

threatened to call the Court when she attempted to clarify her answers. *Third*, counsel provided incomplete and misleading information by showing her only selected excerpts of exhibits on screen (placed on a wall far from the witness)—after failing to bring complete hard copies of exhibits to the deposition or to otherwise make full copies visible to her, failing to provide copies to Defendants’ counsel, and refusing to allow Ms. Manduca to review the entirety of the exhibits on the record.

A protective order and deposition protocol governing counsel’s conduct and the use of deposition exhibits is necessary to prevent such conduct in the future. Thus, State Farm respectfully requests that the Court enter the proposed Protective Order and Deposition Protocol attached hereto as **Exhibit 1**, which will address what occurred at the Manduca deposition and (1) prohibit counsel from threatening or badgering a witness; (2) prevent counsel from making false statements to a witness regarding deposition “rules” or procedures; and (3) require counsel to either (a) bring hard copies of exhibits to the deposition or, (b) where that is not feasible, provide Bates numbers of the exhibits one day prior to allow the parties and the deponent ample time to review the entirety of an exhibit before answering questions regarding the document (and bring their own copies if they choose to do so). State Farm leaves it to the Court’s discretion to determine if sanctions or other relief are warranted as a result of the conduct at Ms. Manduca’s deposition.

BACKGROUND

Over State Farm’s objection as to relevance and other grounds, Plaintiffs noticed the deposition of Nicole Manduca, a Director in State Farm’s Property & Casualty department who was *not* involved in the handling or supervision of Plaintiffs’ claim—but whom Plaintiffs contend was an “architect” of a supposed “scheme” by State Farm to lower indemnity payments. (*See* Jan. 30, 2026, Pls.’ Opp. to State Farm’s Mot. for Prot. Order at 1–2 (emphasis in original).)

On June 23, 2026, Plaintiffs deposed Ms. Manduca on the record for the entire six hours

allowed under the Oklahoma rules.¹ Plaintiffs' counsel—in violation of established law, and disregarding norms of the baseline expectations for professional conduct—repeatedly interrupted, berated and shouted at Ms. Manduca whenever Ms. Manduca failed to agree with his assumptions or interpretations of the “meaning” of documents.

For example, when Ms. Manduca truthfully testified that she was not aware who authored one of the exhibits shown to her, Plaintiffs' counsel began shouting at Ms. Manduca and threatening to “move for sanctions” if she did not change her testimony:

Q: . . . Who wrote this document?

A: I don't know who wrote the document.

Q: Did I write this document? Did I have access to State Farm's computer? Did my clients, hundreds of them throughout Oklahoma, did they write it?

MR LEFFEL: Objection. Form. Counsel. She just told us she didn't know who wrote it.

Q: Well, it was produced to us recently by State Farm. State Farm wrote this document, didn't they? You can see their logo on it.

A: What I also see here - - -

Q: Answer my question first.

A: --- it's the table. The -- excuse me.

Q: Answer my question first.

A: I believe I did answer your --

Q: No.

A: I'm not going to raise my voice with you, and I would appreciate it if you didn't raise your voice with me.

¹ The deposition actually lasted from 8:39 a.m. in the morning until 5:26 p.m. in the evening, in large part to Plaintiffs' counsel's insistence that Ms. Manduca review any exhibits presented at the deposition “off the record.”

Q: Ma'am, if you would answer my question --

A: I'm trying to be very polite and calm with you.

Q: You have been totally and completely nonresponsive. That's why we're going to move for sanctions against you. Very rare, almost nonexistent, that I have to do that. Most people follow the rules. Ma'am, State Farm wrote this document. Will you at least agree to that? It was produced to us by State Farm's lawyers. Yes or no?

A: I don't know who wrote the document, sir.

(See Exhibit 2, June 23, 2026 N. Manduca Dep. Tr. at 287:16–288:24.)²

Plaintiffs' counsel also repeatedly made self-serving speeches and engaged in name-calling, accusing Ms. Manduca of lying or "redefining the English language" when she gave answers that contradicted Plaintiffs' allegations. For instance, when Ms. Manduca did not agree with what Plaintiffs' counsel represented she "meant" when she wrote certain terms. Plaintiffs' counsel responded:

Q: Here's the great thing. You wrote -- we can we see how long this email is. You could have written anything you wanted. You could have written the same excuse you just now gave the court and jury under oath, but you chose not to. . . .

A: You're putting words in my mouth. It says right there for the effort and capacity —

Q: Here's what I'm

A: -- it will take.

Q: --not doing. I'm not putting words in your mouth because you're not telling the truth. You know what you meant, and anybody reading this knows what you meant. You had the opportunity to say otherwise, and

² Because the time to designate the portions of Ms. Manduca's deposition that are confidential has not passed, because the deposition includes extensive excerpts of confidential documents, and to allow the Court to see all questioning in context, State Farm herewith submits the entire transcript to be filed under seal. State Farm contemporaneously files its Application to Seal the transcript and files a placeholder with the copy filed with the Court Clerk pending ruling on the Application to Seal.

you didn't; isn't that true?

MR. LEFFEL: Objection. Form. And, Counsel, commenting on the veracity of witnesses is improper.

Q: Isn't that true? You meant return on investment. That means --

A: I wholly disagree with you.

Q: -- dollars and cents to State Farm.

A: I wholly disagree with you.

(*Id.* at 339:20–340:19; *see also id.* at 200:21–201:1.) Plaintiffs' counsel similarly launched into inappropriate commentary when Ms. Manduca rejected his misinterpretation of her intent in using certain terms in internal documents:

Q: And you didn't write it either.

A: Well, you may not understand how we refer to reinspection results.

Q: Well.

A: But that is suggesting

Q: Again, do you –

A: -- . . . I'm not trying to interrupt you, sir, but that is what that is referring to.

Q: Do you think Oklahomans are dumb enough to believe what you're saying? That this is all sweetness and light when you're reducing payments? Because that's exactly what happened to hundreds and hundreds and hundreds of Oklahomans throughout this state, and they're all going to testify to that. Just a coincidence?

MR. LEFFEL: Objection to form.

A: Sir, that isn't what it says.

(*Id.* at 362:5–23.)

Q: State Farm is comparing this, the accuracy results, which I've argued to you all day, you guys use these words, quality and accuracy, to mean saving State Farm money.

A: I disagree with you.

Q: I know you do. But the documents speak for themselves and the math never lies.

A: I disagree with you.

Q: We're going to have an economist look at every bit of this. State Farm saved millions and millions, hundreds of millions, billions of dollars, according to their own records, didn't they? By people like you running this team and redefining the English language; isn't that true?

MR. LEFFEL: Objection. Form. You can go ahead.

Q: Isn't that true?

A: No, sir. That's not true.

Q: And that's what this says.

A: I'm sorry. So I was actually responding, and you continue to interrupt me and you continue to raise your voice. I have been calm with you all day. I'm asking for us to have a polite exchange.

(*Id.* at 368:13–369:11.) These are but a handful of numerous examples of Plaintiffs' counsel shouting at and attempting to intimidate Ms. Manduca into testifying to his *theory* of the case. (See also, e.g., *id.* at 109:4–15; 118:25–119:23; 186:15–187:11; 218:16–219:9; 222:13–23; 226:18–227:6; 247:13–249:11; 262:10–22; 264:25–265:20; 290:6–291:16; 293:18–294:4.)

Plaintiffs' counsel also repeatedly misstated to Ms. Manduca that “the rules” prevented her from answering his questions with anything other than a “yes” or “no”—even after being warned by State Farm's counsel that this instruction was improper and often after lobbing multiple and compound questions at once (*see id.* at 34:18–35:17). As just two of many examples:

Q: . . . Isn't it true that based on your training about good faith and fair dealing, it is against the law behind the scenes to write these little secret messages and lower indemnity dollars to these people who bought insurance from State Farm? Now, isn't that the law, based on your training?

MR. LEFFEL: Form. Go ahead.

Q: Yes or no, please, ma'am.

MR. LEFFEL. Same.

Q: For once, follow the rules and say yes or no.

MR. LEFFEL: Same --

Q: It is against the law to lower indemnity payments in secret, isn't that true?

