

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BANK OF AMERICA, N.A.,

Plaintiff(s),

vs.

DESERT PINE VILLAS HOMEOWNERS
ASSOCIATION, et al.,

Defendant(s).

Case No. 2:16-cv-00725-JCM-NJK

ORDER

(Docket Nos. 46, 47)

Pending before the Court are Plaintiff Bank of America, N.A.'s motions for protective order and for sanctions, both of which were originally filed on an emergency basis. Docket Nos. 46, 47. The motions relate to a deposition that was originally scheduled for October 24, 2016. Docket No. 46 at 2. Rather than resolving the motions on an expedited basis, the Court issued an order holding the deposition in abeyance pending resolution of the dispute. Docket No. 48. Defendant SFR Investments Pool 1, LLC ("SFR") subsequently filed a response to the motions, and Plaintiff filed a reply. Docket Nos. 55, 56. SFR also filed a sur-reply at the Court's invitation. Docket Nos. 66, 68. The Court finds these motions properly resolved without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion for protective order is **GRANTED** and the motion for sanctions is **DENIED**.

1 Rule 26(b)(2)(C) further limits discovery. It requires the Court to limit the extent of
2 discovery if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative,
3 or can be obtained from some other source that is more convenient, less burdensome, or less
4 expensive; (ii) the party seeking discovery has had ample opportunity to obtain information by
5 discovery in the action; or (iii) the proposed discovery is outside the scope permitted by Rule
6 26(b)(1). Fed. R. Civ. P. 26(b)(2)(C).

7 Active involvement of federal judges is necessary “to prevent discovery from becoming a war
8 of attrition or . . . a device to coerce a party, whether financially weak or affluent.” *Roberts v. Clark*
9 *Cty. Sch. Dist.*, 312 F.R.D. 594, 602 (D. Nev. 2016). Accordingly, the Court has broad discretion
10 in wielding Rules 26(b)(1) and (2) to provide parties with efficient access to what discovery is
11 needed while, at the same time, eliminating wasteful discovery. *Hallet v. Morgan*, 296 F.3d 732,
12 751 (9th Cir. 2002); *Roberts*, 312 F.R.D. 594, 604-04 (D. Nev. 2016).

13 **III. DISCUSSION**

14 **i. Deposition Topics**

15 Plaintiff submits that no further discovery is necessary because the Ninth Circuit held Nevada
16 Revised Statute chapter 116’s “opt-in” notice scheme unconstitutional in *Bourne Valley*. Docket No.
17 46 at 6. SFR responds that, *inter alia*, *Bourne Valley* left open the remedy for the statutory
18 provision’s unconstitutionality. Docket No. 55 at 4.

19 After SFR filed its response and before Plaintiff filed its reply, the Ninth Circuit Court of
20 Appeals declined a petition to rehear *Bourne Valley*. *See, e.g.*, Docket No. 56 at 2. Plaintiff’s reply
21 submits that this development strengthens its assertion that no further discovery is necessary. *See*
22 *id.* at 2-3. On December 5, 2016, therefore, the Court issued an order inviting SFR to file a sur-reply
23 addressing the Ninth Circuit’s decision to decline the petition for rehearing. Docket No. 66. SFR
24 then filed a sur-reply, in which it notes that the appellee in *Bourne Valley* intends to file a petition
25 for a writ of *certiorari* in the United States Supreme Court. Docket No. 68 at 2. SFR further notes
26 that it has moved to certify a question of law to the Nevada Supreme Court on related issues, and that
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1 the application and effect of *Bourne Valley* remain open. *Id.* at 2-4.²

2 The Court agrees with the parties that *Bourne Valley*, which is now controlling law in this
3 Circuit, may be dispositive of this case. In the event that it is not dispositive, however, SFR's
4 proposed deposition topics are not proportional to the needs of this case. The Court agrees with
5 Plaintiff that the topics regarding Plaintiff's tender are the only topics proportional to the needs of
6 this case. Therefore, the 30(b)(6) deposition may move forward, and Plaintiff shall prepare a witness
7 to testify on the following topics:

- 8 • Plaintiff's communications and efforts to tender the super-priority portion of the
9 homeowners association's lien;
- 10 • Non-privileged information related to tender;
- 11 • Plaintiff's interest in the deed of trust;
- 12 • Who the beneficiary of the deed of trust was at the time the homeowners association
13 foreclosed, and who is currently the beneficiary; and
- 14 • Any other entities that have an interest in the deed of trust and the nature of that
15 interest.

