

Hon. Robert B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

SAMUEL TARABOCHIA, an individual,

Plaintiff,

vs.

THURSTON COUNTY, a municipality;
et al.,

Defendants.

NO. 3:18-cv-05056 RBL

STIPULATED MOTION AND
ORDER TO TAKE THE
PERPETUATION VIDEO
DEPOSITION OF DR. RUSSELL
VANDENBELT FOR USE AT
TRIAL

I. MOTION

Comes now defendants and move the court for leave to take the video perpetuation deposition of Dr. Russell Vandenberg for purposes of the trial in this matter. This motion is stipulated to by the plaintiff. This motion is based on Fed. R. Civ. P. 32(a)(4) and Fed. R. Civ. P. 16(b)(4), and the declaration of John E. Justice.

II. FACTS RELEVANT TO THE MOTION

Dr. Vandenberg was disclosed by defendants as a testifying expert in accordance with the Court's case schedule order. *Justice Dec.* He was deposed by plaintiff's counsel. *Id.* On March 12, 2019, defense counsel contacted Dr. Vandenberg to identify any conflict dates during the

STIPULATED MOTION AND ORDER TO TAKE THE
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LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.
ATTORNEYS AT LAW
2674 R.W. JOHNSON RD. TUMWATER, WA 98512
P.O. BOX 11880 OLYMPIA, WASHINGTON 98508-1880
(360) 754-3480 FAX: (360) 357-3511

Cause No.: 3:18-cv-05056 RBL

1 trial of this matter. *Id.* Dr. Vandenberg indicated that he did not have the trial date on his
2 calendar and had already purchased plane tickets to be out of the State during the two weeks of
3 trial. *Id.* Defense counsel inadvertently had failed to communicate the trial date to Dr.
4 Vandenberg. *Id.* Defense counsel immediately notified plaintiff's counsel of the issue and
5 sought agreement to a video perpetuation deposition of Dr. Vandenberg for use at trial. *Id.*
6 Plaintiff's counsel graciously agreed to stipulate to this motion. *Id.*
7

8 III. LAW AND ARGUMENT

9 Federal Rule of Civil Procedure 32(a)(4) provides that the deposition of a witness may
10 be used "for any purpose" at trial if he or she "is more than 100 miles from the place of hearing
11 or trial or is outside the United States," or, "on motion and notice, that such exceptional
12 circumstances make it desirable, in the interest of justice and with due regard to the
13 importance of live testimony in open court, to permit the deposition to be used." Dr.
14 Vandenberg will be out of State for the two weeks of trial in this matter and thus he meets the
15 test of Rule 32(a)(4).
16

17 While the deadline for taking depositions has passed, the Court can extend the deadline
18 for good cause. Fed. R. Civ. P. 16(b)(4). The scheduling conflict in this case was a result of
19 inadvertence and was brought to plaintiff's counsel's attention as soon as it was known and
20 Plaintiff's counsel has stipulated to this deposition occurring. Defense counsel has been
21 diligent in addressing this scheduling mistake and good cause exists to modify the case
22 schedule for the taking of this deposition. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
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1 604, 609 (9th Cir.1992) (“Rule 16(b)' s “good cause” standard primarily considers the diligence
2 of the party seeking the amendment.”)

3 DATED this 13th day of March, 2019.

4 LAW, LYMAN, DANIEL,
5 KAMERRER & BOGDANOVICH, P.S.

6 /s/ John E. Justice

7

John E. Justice, WSBA N^o 23042
8 Attorney for Thurston County Defendants
9 Email: jjustice@ldkb.com

10 STIPULATED TO this 13th day of March, 2019.

11 MACDONALD HOAGE & BAYLESS

12 /s/ David Whedbee

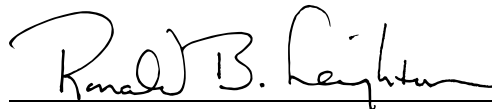
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David Whedbee, WSBA N^o 35977
14 Attorney for Plaintiff
15 Email: davidw@mhb.com

16 **ORDER**

17 Based on the foregoing stipulated motion and for good cause shown, the Court hereby
18 Orders that the Video Perpetuation Deposition of Dr. Russell Vandenberg may be taken for use
19 at trial in this matter.

20 DATED this 14th day of March, 2019.

21 

22 Ronald B. Leighton
23 United States District Judge
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**STIPULATED MOTION AND ORDER TO TAKE THE
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PRESENTED BY:

LAW, LYMAN, DANIEL,
KAMERRER & BOGDANOVICH, P.S.

/s/ John E. Justice

John E. Justice, WSBA N^o 23042
Attorney for Thurston County Defendants

APPROVED AS TO FORM:

MACDONALD HOAGE & BAYLESS

/s/ David Whedbee

David Whedbee, WSBA N^o 35977
Attorney for Plaintiff

**STIPULATED MOTION AND ORDER TO TAKE THE
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