MR. LEFFEL: Same objection. It is improper, Counsel, to tell the witness how they must answer a question. If that's the case, you don't need to take a deposition, just testify.

A: Sir, we have no focus on lowering indemnity payments. Our focus is to handle each claim on its merits and pay every dollar we owe.

(*Id.* at 134:13–135:15.) Likewise:

Q: -- you don't answer? I mean, if I ask you if it's light or dark in here, can you say yes, it's light? Can you ever answer a question, yes or no?

A: I just wanted to make clear that that's our – our commitment to handle claims fairly for all of our customers.

Q: It – would it be also clear to just say yes or no?

MR. LEFFEL: Objection. Form. You can go ahead.

Q: Is there something wrong with that?

MR. LEFFEL: Objection. Form. You can go ahead.

A: I just wanted to make it clear that's our focus for all of our policy holders.

Q: Well, I'm requesting politely if you'll answer these yes or no. These are training questions. This will actually go a lot smoother if you'll do that and follow the rules. . . .

(*Id.* at 138:16–139:11; *see also id.* at 159:3–22.)³ Plaintiffs' counsel also interrupted Ms. Manduca—repeatedly and consistently attempting to prevent Ms. Manduca from finishing or

³ The Tenth Circuit has criticized similar behavior by counsel at trial, noting that a court “need not endorse inferences premised on deliberate confusion, inaccurate hypothetical questions, or misstatements of earlier testimony to induce misleading testimony from a later witness.” *See Roesler v. TIG Ins. Co.*, 251 Fed. App'x 489, 496 & n.9 (10th Cir. 2007) (unpublished).

clarifying her answers—and misrepresented to Ms. Manduca that she was “cheating” by providing further context. For instance:

Q: Now, 4.1 is a larger number than 2.3. Yes or no, please, ma’am?

A: Yes, that is comparing - -

Q: Now –

A: -- data on two --

Q: Let me ask my next question –

A: -- separate --

Q: -- based upon your yes.

A: I’m sorry, I’m sorry.

THE REPORTER: One at a time, please.

THE DEPONENT: You’re raising your voice again.

Q: No, ma’am. You’re cheating and violating the rules. I’m trying to make a point, and you’re – you’re stubbornly refusing to allow me to make my point. This will go smoother and easier if you will let me cross -- I’ve been doing this 45 years. I know the rules.

(*Id.* at 247:13–248:6.) And Plaintiffs’ counsel falsely represented to Ms. Manduca that Ms. Manduca’s reasonable request for counsel to clarify a confusing and compound question was “not following the rules”:

Q: And State Farm, I assume, spent a lot of time and money on employees to put this Fire Enhancement project together. Would that be a true statement? There was a lot of people involved. A lot of time and money and effort was spent by State Farm to do this. Would that be a true statement?

A: Is it a true statement that State Farm spent a lot of money?

Q: You don’t need to repeat my question.

A: I’m trying to – earlier today --

Q: You don’t need to repeat it out loud. You can think all you want.

A: I'm just trying –

Q: I'm asking you to quit repeating my question out loud.

MR. LEFFEL: It's not –

Q: I'm asking you politely.

MR. LEFFEL: It's not improper for her to seek –

MR. WHITTEN: It is improper.

MR. LEFFEL: -- clarification of the question.

Q: Well, if the judge says its improper, it's improper. So I'm just making a request, and you have steadfastly refused to follow any of my requests, and you're not following the rules. So, we'll ask the judge to rule on that. . . .

(*Id.* at 160:13–161:16.) Mr. Whitten also threatened that he would “ask that [Ms. Manduca] be ordered to come down and give your deposition in person in the courtroom before Judge Sheperd because you're not following the rules.” (*Id.* at 197:25–198:3.) Again, this is only the tip of the iceberg. (*See also, e.g., id.* at 62:8–16; 82:1–22; 89:22–90:1; 90:22–91:5; 115:25–116:18; 117:11–13; 119:18–23; 122:6–9; 161:20–22; 163:3–6; 188:2–6; 194:8–16; 246:2–247:11; 250:18–25; 251:11–17; 260:9–12; 260:25–261:5; 327:1–328:3; 368:18–369:22; 386:16–21; 387:9–389:5.)

In addition, Plaintiffs' counsel repeatedly attempted to obtain testimony from Ms. Manduca about exhibits that counsel did not provide her with sufficient time to fully review; that counsel would not show to her in their entirety; that counsel did not provide to State Farm's counsel; and that counsel did not provide in hard copy or an electronic copy prior to or during the deposition. Rather than follow longstanding and well-established procedure, Plaintiffs' counsel flashed excerpts from exhibits on a screen—placed far away from Ms. Manduca—and instructed Ms. Manduca to answer questions based on whatever cherry-picked excerpt counsel displayed, without context. When Ms. Manduca reasonably requested time to review an exhibit as a whole, Plaintiffs' counsel insisted that Ms. Manduca was not “following the rules” and required Ms. Manduca to go

off the record to if she wanted to review an exhibit she was being questioned about. For example:

Q: How about you just tell the jury yes?

A: And you're showing one portion of a document. I'm happy to review the entire document and answer every one of your questions.

Q: Ma'am, you spent days preparing with a bunch of lawyers. I'm not getting into that. I have to take it word for word, compare. I only have six hours of this, so I have to do this. So I'm not going to explain myself again. It's a very simple question. Will you tell the jury, just a yes or no, whoever wrote this considered closing more files without payment. The number went up, they said that was a positive trend. Then, yes or no, please?

A: I am not going to speak for whoever authored the document. And again, there are five pages here where there is potentially more context. I'm happy to review the entire document, and I'm happy to answer any question that you may have.

Q: I will object as non-responsive and ask for another instruction from the Court to the jury, when this is played, that you are not following the rules. . . .

(*Id.* at 254:25–255:22; *see also id.* at 170:9–25; 184:4–25; 230:16–24; 344:24–345:7.) Plaintiffs' counsel insisted they were not required to provide anything more than a Bates number to identify an exhibit excerpted for purposes of the deposition and that State Farm's counsel could "pull it up on [its] end." That is:

MS. WHITTEN: State Farm also has all this production. So to the extent we provide Bates, you're more than welcome to pull that up on your end.

MR. LEFFEL: Respectfully, we don't have the documents with us and we don't know what exhibits you're going to use. We're just asking [counsel] for a chance to review –

MR. WHITTEN: No, come on. You guys got it on your computer, just like we did.

(*Id.* at 238:22–239:6.) Plaintiffs' counsel even went as far as to claim that State Farm's counsel's request that Plaintiffs' counsel *identify* a Bates number for an exhibit was improper because it interrupted his questioning of Ms. Manduca. (*See id.* at 239:9–24.) Both the witness and defense counsel have the right to review the entirety of an exhibit to ensure the witness understands the

full context before answering questions. This foundational principle promotes accurate testimony, prevents misleading and out of context questioning, and ensures the witness has a fair opportunity to understand the document before responding. Because Plaintiffs' counsel refused to acknowledge this hallmark of fair examination, a deposition protocol is now required.⁴

ARGUMENT AND AUTHORITY

Pursuant to 12 O.S. § 3226(C) and 12 O.S. § 3226.1, the Court, upon good cause shown, “may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden, or expense,” including an order specifying “that the discovery may be had only on specified terms and conditions.” 12 O.S. § 3226(C); *see also* 12 O.S. § 3226.1. Courts across the country have, under similar authority, entered deposition protocols governing how a deposition may be conducted—both by stipulation and over an opposing party’s objection. *See, e.g., In re: Social Media Adolescent Addiction/ Personal Injury Prods. Liab. Litig.*, No. 4:22-md-03047-YGR (N.D. Cal. Apr. 3, 2024) (attached as **Exhibit 3**) (entering deposition protocol that, *inter alia*, provides that “[c]ounsel are expected to adhere to the Northern District of California Guidelines for Professional Conduct” and establishing rules for the use of hard copy and electronic exhibits); *In re Uber Technologies, Inc. Passenger Sexual Assault Litig.*, MDL No. 3084 CRB (N.D. Cal. Aug. 9, 2024) (attached as **Exhibit 4**) (entering deposition protocol that requires, *inter alia*, counsel using exhibits “should have at least five (5) copies” of such exhibits to distribute to the witness, opposing counsel, and