16 ii. Deposition Location

17 As a general rule, a plaintiff is required to sit for a deposition in the district where it brought
18 suit. *Bank of Am., Nat'l Ass'n v. SFR Invs. Pool 1 LLC*, No. 2:15-cv-01042, 2016 WL 2843802,
19 at *4 (D. Nev. May 12, 2016). This rule is premised on the proposition that, since the plaintiff
20 selected the forum, it should not be heard to complain about having to appear there for deposition.

22 ² Notably, SFR's opposition to the idea that *Bourne Valley* is dispositive in this instance
23 conflicts with its assertions in other briefing. For example, in its joint motion to stay, SFR states that
24 "the Ninth Circuit's ultimate resolution of this issue may have a dispositive effect on this litigation."
25 Docket No. 42 at 3. Additionally, in its reply in support of the joint motion to stay, SFR quotes with
26 approval Chief United States District Judge Gloria M. Navarro's assertion that "*Bourne Valley* is
27 likely dispositive of this and the hundreds of other foreclosure cases pending in both state and federal
court." Docket No. 45 at 4 (quoting *Bank of Am., Nat'l Ass'n v. Travata & Montage at Summerlin
Centre Homeowners' Ass'n*, No. 2:16-cv-00699-GMN-PAL, Docket No. 45 at 2) (internal quotation
marks omitted).

1 *Id.* “This rule need not be adhered to, however, if [the] plaintiff can show good cause for not being
2 required to come to the district where the action is pending.” *Id.*

3 Notably, the Court already addressed this dispute with the same counsel in *Bank of Am., Nat’l*
4 *A’ssn v. SFR Invs. Pool 1, LLC*, No. 2:15-cv-00691. At a hearing on March 14, 2016, after
5 considering counsel’s positions, the Court stated:

6 The Court, in looking at the proportionality, agrees that if no one needs to travel, it
7 should be a video deposition. If, however, Bank of America determines that
8 someone needs to travel, it will not be the attorney, it will be the Bank of America
representative. So if no one needs to travel, the deposition can occur in Dallas over
video-conferencing, otherwise it needs to occur in Las Vegas.

9 Hearing Transcript at 51:45-52:35. Despite this guidance, the same counsel subsequently returned
10 to the Court with the same dispute in *Bank of Am., Nat’l Ass’n v. Auburn & Bradford at Providence*
11 *Homeowners’ Ass’n*, No. 2:16-cv-00393. On August 1, 2016, the Court reaffirmed its prior holding,
12 stating: “Plaintiff’s Rule 30(b)(6) designee shall appear for the deposition in Dallas, Texas by video-
13 conference.” *Auburn & Bradford*, Docket No. 67 at 3. Three days later, counsel returned to the
14 Court with the same dispute yet again in *Bank of New York Mellon v. Paradise Court Homeowners*
15 *Ass’n*, 2:16-cv-00390. On August 5, 2016, the Court issued an order advising that “[i]t is time for
16 counsel to take the guidance the Court has already given them in order to resolve the dispute among
17 themselves.” *Bank of New York Mellon*, Docket No. 53 at 2.

18 SFR now submits that it refused to agree to video-conferencing in this case because
19 Plaintiff’s counsel in *Bank of New York Mellon* flew to Dallas instead of remaining in Las Vegas.
20 Docket No. 55 at 18. Plaintiff asserts that Plaintiff’s counsel has defended depositions in Las Vegas
21 and in Dallas, depending on which location is most convenient and efficient. Docket No. 56 at 10.

22 The Court holds that, in this and all substantially similar situations moving forward,
23 Plaintiff’s 30(b)(6) designees may appear for depositions remotely by video-conference.
24 Additionally, Plaintiff’s counsel may choose to either travel or remain in Las Vegas.

25 Plaintiff seeks fees and costs pursuant to Rule 37(a)(5) because SFR has refused to agree to
26 depose Plaintiff’s representative by video-conference, despite the Court’s previous guidance. Docket
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1 No. 47 at 15-17. The Court declines to award fees and costs in this instance.

2 **IV. CONCLUSION**

3 Accordingly, for the reasons stated above, Plaintiff's motion for protective order, Docket No.
4 46, is hereby **GRANTED**. SFR may only inquire about the topics listed *supra* at 4:8-4:15.
5 Plaintiff's Rule 30(b)(6) designee shall appear for the deposition in Dallas, Texas by video-
6 conference. Plaintiff's counsel may choose to participate from either Las Vegas or Dallas.
7 Plaintiff's motion for sanctions, Docket No. 47, is hereby **DENIED**.

8 IT IS SO ORDERED.

9 DATED: January 13, 2017

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13 NANCY J. KOPPE
14 United States Magistrate Judge
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