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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO UNIFIED PORT
DISTRICT,

Plaintiff,

v.

NATIONAL UNION FIRE
INSURANCE COMPANY OF
PITTSBURG, PA,

Defendant.

Case No.: 15cv1401-BEN-MDD

**ORDER GRANTING
PLAINTIFF'S EX PARTE
APPLICATION TO BAR
SEPARATE VIDEOTAPING OF
DEPOSING ATTORNEY AT
DEPOSITIONS SET FOR
AUGUST 28-31, 2017**

[ECF NO. 56]

Before this Court is Plaintiff's Ex Parte Application to Bar Separate Videotaping of Deposing Attorney filed on August 21, 2017. (ECF No. 56). Considering that depositions pursuant to the challenged protocol are scheduled to begin Monday, August 28, 2017, the Court finds it appropriate that Plaintiff moved ex parte. Defendant was ordered to and did respond in opposition on August 24, 2017. (ECF No. 59). As provided below, Plaintiff's Motion is **GRANTED**. Defendant is precluded from using a second camera to videotape the deposing counsel.

1 DISCUSSION

2 Fed. R. Civ. P. 30 governs depositions by oral examination. Regarding
3 methods of recording a deposition, the Rule provides that the party who
4 notices the deposition must state “the method for recording **the testimony.**”
5 Rule 30(b)(3)(A)(emphasis added). The Rule also provides that with prior
6 notice to the deponent and other parties, “any party may designate another
7 method for recording **the testimony** in addition to that specified in the
8 original notice.” Rule 30(b)(3)(B)(emphasis added). The Rule addresses only
9 the recording of “testimony.” It does not address the recording of questioning
10 other than in the context of obtaining testimony. It says nothing at all
11 regarding separately focusing a camera to record the questioning attorney.

12 Case law, as the parties note, is sparse. Most of the case law
13 addressing a second camera focused on the deposing attorney arise in the
14 context of multi-district litigation and even in that context, “the use of
15 multiple cameras during depositions in an MDL case is therefore, at best,
16 disputed.” See *In re Xarelto (Rivaroxaban) Prods. Liab. Litig.*, 2016 U.S. Dist.
17 LEXIS 8233 *7-8, MDL No. 2592 Section L (E.D. La. January 25,
18 2016)(collecting cases). The *Xarelto* Court allowed for the use of one
19 additional camera in the discovery phase of an MDL action:

20 because it is not the place of an MDL court to dictate the method or
21 propriety for the use of depositions at trial by the various state and
22 federal courts if and when the cases are returned by the transferee
23 court.

24 *Id.* at *8-9.

25 In the non-MDL context, the Court found a single case authorizing a
26 second camera trained on the deposing counsel; the use of the second camera
27 was imposed as a sanction for the attorney’s misconduct during an earlier

1 deposition. *Zottola v. Anesthesia Consultants of Savannah, PC*, 2012 WL
2 6824150 *7, No. CV 411-154 (S.D. Ga. June 7, 2012). Defendant cites to a
3 case in this Court, *Insurance Co. of the State of Pennsylvania, et al., v. City of*
4 *San Diego*, Case No. 02-cv-0693-BEN-CAB (S.D. Cal.). Defendant did not
5 supply a copy of the relevant order and did not cite to a particular docket
6 entry. That case has 530 docket entries and the Order relied upon by
7 Defendant is not obvious.

8 What is clear is that it is within the discretion of the Court to allow or
9 disallow the second camera in this case. The Court finds that the use of a
10 second camera focused upon the deposing attorney is not necessary or
11 appropriate in this case. The Court finds that it is more likely that the
12 second camera is intended to intimidate the deposing attorney rather than to
13 better preserve the deposition for ultimate use at trial. *See In re Xarelto*,
14 2016 U.S. Dist. LEXIS 8233 *7.

15 **IT IS SO ORDERED.**

16 Dated: August 25, 2017

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18 Hon. Mitchell D. Dembin
19 United States Magistrate Judge
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