⁴ Prior to filing this motion, counsel for State Farm attempted to confer in good faith with Plaintiffs’ counsel regarding the proposed Deposition Protocol. State Farm’s counsel provided a copy of the Protocol to Plaintiffs’ counsel on Friday, July 24, noted that due to the time-sensitive nature of this Motion, State Farm was intending to file the Motion on Monday, July 27, and requested that Plaintiffs’ counsel meet and confer telephonically on Friday. Plaintiffs’ counsel, however, refused to make themselves available to meet or confer regarding the Protocol until Wednesday, July 29.

the court reporter, and incorporating the “Guidelines for Professional Conduct, including those related to Discovery and Depositions, of the United States District Court, for the Northern District of California”); *United Food & Commercial Workers Union v. Chesapeake Energy Corp.*, No. CIV-09-1114-D, 2012 WL 3067438, at *1 (W.D. Okla. July 27, 2012) (establishing a deposition protocol after counsel’s allegedly improper behavior where opposing counsel requested such protocol “to prevent such conduct in future depositions.”).

Here, there is good cause to enter State Farm’s proposed Protective Order and Deposition Protocol (*see* Ex. 1, “Deposition Protocol”) to protect additional witnesses from being subjected to Plaintiffs’ counsel’s improper deposition tactics. Plaintiffs have noticed six depositions in this action—in addition to Ms. Manduca, and not including any claim specific personnel (none of whom have been noticed as of the date of this Motion). The Court denied State Farm’s motion to quash those depositions, and State Farm expects that Plaintiffs’ counsel will continue this improper behavior in those depositions. Entering the Deposition Protocol will ensure that Plaintiffs’ counsel is on notice that such behavior is prohibited and will minimize any disagreements or arguments regarding the propriety of Plaintiffs’ counsel’s deposition conduct.

I. THE COURT SHOULD ENTER STATE FARM’S PROPOSED DEPOSITION PROTOCOL

Given Plaintiffs’ counsel’s conduct at Ms. Manduca’s deposition, as is amply demonstrated in the deposition transcript excerpted above and attached in its entirety to this Motion (under seal), State Farm’s proposed Deposition Protocol most importantly and fundamentally imposes compliance with Local Rule 28 and the Rules of Professionalism established by the Oklahoma Bar Association. More specifically, it does three things. *First*, it prohibits counsel from bullying or threatening a deponent, shouting at the witness, interrupting the witness’s answers, or improperly commenting on the witness’s credibility or the hypothetical reactions of a judge or jury to the

witness's testimony. *Second*, the Deposition Protocol prohibits counsel from making false statements to a deponent regarding the deposition "rules" or procedures. *Third*, it requires counsel to either (a) bring hard copies of all exhibits to the deposition or (b) where that is not feasible, provide Bates numbers for or an electronic copy of each exhibit *one day prior* to the deposition to allow the witness and the opposing party ample time to review the entirety of the exhibit before the deponent answers questions regarding the document (and bring copies to the deposition if they so choose). These procedures, similar to those that have been adopted by courts across the country in other contentious litigation, will allow the parties to complete the remaining depositions courteously and professionally.

A. There Is Good Cause to Enter a Protocol Implementing and Enforcing Local Rule 28 and the Oklahoma Bar's Professionalism Standards.

First and foremost, the Deposition Protocol is necessary to ensure counsel conducts depositions in accordance with Local Rule 28 and the Oklahoma Bar Association's Standards of Professionalism—both of which assail the sort of bullying and offensive conduct Plaintiffs' counsel exhibited at Ms. Manduca's deposition.

Local Rule 28, regarding courtroom conduct, directs that "lawyers owe duties of professionalism to their clients, opposing parties and their counsel, the courts and other tribunals, and the public as a whole. Those duties include among others: *civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation*, and competence" and provides that "[l]awyers shall conduct their business before the Court in an appropriate and professional manner at all times."⁵ Similarly, the Oklahoma Bar Association's Standards of Professionalism

⁵ See Local Court Rules for the District Court of Comanche County State of Oklahoma, Effective Jan. 1, 2024 (Rule No. 28 Courtroom Conduct, <https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=465238> (last accessed July 23, 2026)).

provide, *inter alia*, that the Bar's members:

- “[W]ill not, even when called upon by a client to do so, abuse others or indulge in offensive conduct directed to other counsel, parties or witnesses” and “*refrain from disparaging personal remarks or acrimony towards other counsel, parties and witnesses*” and “will treat adverse parties and witnesses with civility and fair consideration.”
- “[W]ill *avoid repetitive and argumentative questions and those asked solely for the purpose of annoyance and harassment*”
- “[W]ill *refrain from self-serving speeches during depositions*” and
- “[W]ill not engage in any conduct during a deposition which would not be allowed in the presence of a judicial officer, *including disparaging personal remarks or acrimony toward opposing counsel or the witness*, as well as gestures, facial expressions, audible comment, or other manifestations of approval or disapproval during the testimony of the witness” and “will not engage in undignified or discourteous conduct which degrades the legal proceeding or the legal profession.”

(See Oklahoma Bar Assoc., OBA Standards of Professionalism (Apr. 20, 2006)⁶ (emphasis added).)

Berating and shouting at a deponent, accusing her of lying and threatening the deponent with “sanctions” is not professional behavior, violates Local Rule 28 and the Bar’s Professionalism standards, and should not be tolerated. As such, the Deposition Protocol incorporates Local Rule 28 and the Standards of Professionalism for depositions. *Cf.* Ex. 3 at 2 (entering deposition protocol providing that “[c]ounsel are expected to adhere to the Northern District of California Guidelines for Professional Conduct”); Ex. 4 at 18–19 (entering deposition protocol incorporating the “Guidelines for Professional Conduct, including those related to Discovery and Depositions, of the United States District Court, for the Northern District of California”).

⁶ <https://www.okbar.org/ec/standardssofprofessionalism/> (last accessed July 23, 2026.)

B. There Is Good Cause to Enter a Protocol Preventing Counsel from Misrepresenting to a Deponent the “Rules” of a Deposition.

Likewise, there is good cause to enter State Farm’s Deposition Protocol prohibiting counsel from misstating to a deponent that the “rules” of a deposition require the deponent to answer a question in a certain way—including misrepresenting that a deponent must respond with a one-word answer or that the deponent may not clarify an answer or ask for clarification of a question.

For one, no “rules” require a deponent to restrict their responses to simple one-word answers. *See generally* 12 O.S. § 3230, Depositions upon Oral Examination (2025) (setting forth no limits on the length or form of deponents’ answers); *see also id.* § 3230(D) (“Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of Section 2101 et seq. of this title except Section 2104.”); *see also* 12 O.S. § 2101, et seq. (setting forth no limits on the length or form of deponents’ answers.). Plaintiffs’ counsel’s repeated representations that Ms. Manduca was not “following the rules” by offering additional context were simply misstatements of law.

Nor is there any “rule” or law preventing a witness from clarifying an answer or asking counsel to repeat or clarify a question. *See id.* To the contrary, it is common practice for deposing attorneys to instruct and invite testifying witnesses at the outset of a deposition to seek clarification about a question they did not fully hear or understand, and Courts have even imposed such requirements. *See Damaj v. Farmers Insurance Co., Inc.*, 164 F.R.D. 559, 561 (N.D. Okla. 1995) (imposing requirement for future depositions that “[a]t the beginning of the deposition, deposing counsel shall instruct the witness to ask deposing counsel, . . . for clarification, definition, or explanation of any words, questions or documents presented during the course of the deposition. The witness shall abide by these instructions.”); *see also State Farm Mut. Auto. Ins. Co. v. Dowdy ex rel. Dowdy*, 445 F.Supp.2d 1289, 1294 (N.D. Okla. 2006).

