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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ART COHEN,

Plaintiff,

v.

DONALD J. TRUMP,

Defendant.

Civil No. 13-CV-2519-GPC (WVG)

ORDER FOLLOWING
TELEPHONIC DISCOVERY
CONFERENCE

I. BACKGROUND

On April 14, 2015, this Court held a telephonic Discovery Conference with counsel for both parties. The parties sought the Court’s guidance during a deposition as to whether Defendant’s objections were proper. Plaintiff argued that Defendant was making speaking objections. Plaintiff expressed concern that Defense counsel was coaching the witness and obstructing Plaintiff’s ability to obtain an accurate response from the witness. During the Discovery Conference, Plaintiff cited a case called Doe v. City of San Diego, 2013 WL 6577065 (S.D. Cal. Dec. 13, 2013) to support his position that Defendant’s objections were improper.

Defense counsel argued that his objections were appropriate, as all objections were based on proper grounds such as lack of foundation, relevance, misstates testimony, and other similar objections. Defense counsel argued that he was not coaching the witness, but

1 rather, was trying to make sure that the witness understood the questions being asked. He
2 explained that he was not making two or three sentence objections.

3 **II. RELEVANT LAW**

4 During a deposition an attorney may properly state objections “concisely in a
5 nonargumentative and nonsuggestive manner.” Fed.R.Civ.P. 30(c)(2). As a general rule,
6 “instructions not to answer questions at a deposition are improper.” Detoy v. City & Cnty.
7 of San Francisco, 196 F.R.D. 362, 365 (N.D. Cal. 2000). “A person may instruct a deponent
8 not to answer only when necessary to preserve a privilege, to enforce a limitation ordered
9 by the court, or to present a motion under Rule 30(d)(3).” Fed.R.Civ.P. 30(c)(2) (emphasis
10 added). “If a party believes that a particular question asked of a deponent is improper for
11 any other reason, that party may object; however, ‘the examination still proceeds; the
12 testimony is taken subject to any objection.’” Mendez v. R+L Carriers, Inc., 2012 WL
13 1535756, at *1 (N.D. Cal. Apr. 30, 2012) (quoting Fed.R.Civ.P. 30(c)(2).)

14 Under Rule 30(d)(3), “[a]t any time during a deposition, the deponent or a party may
15 move to terminate or limit it on the ground that it is being conducted in bad faith or in a
16 manner that unreasonably annoys, embarrasses, or oppresses the deponent or party...If the
17 objecting deponent or party so demands, the deposition must be suspended for the time
18 necessary to obtain an order.” Fed.R.Civ.P. 30(d)(3)(A).

19 **III. COURT DISCUSSION**

20 **A. DEFENDANT’S OBJECTIONS WERE PROPER**

21 During the Discovery Conference, the Court read the case cited by Plaintiff, Doe v.
22 City of San Diego, a case from this judicial district. Doe v. City of San Diego, 2013 WL
23 6577065. In Doe, counsel instructed one witness not to answer no fewer than twenty-eight
24 times. Id. at 5. Counsel’s instructions not to answer were preceded by various objections,
25 including that the question at issue had been asked and answered, invaded the privacy rights
26 of the witness and/or other non-parties, exceeded the scope of the deposition and/or lacked
27 relevance, lacked foundation, sought personnel information and official information from
28 the police department, assumed facts, and misstated the prior testimony of the witness. Id.

1 The Doe court found that most of counsel’s objections did not provide adequate
2 grounds for his instructions to the witness not to answer. Doe v. City of San Diego, 2013
3 WL 6577065, at *5. The court stated that an attorney can instruct “a deponent not to answer
4 only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or
5 to present a motion under Rule 30(d)(3).” Id; citing Fed. R. Civ. P. 30(c) (2). Therefore, the
6 court found that counsel’s objections that questions had been asked and answered, exceeded
7 the scope of the deposition, lacked relevance, assumed facts, and misstated the prior
8 testimony of the witness, were improper grounds for instructing the witness not to answer.
9 Id; see Jadwin v. Abraham, 2008 WL 4057921, at *5 (E.D.Cal. Aug. 22, 2008) (“[A]n
10 objection that the question might have been repetitive was not a proper basis to instruct the
11 witness not to answer it.”).

12 Here, the Court determined that the Doe case did not provide support for Plaintiff’s
13 argument that Defendant’s objections were improper. During the Discovery Conference, the
14 Court noted that in Doe, the objections were improper because they were followed by
15 instructions to the witness not to answer the question. The objections themselves were not
16 improper. The Court distinguished the Doe case from the instant situation because here,
17 Plaintiff did not argue that Defendant was instructing the witness not to answer. Rather,
18 Plaintiff’s dispute was with the form of Defendant’s objections.

19 After distinguishing the Doe case upon which Plaintiff relied, the Court determined
20 that Defendant’s objections were proper. The Court noted that, if Defense counsel attempted
21 to telegraph an answer to the witness through objections, such objections would be entirely
22 improper. However, it did not appear that Defense counsel was using his objections to
23 telegraph answers to the witness. Further, Defendant was not asserting objections on the
24 basis of relevance or misstates testimony, and subsequently instructing the witness not to
25 answer.

26 **B. PRIOR COURT ORDERS**

27 During the Conference, the Court directed the parties’ attention to a March 27, 2015,
28 Court Order in this case, notifying the parties that sanctions may be imposed for involving

1 the Court in another phantom and basic dispute. (Doc. No. 64 at 2.) The Court noted that
2 there was not consistency throughout the district courts regarding whether form objections
3 were proper, and thus, this was not an issue that the Court needed to resolve for the parties.^{1/}
4 The Court explained that the parties should have recognized there are divergent viewpoints
5 throughout the district courts, and resolved the issue on their own without pausing the
6 deposition and contacting the Court for guidance.

7 During the Conference, the Court also discussed its November 20, 2014, Scheduling
8 Order, which stated, "...if the depositions in this action are conducted properly and met with
9 unnecessary objections, the Court may issue an Order expanding the number of depositions."
10 (Doc. No. 58 at 2.) The parties were once again placed on notice that if either side finds it
11 necessary to involve the Court yet again in the resolution of a phantom and basic dispute, the
12 parties should expect the Court to seriously consider imposing sanctions.

13 **IV. COURT RULING**

14 At the conclusion of the Conference, the Court ordered Defendant to assert clear and
15 succinct objections. The Court noted that anything more than a clear and concise objection
16 may be considered a speaking objection, which is improper and prohibited. The Court also
17 told Defendant that Plaintiff was entitled to ask the witness about documents, and therefore,
18 Defendant should not object on the basis that the documents speak for themselves.

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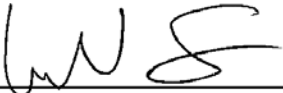
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27 ^{1/} For example, a district court in the Northern District of Iowa stated that attorneys are
28 required, not just permitted, to state the basis for their objections. Sec. Nat'l Bank of Sioux
City v. Abbott Labs., 299 F.R.D. 595, 602 (N.D. Iowa 2014). However, the court recognized
that not all courts share the same views regarding form objections, as "some courts explicitly
require lawyers to state nothing more than unspecified 'form' objections during depositions."
Id. at 603 (emphasis in original).

1 The Court recognized that, if either party acts contrary to the Court's guidance, one
2 side will undoubtedly inform the Court. The Court warned that it was prepared to impose
3 harsh sanctions if it determined that either party was acting contrary to its guidance.

4 IT IS SO ORDERED.

5 DATED: May 19, 2015

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9 Hon. William V. Gallo
10 U.S. Magistrate Judge
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