

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE BANK OF NEW YORK MELLON, } Case No. 2:17-cv-01074-RFB-NJK
Plaintiff(s), }
v. } ORDER
EMILY RUDDELL, et al., } (Docket No. 34)
Defendant(s). }

Pending before the Court is Plaintiff's motion to compel or, alternatively, to extend the discovery cutoff. Docket No. 34. Defendant SFR filed a response in opposition. Docket No. 36. No reply was filed and the deadline has now expired. *See* Local Rule 7-2(b). The Court find the motion properly decided without a hearing. *See* Local Rule 78-1. For the reasons discussed below, the motion to compel is **GRANTED**.

I. STANDARDS

“[B]road discretion is vested in the trial court to permit or deny discovery.” *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002); *see also Crawford-El v. Britton*, 523 U.S. 574, 598 (1998). When a party fails to provide requested discovery, the requesting party may move to compel that discovery. *See, e.g., Nationstar Mtg, LLC v. Flamingo Trails No. 7 Landscape Maintenance Assoc.*, 316 F.R.D. 327, 331 (D. Nev. 2016). The party opposing discovery bears the burden of explaining why discovery should be denied. *See, e.g., Carr v. State Farm Mut. Auto. Ins. Co.*, 312 F.R.D. 459, 465-69 (N.D. Tex. 2015) (addressing burdens following 2015 amendments to the discovery rules).

1 **II. ANALYSIS**

2 The pending motion raises a straight-forward dispute. The parties agreed in their proposed
3 discovery plan to give one another 30-days' notice for depositions, and the Court entered an order
4 accordingly. *See* Docket No. 28 at 5. Plaintiff provided notice of its Rule 30(b)(6) deposition on
5 November 2, 2017. *See* Docket No. 34-1 at 10. The deposition was noticed for November 30, 2017,
6 which provided only 28-days' notice. *See id.* at 6. The notice of deposition was served 32 days before
7 the discovery cutoff of December 4, 2017. *See* Docket No. 28 at 3.

8 The gist of SFR's position is that the deposition notice was void for failing to provide 30 days
9 of notice and, because less than 30 days were left in the discovery period once the meet-and-confer
10 process began, a new notice could not be served. *See, e.g.*, Docket No. 36 at 2-4.¹ Consequently, SFR
11 contends that it has no obligation to provide any Rule 30(b)(6) deponent in this case. *See id.* The Court
12 is not persuaded.

13 There is an overarching preference for cases to be decided on their merits, *see, e.g.*, *Silvagni v.*
14 *Wal-Mart Stores, Inc.*, 320 F.R.D. 237, 243 (D. Nev. 2017), and courts eschew reliance on overly-
15 technical objections to avoid discovery obligations, *see, e.g.*, *Aevoe Corp. v. AE Tech Co.*, 2013 WL
16 4701192, at *1 (D. Nev. Aug. 30, 2013) (collecting cases that courts may require compliance with
17 discovery requests even if the default response deadline is a few days after the discovery cutoff).
18 Moreover, as the Court has already reminded counsel elsewhere, common sense and practicality should
19 be at the forefront of their meet-and-confer discussions. *Bank of N.Y. Mellon v. Paradise Court*
20 *Homeowners Ass'n*, 2016 U.S. Dist. Lexis 103384, at *3 (D. Nev. Aug. 5, 2016); *see also Asea, Inc. v.*
21 *Southern Pac. Transp. Co.*, 669 F.2d 1242, 1246 (9th Cir. 1981) ("The discovery process is subject to
22 the overriding limitation of good faith"). In this case, the parties agreed to provide 30 days of notice for
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25 ¹ The parties contest the significance of the timing of SFR's objection. Plaintiff contends that SFR
26 waited to object until less than 30 days remained in the discovery period to thwart any attempt to re-notice
27 the deposition. Docket No. 34 at 2. SFR counters that it was not engaged in bad faith conduct, but that the
28 timing of its objection was necessitated by its counsel's appearance in another case in Carson City. Docket
No. 36 at 2. The Court need not opine on the timing of SFR's objection to resolve the instant motion.

1 depositions, and the deposition notice in dispute was provided 32 days before the close of discovery.²
2 If SFR believed that it was entitled to an additional two-days' notice for that deposition, the most
3 obvious solution was for the parties to agree upon a new deposition date within the discovery period that
4 would alleviate any of SFR's scheduling concerns. Had the parties agreed to continue the deposition
5 to December 4, 2017, for example, that would have effectively provided SFR 32-days' notice from its
6 receipt of the initial notice of deposition. Similarly, if no date within the discovery period was available,
7 the parties could have stipulated to a short extension to the discovery cutoff to accommodate both
8 Plaintiff's need for the deposition and SFR's scheduling concerns. Nonetheless, the record shows that
9 SFR refused to provide any alternative date for the deposition, Docket No. 34-1 at 3, and instead
10 proclaimed that it would not appear for a Rule 30(b)(6) deposition, *id.* at 14. SFR has not persuaded the
11 Court that it should be permitted to avoid altogether its Rule 30(b)(6) deposition based on the
12 circumstances presented here.

13 In short, this case involves the setting of deposition that shorted SFR's notice by a *de minimis*
14 two days, providing 28 days rather than 30 days of notice, but was delivered 32 days before the close of
15 discovery. This is a situation that should have been resolved through practical cooperation during the
16 meet-and-confer process. At best, SFR has shown that the deposition should have been continued by
17 a few days. It has not shown that it should be permitted to avoid the deposition all together.

18 III. CONCLUSION

19 Accordingly, the motion to compel is **GRANTED**. The Court hereby **SETS** the deposition at
20 issue for January 5, 2018, at 1:00 p.m., unless the parties stipulate to a different date and/or time.³ While
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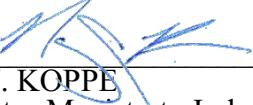
22 ² Hence, this is not a situation in which discovery was served so late in the discovery period that it
23 could not be completed before the discovery cutoff. *Cf. Adobe Sys. v. Christenson*, 2011 WL 1322529, at
*2 (D. Nev. Apr. 5, 2011). SFR's reliance on cases involving that situation is not persuasive. *Compare U.S.*
24 *Bank, N.A. v. SFR Invs. Pool 1, LLC*, Case No. 2:16-cv-2712-RFB-CWH, Docket No. 37 (D. Nev. Aug. 10,
25 2017) (in case involving 30-day deposition notice requirement, denying motion to extend discovery) *with*
26 *id.*, Docket No. 33 at 4 (SFR's brief urging that result because, *inter alia*, the bank "offers this Court no
explanation why it waited until July 13 to notice two depositions when discovery closes on July 31, 2017").

27 ³ Plaintiff is not required to provide a formal notice of deposition with this new date. *See, e.g.*, 8A
28 Wright, Miller & Marcus, FEDERAL PRACTICE AND PROCEDURE, § 2111 at p. 520-21 (2010) ("a second
notice of taking deposition is not necessary"). The deposition shall take place at the location initially

1 the Court is permitting Plaintiff an opportunity to take this deposition, the discovery period otherwise
2 remains closed. The Court **EXTENDS** the deadline for dispositive motions to January 19, 2018, and
3 the deadline to file a joint proposed pretrial order to February 20, 2018.

4 IT IS SO ORDERED.

5 DATED: December 6, 2017

6 
7 NANCY J. KOPPE
United States Magistrate Judge

28 identified unless Plaintiff otherwise indicates in writing within seven days of this order.