Indeed, Plaintiffs' counsel began the deposition by specifically instructing Ms. Manduca that he wanted to make sure she understood his question—and demanded that if Ms. Manduca had “a problem with [his] questions,” she should tell him “out loud.” (*See* Ex. 2, June 23, 2026 N. Manduca Dep. Tr. at 10:22-25.) Counsel further instructed Ms. Manduca that if she “didn’t tell [him] she had a problem with [his questions],” he would assume that she “answered truthfully.” (*See id.* at 11:2-8.) Yet, during the deposition, Plaintiffs' counsel repeatedly claimed that “the rules” meant that Ms. Manduca could not ask for clarification of his questions. Not only is this contrary to Plaintiffs' counsel's own instructions to the deponent at the outset, but it is a misstatement of the law.

Furthermore, it is *not* permissible for an attorney to instruct a witness how to answer a question. *See, e.g., United States ex rel. Baltazar v. Warden*, 302 F.R.D. 256, 267 (N.D. IL 2014) (imposing additional guidelines on future conduct during depositions including that examining counsel “shall not characterize or comment on any answer given by a witness” and “shall not engage in any argument with the witness or opposing counsel. Any objection shall be made on the record and appropriate relief may be sought from the Court.”).

Plaintiffs' counsel's repeated misstatements of the law, in conjunction with his insistence that Ms. Manduca be required to answer each question “yes” or “no,” is in direct violation of the very “rules” he repeatedly tried to misrepresent to the witness. The Deposition Protocol makes clear that counsel is not permitted to make misrepresentations about “the rules” or the “law,” and may not instruct a witness on how to answer a question.

C. There Is Good Cause to Enter a Protocol Requiring Counsel to Provide Copies of Exhibits to the Deponent and the Opposing Party.

Finally, the proposed Deposition Protocol provides a consistent process for using exhibits at a deposition. It requires that the party using an exhibit either (1) provide a hard copy of the entire exhibit to the deponent and provide the deponent an opportunity to review the document before asking questions regarding it; or (2) alternatively, identify for the witness and opposing party—at least 24 hours before the start of the deposition—each document, by Bates number, that counsel intends to use with the witness or send an electronic copy of the documents to be used. This will allow counsel for the opposing party to either print hard copies or gather electronic copies of the complete exhibits prior to the deposition and to ensure that the witness has a way to sufficiently review the exhibits in their entirety.

Plaintiffs' counsel's refusal to provide copies of his exhibits at Ms. Manduca's deposition was not only contrary to professional courtesy, but it was also contrary to law. Further, Plaintiffs' counsel's insistence on using a screen—placed far away from the deponent—to display exhibits created several issues when Ms. Manduca was unable to see the content of the materials displayed on the screen and had to stand and walk over to the screen just to attempt to see it. (*See, e.g.*, Ex. 2, N. Manduca Dep. Tr. at 323:7–324:12.)

Oklahoma law is unambiguous that when counsel produces “documents and things . . . for inspection during the examination of a witness,” those materials “*may be inspected and copied by any party.*” 12 O.S. § 3230(G)(1) (emphasis added). Further, if the party providing the exhibits “desires to retain them,” he may either “offer copies to be marked for identification and annexed to the deposition and to serve as originals *if he affords to all parties fair opportunity to verify the copies by comparison with the originals,*” or “offer the originals to be marked for identification, *after giving to each party an opportunity to inspect and copy them.*” *Id.* (emphasis added). There

is no provision in the Oklahoma Code that permits counsel to selectively excerpt portions of an exhibit, show the witness only those portions, and refuse to allow the opposing party to inspect and copy the remainder of the exhibit. Further, the Rule of Completeness requires that “[w]hen a record *or part thereof* is introduced by a party, an adverse party may require the introduction at that time of any other part or any other record that should in fairness be considered with it.” 12 O.S. § 2107 (emphasis added); *see also* 12 O.S. § 3230(D) (“Examination and cross examination of witnesses [at a deposition] may proceed as permitted at the trial under the provisions of Section 2101 et seq. of this title except Section 2104.”).

Oklahoma law further contemplates that deposition exhibits will be furnished to opposing counsel, since the Discovery Code authorizes courts to tax as costs the “[r]easonable expenses for taking and transcribing deposition testimony, for furnishing copies to the witness and opposing counsel, and for recording deposition testimony on videotape.” 12 O.S. § 942 (emphasis added). There is also an independent evidentiary basis for requiring disclosure to State Farm’s counsel, apart from the discovery rules discussed above.

Courts confronting this exact scenario require deposing counsel to furnish exhibits to the witness and opposing counsel either before the deposition or contemporaneously with their use. The leading case is *Hall v. Clifton Precision*, which arose from a nearly identical dispute where deposing counsel refused to give the witness’s own counsel copies of documents before showing them to the witness. 150 F.R.D. 525 (E.D. Pa. 1993). The court’s resulting guideline required that “[d]eposing counsel shall provide to the witness’s counsel a copy of all documents shown to the witness during the deposition,” and that “[t]he copies shall be provided either before the deposition begins or contemporaneously with the showing of each document to the witness.” *Id.* at 531–32. An Oklahoma federal court considering a party’s Motion for an Order Directing Counsel to Cease

Obstructionist Tactics During Oral Deposition imposed this exact same requirement for future depositions, holding that the witness's counsel was entitled to a copy of all the documents shown to the witness during the deposition either before the deposition or contemporaneously with the showing of the document at the deposition. *Damaj*, 164 F.R.D. at 561. Plaintiffs' counsel satisfied neither prong here: they did not provide the exhibits to State Farm's counsel in advance, and the screen-only display of excerpted pages during the deposition did not give Ms. Manduca or her counsel the ability to see the whole document, so their conduct likely fails even the more permissive "contemporaneous" branch of this rule.

State Farm's Deposition Protocol is consistent with these rules and with similar protocols that have been adopted across the country. *Cf.*, e.g., Ex. 3 at 15 (entering deposition protocol providing that "[h]ard copies of documents which the examining attorney expects to use to examine a deponent should be provided to primary Counsel for the Parties and the deponent during the course of any in-person deposition"); Ex. 4 at 7–8, 10 (entering deposition protocol requiring that at a remote deposition "full and complete copies of deposition exhibits must be provided to the witness and counsel who are attending the deposition" and that at a live deposition, "[c]ounsel conducting an examination should have at least five (5) copies of all exhibits utilized with the witness available for use by the witness (1 copy), the witness's counsel (1 copy), other counsel (2 copies) and the Court reporter (1 copy)"). There is good cause to adopt a similar Protocol to prevent further improper exhibit gamesmanship by Plaintiffs' counsel.

Plaintiffs' counsel's requiring Ms. Manduca to go off the record to review a document, rather than continuing the examination while she did so, is equally unsupported. Examination and cross-examination at a deposition must proceed even over an objection, with "the examination . . . proceed[ing], with the testimony being taken subject to the objections." 12 O.S. § 3230(D). The

correct course is to state the request or objection on the record and continue the examination, not to suspend the deposition. Federal authority further confirms that a deponent's on-the-record review of a document is not the sort of delay that impedes a fair examination or warrants sanctions or additional deposition time for the examining party.⁷

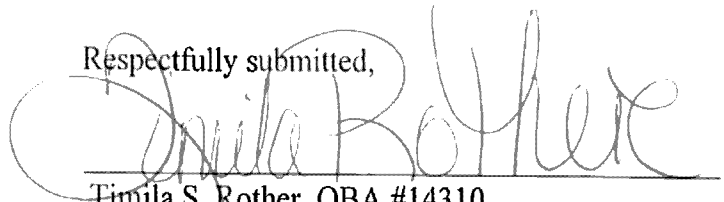
Zealous advocacy does not excuse uncivil conduct. A deposition protocol is necessary to ensure that future witnesses are not subjected to the same distasteful treatment.

CONCLUSION

WHEREFORE, State Farm respectfully requests that the Court grant its motion for entry of a Protective Order and Deposition Protocol to curb Plaintiffs' counsel's misbehavior in subsequent depositions in this matter.

