support of its position, Plaintiff states that it first attempted to schedule the  
21 deposition of Mr. Stewart on August 3, 2012 and that after a lot of discussion between the  
22 parties, Plaintiff noticed the deposition for November 28, 2012. Defendant later suggested  
23 postponing the Stewart deposition and Plaintiff agreed and tried to reschedule the  
24 deposition for January 22, 2013, but was unable to do so due to the schedule of Mr.  
25 Stewart's attorney. When Plaintiff again attempted to re-notice the deposition for February  
26 20, 2013, Defendant contacted Plaintiff and stated that because Plaintiff had reached the

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28 <sup>2</sup>Both parties refer to this witness as Davis in their letter briefs, although the deposition notice attached  
to Defendant's letter brief refers to David Fortenberry.

1 maximum number of depositions, Defendant would notice the deposition of Mr. Stewart.  
2 After an exchange of emails and a week without response, Plaintiff noticed Mr. Stewart's  
3 deposition for March 7, 2013. Plaintiff also states that it has not exceeded the ten  
4 deposition limit because the amended deposition notices that it served naming each FRCP  
5 30(b)(6) witness was done to ensure that each witness appeared at the correct time and  
6 location since the deposition schedule was changed several times and, that even if the  
7 individual depositions were counted separately, Plaintiff has only conducted nine depositions  
8 because the deposition of Defendant does not count as an additional deposition. Plaintiff  
9 seeks to have the Court issue an order permitting Plaintiff to take the deposition of Mr.  
10 Stewart as noticed because he has not exceed his limit of ten depositions or, if the Court  
11 finds that Defendant's position is correct, to permit the deposition to take place under FRCP  
12 26(b)(2).

13 After reading and considering the letter briefs and counsel's arguments, the Court  
14 finds that Plaintiff has not exceeded the maximum number of depositions permitted under  
15 FRCP 30(b)(a) without leave of court.<sup>3</sup> While it is possible that Plaintiff's decision to send  
16 amended notices clarifying the dates and times of the PMK witnesses was a procedural  
17 error, it is not clear to the Court that Plaintiff intended to notice individual depositions for  
18 the witnesses in addition to their depositions under FRCP 30(b)(6). Additionally, in light of  
19 the numerous conversations between counsel regarding the scheduling of the depositions  
20 and the number of times depositions were re-noticed, the Court does not find Plaintiff's  
21 desire to confirm the times and dates of the depositions to be unreasonable, even if the  
22 manner in which he did so was procedurally incorrect or confusing. The Court has also  
23 considered the fact that Plaintiff has been trying to notice the deposition of Mr. Stewart  
24 since August of last year and it would likely have taken place months ago had it not been

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27 <sup>3</sup>Even if Plaintiff had reached the ten deposition limit, FRCP26(b)(2)(a) permits the Court to "alter the  
28 limit . . . on the number of depositions . . . under Rule 30" and the Court would do so under these  
circumstances.

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1 for Defendant's scheduling concerns and Plaintiff's willingness to accommodate those  
2 concerns. Finally, neither Plaintiff nor Defendant provided this Court with directly relevant  
3 and binding authority for their respective positions. The case cited to by Plaintiff, Detoy v.  
4 City & County of San Francisco, 196 F.R.D. 362 (N.D. Cal. 2000), does not contemplate the  
5 situation where counsel has served individual deposition notices for the other side's FRCP  
6 30(b)(6) designees, and the two treatises cited to by Defendant do not constitute binding  
7 authority.<sup>4</sup>

8 Accordingly, the deposition of Mr. Kirk Stewart will take place as noticed by Plaintiff  
9 on **March 7, 2013** at the office of Plaintiff's counsel in **San Diego, California**.

10 **IT IS SO ORDERED.**

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12 DATED: February 28, 2013

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14 BARBARA L. MAJOR  
15 United States Magistrate Judge

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27 <sup>4</sup>In addition to not being binding authority, one of the treatises cited to, The Rutter Group, Federal Civil  
28 Procedure Before Trial, California & Ninth Circuit Edition, Ch. 11, Part IV-A (2012), simply states that when  
counsel notices a deposition in a person's individual capacity and under FRCP 30(b)(6), the deposition **may**  
count as two depositions which is not a strong argument in either party's favor.