⁷ See Fed. R. Civ. P. 30(d)(1) (court "must allow additional time . . . if needed to fairly examine the deponent or if the deponent . . . impedes or delays the examination"); *Rheault v. Halma Holdings Inc.*, No. 23-700-WCB, 2024 WL 5262908, at *1–2 (D. Del. Dec. 30, 2024) (denying request for additional deposition time based on delays from document review where most such instances took less than a minute, and even an eleven-minute review of a nine-page document containing fine print and redline edits did not materially prejudice the examining party, and noting that the examining party could have minimized any delay by sending the documents to the witness in advance of the deposition); *Borenstein v. Animal Found.*, No. 2:19-cv-00985-CDS-NJK, 2024 WL 5683398, at *2 n.4 (D. Nev. Feb. 14, 2024) (rejecting the contention that a witness impeded a deposition through document review where the only example provided reflected one minute spent reviewing a document). This follows from the well-established purpose of a deposition, which is "to find out what the witness saw, heard and knows, or what the witness thinks, through a question and answer conversation between the deposing lawyer and the witness"—not to permit examining counsel to dictate the terms on which a witness may examine the documents she is being questioned about. *Damaj*, 164 F.R.D. at 560–61 (adopting, with modifications, the deposition-conduct framework set forth in *Hall v. Clifton Precision*, 150 F.R.D. 525 (E.D. Pa. 1993)); accord *In re Stratosphere Corp. Sec. Litig.*, 182 F.R.D. 614, 621 (D. Nev. 1998) (agreeing that "a questioning attorney is entitled to have the witness, and the witness alone, answer questions," and that "[n]either the deponent nor his or her counsel may initiate . . . interruption of the proceeding to confer about the question, the answer, or about any document that is being examined, except to assert a claim of privilege").

Respectfully submitted,



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**ATTORNEYS FOR DEFENDANT STATE
FARM FIRE AND CASUALTY COMPANY**

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of July, 2026, the undersigned caused a true and correct copy of the above and foregoing to be hand-delivered to:

Reggie N. Whitten

Michael Burrage

Blake Sonne

Hannah Whitten

John S. Sanders

Jake Denne

WHITTEN BURRAGE

512 North Broadway Avenue, Suite 300

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And mailed on the 27th day of July, 2026, to:

Brad W. Burgess

Colby A. Stephenson

BURGESS & HIGHTOWER LAW FIRM

21 NW 4th Street, Suite 201

Lawton, OK 73505

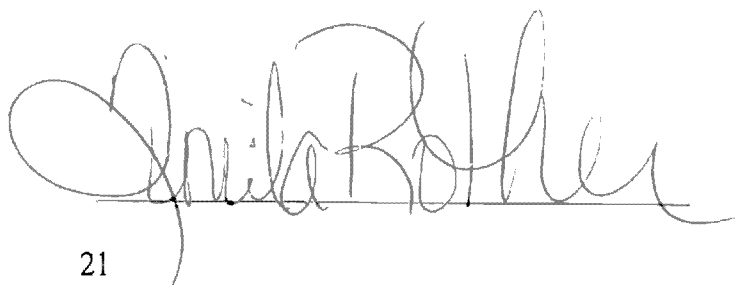


EXHIBIT 1

**IN THE DISTRICT COURT OF COMANCHE COUNTY
STATE OF OKLAHOMA**

NEIL and LACY WEST,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CJ-2025-135
	)	
STATE FARM FIRE & CASUALTY	)	
COMPANY and NANCY HOLDOMB INS.	)	
AGENCY, INC.,	)	
	)	
Defendants.	)	

[PROPOSED] PROTECTIVE ORDER AND DEPOSITION PROTOCOL

This Order shall govern the conduct of all depositions in the above-captioned case.

A. General Provisions

1. The parties and their counsel acknowledge their duty to work together cooperatively in both scheduling and conducting depositions. Nothing in this Order diminishes or otherwise limits the parties' and their counsel's obligations to conduct, participate, and defend depositions in accordance with governing law.

2. At least three (3) days prior to a scheduled deposition, the party taking the deposition shall disclose to all other parties and their counsel the names and business addresses of (a) the court reporter and (b) videographer conducting the deposition.

B. Professionalism and Conduct at Depositions

1. At any deposition in this case, counsel are expected to adhere to the Oklahoma Bar Association's Standards of Professionalism, which are attached hereto and incorporated herein.

2. At any deposition in this case, counsel must also adhere to the Local Rules, including Local Rule 28, which directs that "lawyers owe duties of professionalism to their clients, opposing parties and their counsel, the courts and other tribunals, and the public as a whole. Those

duties include among others: civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation, and competence” and provides that “[l]awyers shall conduct their business before the Court in an appropriate and professional manner at all times.”

3. Counsel will not make aggressive or threatening statements or gestures during the deposition or during breaks in the deposition and will not otherwise attempt to physically or verbally startle, intimidate, or agitate the deponent, the deponent’s counsel, the parties (including any employees or representatives of the parties), or the parties’ counsel.

4. To the extent counsel’s conduct does not comport with the Oklahoma Bar Association’s Standards of Professionalism, the Local Rules, or paragraphs (B)(1)–(3) of this Order, such conduct will be *prima facie* evidence that the deposition at issue is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent and/or the opposing party pursuant to 12 O.S. § 12-3230(E)(2).

C. Counsel’s Representations to a Deponent at Depositions

1. Counsel conducting an examination of a deponent may not represent to the deponent that any rules, law, or other authority require the deponent to answer a question in a particular way or to only use certain words when answering the question.

2. All objections, except those as to form and privilege, are reserved until trial or other use of the deposition. Once a question is asked, counsel should not coach the deponent or suggest answers, whether through objections or other means. Deposition objections may be made as to privilege or may be made only as required in order to preserve the objection. Speaking objections or those calculated to coach the deponent are prohibited. Counsel shall refrain from engaging in colloquy during a deposition. However, this paragraph shall not prevent counsel from moving to strike answers that are believed to be non-responsive or statements of counsel that are in the nature of testimony rather than questions, or to otherwise make a record as necessary while maintaining

decorum and not needlessly interrupting the flow of a deposition.

3. Counsel may instruct a deponent not to answer a question only when necessary to preserve a privilege, to enforce a limitation directed by the Court, or to present a motion under 12 O.S. § 12-3230(E)(2). When a privilege is claimed, the deponent should nevertheless answer questions relevant to the existence, extent or waiver of the privilege, such as the date of the communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information itself is privileged. Private conferences between deponents and their counsel while on the record are improper and prohibited except for the sole purpose of determining whether a privilege should be asserted.

4. Counsel conducting the examination may not interrupt the deponent while the deponent is answering a pending question or refuse to allow a deponent to clarify an answer previously given. Counsel may not misrepresent to a deponent that any rules, law, or any other authority prevent the deponent from clarifying an answer to a pending or prior question.

5. Counsel conducting the examination may not instruct a witness not to ask for clarification of a pending question and may not misrepresent to a deponent that any rules, law, or any other authority prevent the deponent from asking for clarification of a pending question.

6. To the extent counsel violates paragraphs (C)(1)–(5) of this Order, such conduct will be *prima facie* evidence that the deposition at issue is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent and/or the opposing party pursuant to 12 O.S. § 12-3230(E)(2).

D. Use of Exhibits at a Deposition

1. Documents which the examining attorney expects to use to examine a deponent should be provided to counsel for the parties and the deponent in hard copy during the course of

any in-person deposition as set forth in paragraph (D)(2) herein, except as otherwise permitted by paragraph (D)(3) herein.

2. Counsel conducting the examination should have at least three (3) copies of all hard copy exhibits utilized with the deponent available for use by the deponent (1 copy), the deponent's counsel and other counsel (1 copy) and the Court reporter (1 copy).

3. If a document to be used at a deposition is so voluminous as to make its use in hard copy infeasible, counsel conducting the examination shall notify the deponent and counsel for all parties at least 24 hours prior to the commencement of the deposition that counsel intends to use an electronic copy of the document when examining the deponent. Counsel shall, at that time: (1) if the document has received production numbering, provide the Bates numbers associated with the document to the deponent and counsel for all parties; (2) if the document has not received production numbering, provide an electronic copy of the document to the deponent and counsel for all parties. To the extent counsel fails to make the disclosures identified in this paragraph at least 24 hours prior to the deposition, counsel is prohibited from using the document electronically at the deposition.

4. To the extent counsel conducting an examination has made the disclosures identified in paragraph (D)(3), counsel may use a screen to display an electronic copy of a document to be used as an exhibit at the deposition.

5. Before marking any document as an exhibit to the deposition or asking any questions regarding the document, counsel conducting the examination must provide the deponent a reasonable amount of time to review the document—or at least the portion of the document that gives fair context to the question asked. Counsel conducting the examination may not require that the deponent go off the record to review a document though counsel may agree to an off the record

review if fairness requires it. To the extent this process unreasonably erodes the time permitted for the deposition, counsel should work to agree on some reasonable additional time or otherwise seek relief from the Court.

Dated: _____

Hon. Grant Sheperd

EXHIBIT 2

FILED UNDER SEAL

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: *Social Media Adolescent
Addiction/Personal Injury Products Liability
Litigation*

Case No.: 4:22-md-03047-YGR

MDL No. 3047

Honorable Yvonne Gonzalez Rogers
Honorable Peter H. Kang

This document relates to:

ALL ACTIONS

**STIPULATION AND ~~PROPOSED~~
ORDER GOVERNING PROTOCOL
FOR FACT DEPOSITIONS AND RULE
30(B)(6)/PMQ DEPOSITIONS**

This Stipulation and Order Governing Protocol for Fact Depositions and Rule 30(b)(6)/PMQ Depositions ("Order") shall govern the conduct of fact as well as Fed. R. Civ. P. 30(b)(6)/PMQ depositions for all cases¹ currently in MDL No. 3047 ("MDL") and hereafter added or transferred to MDL No. 3047, all cases currently in California JCCP No. 5255 ("JCCP") and hereafter added or transferred to JCCP No. 5255, and any deposition that is originally noticed in the MDL or JCCP and cross-noticed by parties in Related Actions.² Terms relating to cross-noticed depositions are further addressed in Section II.H of this Order.

¹ Unless otherwise specified in this Order, "cases" and "action" include those cases filed on behalf of individuals, Local Government and School Districts, and State Attorneys General in the MDL and JCCP.

² For purposes of this Order, "Related Actions" are identified in Appendices A, B, C, and D which may be modified or supplemented as needed pursuant to Section IV.1.

1 All Plaintiffs³ and Defendants in the MDL and JCCP (collectively, the “Parties,” or where
2 singular, the “Party”) will submit modified protocols for expert depositions at a later time.

3 **I. GENERAL OBJECTIONS**

4 **A. Cooperation**

5 1. Counsel are expected to adhere to the Northern District of California Guidelines for
6 Professional Conduct, Section 9. Discovery (As to Depositions) (the “Guidelines”).

7 2. Plaintiffs’ MDL Counsel shall coordinate the scheduling of depositions with Plaintiffs’
8 JCCP Counsel to avoid duplicative discovery, including in non-case-specific fact and corporate
9 witness depositions. Plaintiffs’ MDL and JCCP Counsel shall also make reasonable efforts
10 through the meet and confer process to coordinate the scheduling of any cross-noticed depositions
11 with counsel for plaintiffs in Related Actions.

12 **B. Attendance**

13 1. Who May be Present. Unless otherwise ordered under Fed. R. Civ. P. 26(c), and
14 subject to the provisions of the Protective Order in this MDL (see Doc. 586) (the “Protective
15 Order”), depositions may be attended by members of the Court-appointed Plaintiffs’ Leadership,
16 the State Attorneys General, and employees of their firms/offices or their designees, Counsel of
17 record in any proceeding in which the deposition is cross-noticed, members and employees of
18 their firms, attorneys specially engaged by a Defendant or Plaintiffs for purposes of the
19 deposition, the Parties or the representative of each respective Party (including in-house Counsel),
20 any person who is assisting a Party and whose presence is reasonably required by the
21 aforementioned Counsel of record (such as a consulting expert), court reporters, videographers,
22 document technicians, court interpreters, the deponent, and Counsel for the deponent.

23 2. Notwithstanding any other provision in this Order, Counsel may not attend a
24 deposition of a Party, or of a current or former employee of a Party, unless they are Counsel of
25 record in an action or cross-noticed action in which that Party is a named Plaintiff or Defendant,
26 without that Party’s consent. Absent agreement, a State Attorney General may not attend a

27
28 ³ Unless otherwise specified in this Order, “Plaintiffs” include all individuals, Local Government
and School Districts, and State Attorneys General that have filed cases in the MDL or JCCP.

1 deposition of a Defendant, or of a current or former employee of that Defendant, if the Defendant
2 is not a named Party in an action brought by that State Attorney General, and Defendants and
3 Plaintiffs who are not Parties in an action brought by a State Attorney General may not attend a
4 deposition noticed by a Defendant in that State Attorney General's case. No deposition or a part
5 of a deposition from which a Party is excluded pursuant to this provision may be used against that
6 Party in the MDL or JCCP.

7 3. As an exception, a State Attorney General may attend the deposition of any former
8 employee of a Defendant that it has named as a Party in an action brought by that State Attorney
9 General, even if that employee has been or is currently employed by a Defendant that the State
10 Attorney General has not so named.

11 4. Unnecessary Attendance. Unnecessary attendance by Counsel is discouraged and
12 may not be compensated in any fee application to the Court. Counsel who have only marginal
13 interest in a proposed deposition or who expect their interests to be adequately represented by
14 other Counsel should elect not to attend but may exercise an option to observe a deposition
15 remotely to the extent practicable.

16 5. Notice of Intent to Attend a Deposition. In order to make arrangements for adequate
17 deposition space and logistics, Counsel for each Party shall confer regarding the expected in-
18 person attendance in advance of the deposition. Specifically, absent agreement by the Parties, at
19 least seven (7) days prior to a deposition, all Parties shall inform the person(s) hosting the
20 deposition of the number of expected in-person attendees, and shall provide the identity of any in-
21 person attendees at least two (2) business days prior to the deposition with the understanding that
22 such names are provided in good faith and could be subject to change.

23 **II. CONDUCT OF DEPOSITIONS**

24 **A. Examination**

25 1. Counsel for the Noticing Party or Parties shall confer prior to the deposition
26 concerning allocation of time to examine a deponent. To the extent a deposition in this action is
27 cross-noticed in any state court or other federal court proceedings, including California JCCP No.
28 5255, those attorneys representing Parties in the cross-noticed cases that are not in the MDL or

1 JCCP may also examine the witness, but Counsel for the Noticing Party or Parties shall make
2 efforts to coordinate as to who examines the deponent and attends, including allocation of time to
3 depose the witness.

4 2. For each deposition, Plaintiffs may designate up to three examining attorneys,
5 including no more than one such attorney representing Plaintiffs in the MDL; no more than one
6 such attorney representing Plaintiffs in California JCCP No. 5255; and for witnesses relating to
7 the claims of the State Attorneys General in the MDL (including witnesses associated with
8 Defendants sued by the State Attorneys General and third-party witnesses), no more than one
9 such attorney representing State Attorneys General in the MDL. Only one examiner may address
10 the deponent at a time, and subsequent examiners shall make best efforts not to repeat the same or
11 substantially the same question asked by earlier Counsel. The primary examining attorneys for
12 Plaintiffs described in this paragraph may change from deposition to deposition.

13 3. Each named Defendant may designate one (1) primary defending or examining
14 attorney per Defendant per deposition to the extent practical. That primary defending or
15 examining attorney for the named Defendant may change from deposition to deposition.

16 4. A witness may be deposed in their individual capacity only once across the MDL
17 and JCCP, unless otherwise agreed to by the Parties in writing, or authorized by an order of the
18 Court upon a showing of good cause by the Party seeking the additional deposition. For cross-
19 noticed depositions involving parties in Related Actions, the Parties shall meet and confer in good
20 faith to coordinate with each other and with counsel for parties in the Related Actions regarding
21 the scheduling of depositions to minimize the number of times a witness shall appear for
22 deposition. The MDL/JCCP Party receiving notice of a deposition in a Related Action shall
23 provide counsel for such outside parties in Related Actions with a copy of this Order and any
24 other applicable Orders within five (5) days of receiving notice of the deposition.

25 **B. Examination of Third-Party Witness**

26 1. The Federal Rules of Civil Procedure shall govern the depositions of third-party
27 witnesses unless otherwise stated in this Order or agreed-to by the Parties and the third-party
28 witness. The Parties shall confer prior to the deposition concerning allocation of time to examine

1 the third-party witness. To avoid unnecessary disputes, the default assumption should be that the
2 7-hour time limit of Fed. R. Civ. P. 30(d)(1) governs the deposition of third-party witnesses, but
3 for third-party witnesses applicable to the bellwether cases, which shall be governed by the
4 Court's Discovery Limits Order. Parties should reserve time for re-cross and re-direct to avoid
5 exceeding these time limits. The time limit does not include time spent in questioning by the
6 third-party's defending attorney. A copy of this Order shall be attached to each third-party
7 subpoena issued or served in this action's proceedings requesting deposition testimony.

8 **C. Duration**

9 1. Absent agreement of the Parties or order of this Court based on a showing of good
10 cause, a deposition shall be limited to the time and other parameters set forth in the Court's
11 Discovery Limits Order.

12 2. After questioning by the Noticing Party or any other Party permitted to ask
13 questions pursuant to this Order, the Party defending the deposition may elect to question the
14 deponent. Other non-noticing Parties from the defending side may also elect to question the
15 deponent. If the defending Party elects to question the deponent, then the Noticing Party shall be
16 entitled to perform re-cross examination, which shall be limited in scope to the matters covered
17 by the defending Party. Following any re-cross examination, the Party defending the deposition
18 shall be entitled to perform re-direct examination, which shall be limited in scope to the matters
19 covered by the Noticing Party on re-cross examination. All time spent questioning the deponent
20 by the Noticing Party or other Party designated to examine the deponent shall count toward that
21 Party's per-deposition and cumulative time limits as set forth in the Court's Discovery Limits
22 Order. All time spent questioning the deponent by the defending Party (and those aligned with the
23 defending Party) shall not count toward the per-deposition or cumulative time limits, but such
24 Parties shall use best efforts to be efficient in their questioning of the deponent.

25 3. At the deponent's election, any deposition may be adjourned after seven hours on
26 the record, or as otherwise agreed to by the Parties. The Parties will use best efforts to complete
27 all direct, redirect, and re-cross examination on the same day. If a deposition is adjourned
28 pursuant to this provision, the deposition will continue the following day to the extent practical

1 for the deponent and Counsel.

2 **D. Means of Recording**

3 1. **Stenographic Recording.** A certified court reporter shall stenographically record all
4 deposition proceedings and testimony with “real-time feed” capabilities. The court reporter shall
5 administer the oath or affirmation to the deponent. A written transcript by the court reporter shall
6 constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30(e) and similar
7 state court rules addressing filing, retention, certification and the like.

8 2. Witnesses will have the opportunity to review transcripts and provide a statement
9 of errata changes if they so choose, in accordance with Fed. R. Civ. P. 30(e). The deponent shall
10 submit the errata sheet and Parties will submit confidentiality designations to the court reporter
11 within forty-five (45) days of the deponent’s, or their Counsel’s, receipt of the final transcript,
12 whichever is earlier. The court reporter shall serve copies of the errata sheet and confidentiality
13 designations on all Parties purchasing the transcript. The Parties may, upon agreement, modify
14 this requirement as may be necessary. Any modification shall be placed on the record at the
15 deposition or in writing. If no corrections are made within forty-five (45) days after receipt of the
16 final transcript from the court reporter, and if good cause is not shown for an extension of the
17 forty-five (45) days’ limitation, the Parties shall have the right to use a certified copy of the
18 transcript in any further proceedings as though the copy were the original transcript.

19 3. The Noticing Party shall bear the expense of stenographic recording, video
20 recording (except as provided in Section II.N), and any applicable witness fees. Any Party
21 attending a deposition may, at their own expense, request a Real Time transcript directly from the
22 Court Reporter.

23 4. Subject to the terms of the Protective Order, any Party to an action whose
24 attendance is permitted at a deposition under Section I.B may, at its own expense, obtain a copy
25 of the audio/video files and the stenographic transcript of that deposition by contacting the court
26 reporter.

27 **E. Scheduling**

28 1. Each deposition notice shall include the name, address, email address, and

1 telephone number of an attorney point of contact designated by the Noticing Party or side as well
2 as the date, time, and place of the deposition. The Noticing Party shall confer reasonably in
3 advance of the deposition with opposing Counsel and unrepresented proposed deponents to
4 schedule depositions at mutually convenient times and places. Unless otherwise agreed by the
5 Parties or ordered by the Court, the deposition notice shall be served no less than thirty (30) days
6 prior to a deposition scheduled in accordance with Section D of the Court's Standing Order for
7 Discovery in Civil Cases; said notice shall not be filed on the Court docket.

8 2. After noticing a deposition of a Party or a non-party, the Noticing Party must
9 confer about the scheduling of the deposition with opposing Counsel in the event the noticed date,
10 time, and location are not mutually convenient. If the noticed date is unworkable for the witness
11 or their Counsel, Counsel for the witness shall, within ten (10) days of receipt of the notice,
12 provide alternative dates within thirty (30) days of the noticed date, in accordance with Section D
13 of the Court's Standing Order for Discovery in Civil Cases. To facilitate scheduling, the witness
14 or their Counsel shall provide three (3) alternative dates within ten (10) days of receipt of the
15 notice. If the time or place of the deposition changes after conferring, the Noticing Party will
16 serve an amended notice of deposition.

17 3. For in-person depositions, absent agreement by the Parties, the Defending Party
18 will be responsible for arranging a deposition venue within reasonable proximity to the city in
19 which the deponent resides or works, or as otherwise agreed to by the Parties. If the deponent is a
20 Plaintiff or Plaintiff-affiliated witness, then the Plaintiff gets to choose the deposition venue
21 (presumably, offices of Plaintiffs' Counsel). If the deponent is a Defendant or Defendant-
22 affiliated witness, then the Defendant gets to choose the deposition venue (presumably, offices of
23 Defendant's Counsel). The Defending Party will bear the costs associated with the use of the
24 deposition space at the selected venue. The venue must include a main deposition room and a
25 breakout room for the examining Party's Counsel. The Party noticing a deposition has the option
26 to notice an in-person or virtual deposition. The Parties will meet and confer regarding the service
27 to be used to host virtual depositions.

1 **F. Deposition Day**

2 1. To the extent the Parties cannot reach agreement regarding scheduling of
3 depositions pursuant to the terms of this Order or Section D of the Court's Standing Order for
4 Discovery in Civil Cases, the Party resisting the deposition shall move for a protective order or
5 other relief pursuant to the Federal Rules of Civil Procedure and Local Rules.

6 2. The Court expects Counsel to mutually agree upon deposition locations. In the absence of
7 agreement, depositions of witnesses located in the United States will take place in the deponent's
8 home district.

9 **G. Interpreters**

10 1. Where a witness indicates their intention to respond to questions in a language
11 other than English, interpreters will be selected by the Party for the witness to interpret and
12 translate between the foreign language and English. Multiple interpreters may be employed to
13 allow for rotation of interpreters, and nothing shall prevent the non-witness Party from retaining
14 their own interpreter to attend the deposition for purpose of verifying the interpretation or
15 translation provided by the interpreter. Each interpreter will swear under oath or affirm prior to
16 each deposition to provide honest and truthful translations and to sign the Acknowledgement and
17 Agreement to be Bound attached as Exhibit A to the Protective Order. A monitor displaying
18 "real-time" transcription will be placed in front of the interpreters to assist in the translation.

19 2. Counsel defending a deposition will notify Counsel for the Party noticing the
20 deposition at least fifteen (15) days in advance of the deposition if the witness will require the
21 services of an interpreter. Subject to their being informed of the terms of this Order, Counsel for
22 third-party witnesses will notify Counsel for the Party noticing the deposition at least fifteen (15)
23 days in advance of the deposition that the examination will require the services of an interpreter.
24 In the event the Noticing Party receives such a notice from a third party or his/her Counsel, then
25 the Noticing Party shall inform the non-noticing side within twenty-four (24) hours of receiving
26 such notice.

27 3. Defendants and Plaintiffs who participated in the deposition will share the fees and
28 costs of the interpreters equally between the two sides.

1 4. Objections as to the accuracy of any translations of deposition testimony shall be
2 reserved.

3 **H. Cross-Noticing**

4 1. To ensure efficiency, the Parties in the MDL, JCCP, or any other Related Action
5 may be permitted to cross-notice and attend depositions (except as otherwise provided herein),
6 regardless of whether the deposition was originally noticed in the MDL, JCCP, or in any Related
7 Action.

8 2. Defendants shall provide notice to Plaintiffs' Counsel of any deposition of one of
9 their current or former employees that has been noticed to take place in a Related Action within
10 five (5) days of Defendants receiving notice.

11 3. Upon notice from Defendants, Plaintiffs will have twenty-one (21) days to decide
12 whether to cross-notice a deposition into this MDL. If Plaintiffs cross-notice such a deposition,
13 the individual and cumulative time limits for depositions apply to that cross-noticed deposition. If
14 Plaintiffs do not cross-notice the deposition of a witness in a Related Proceeding but later elect to
15 depose that witness in the MDL or JCCP, the Parties shall first meet and confer to determine
16 whether the party defending the witness consents. If the defending Party does not consent to the
17 witness's re-deposition, the Parties shall follow the dispute resolution procedures in the Court's
18 Standing Order for Discovery. If, after completing all meet and confers to try to resolve any such
19 dispute, the dispute remains unresolved, the Parties shall file a Joint Discovery Letter to this
20 Court regarding the dispute pursuant to the Court's Standing Order for Discovery, in which both
21 Parties shall address whether or not there is good cause for such leave to be granted, and whether
22 or not there is good cause for the Court to grant a protective order barring Plaintiffs from re-
23 deposing such witness.

24 4. For depositions originating outside the MDL or JCCP that are cross-noticed by
25 Parties in the MDL or JCCP, any time used by an MDL/JCCP Party questioning the witness in
26 that cross-noticed deposition shall count toward that Party's per-deposition and cumulative time
27 limits agreed to or as set forth in this Court's Discovery Limits Order.

28 5. The time limits will not apply to non-parties to the MDL and JCCP (e.g., state

1 court litigants). The MDL/JCCP Parties will use best efforts to meet and confer and coordinate
2 with such non-parties to maximize efficient use of time in the cross-noticed deposition and to
3 minimize burden on the deponent, consistent with the provisions and purpose of this Order. In all
4 events, the MDL/JCCP Parties shall have the full amount of deposition time allotted to them as
5 set forth in this Court's Discovery Limits Order.

6 6. To the extent there is an operative protocol or order in an outside proceeding that
7 would apply to a cross-noticed deposition, the MDL/JCCP Parties will take reasonable steps and
8 engage in good-faith efforts to coordinate with each other and the parties to that outside
9 proceeding regarding the appropriate rules and procedures to follow in that deposition with the
10 goal of maximizing efficiency and minimizing burden to the deponent.

11 **I. Rule 30(b)(6) Depositions**

12 1. For the purposes of efficiency, all corporate representative depositions across the
13 MDL and JCCP and any other Related Action in which the deposition has been cross-noticed,
14 will take place as 30(b)(6) depositions. Any Rule 30(b)(6) deposition notice shall describe with
15 reasonable particularity the proposed matters for examination. It shall be narrowly-tailored to
16 assist the Noticing Party with identifying relevant discovery in the related proceedings.

17 2. A Party that receives a notice of deposition under Rule 30(b)(6) may provide more
18 than one witness to address the Rule 30(b)(6) deposition notice.

19 **J. Objections and Directions Not to Answer**

20 1. Counsel shall comply with Fed. R. Civ. P. 30(c)(2) and the Northern District of
21 California Guidelines on Professional Conduct regarding objections at a deposition.

22 2. Each side shall identify one (1) attorney responsible for making objections. Unless
23 otherwise specified, an objection by such Counsel shall be deemed an objection by all similarly
24 situated Counsel (i.e., all Plaintiffs or all Defendants) with no need to join in the objection.
25 However, unless otherwise specified, an instruction not to answer by Counsel should not be
26 deemed an instruction not to answer by any other similarly situated Counsel. Each Party retains
27 the right to make objections as appropriate.

28 3. All objections, except those as to form, are reserved.

1 4. If requested by the examining attorney, the objecting Party shall provide a
2 sufficient explanation for the objection to allow the examining attorney to rephrase the question.

3 5. In accordance with Section D of this Court's Standing Order for discovery in Civil
4 Cases (effective June 1, 2023), private consultations between deponents and their attorneys on the
5 record during the actual taking of the deposition are improper, except for the purpose of
6 determining whether a privilege should be asserted. Unless prohibited by the Court for good
7 cause shown, consultations may be held during normal recesses, adjournments (including
8 overnight or over multiple days), or if there is a break in the normal course of examination and no
9 questions are pending.

10 **K. Disputes During or Relating to Depositions**

11 1. Disputes between Parties should be resolved in accordance with Section D or H of
12 the Court's Standing Order for Discovery in Civil Cases. If a dispute arises during a deposition,
13 prior to contacting the Court, the primary examining and primary defending attorneys at the
14 deposition must first meet and confer to attempt to resolve the issue. If the dispute remains, lead
15 trial counsel for the Party represented by each of these attorneys must also meet and confer (in
16 person if they are at the deposition or otherwise physically nearby each other, or by
17 videoconference) to attempt to resolve the issue. If the dispute remains, the Parties may then
18 contact the Court for an emergency telephonic hearing pursuant to Section D of the Court's
19 Standing Order for Discovery. The Parties will alert the court reporter to be prepared to read the
20 deposition question and answer at issue to the Court during any such emergency hearing.

21 2. Nothing in this Order shall deny Counsel the right to suspend a deposition
22 pursuant to Fed. R. Civ. P. 30(d)(3), file an appropriate motion with the Court at the conclusion of
23 the deposition, and appear personally before the Court. Notwithstanding this procedure, Counsel
24 are reminded of their professional responsibilities as officers of the Court and strongly
25 encouraged to make all efforts to resolve disputes through good-faith negotiations to minimize
26 involvement of the Court.

27 **L. Use of Confidential and Highly Confidential (Competitor) Information**

28 1. Access to, use, and designation of Confidential and Highly Confidential

(Competitor) testimony and information used in depositions will be governed by the Protective Order. Pursuant to paragraph 5.6 of the Protective Order, Counsel for any Producing Party shall have the right to exclude from oral depositions, other than the deponent and deponent's Counsel, any person who is not authorized by the Protective Order to receive or access Protected Material during periods of examination or testimony regarding such Protected Material.

M. Joint Deposition Status Chart

1. Effective immediately and until further Order of this Court, the Parties shall submit a Joint Deposition Status Chart as an exhibit to the monthly Discovery Management Conference ("DMC") Statement. The Joint Deposition Status Chart shall be formatted with columns to identify the names (including titles, affiliations, last known contact information, and other such identifying information, to the extent known by the listing Party) of each individual witness to be deposed by a Party in this case. A Party identifying a witness to be deposed is thereby representing to the Court and all Parties that the identifying Party reasonably expects in good faith to depose each such witness in this case.

2. The Joint Deposition Status Chart shall be regularly updated and exchanged by the Parties, and at a minimum, the chart shall be updated as part of the process for drafting each month's DMC Statement. Prior to updating the chart for the DMC Statement each month, the Parties shall meet and confer regarding scheduling and identifying proposed dates for all the listed witnesses' depositions, where the depositions shall be scheduled at times and dates within the fact discovery period.

3. The chart shall have columns identifying the date each identified witness was first identified to the other Parties as a deponent, the Party who identified each such witness, and the date(s) for each identified witness's deposition.

4. The Parties shall meet and confer in good faith to cooperate diligently in setting dates for depositions and shall be prepared to report on the progress and status of scheduling depositions at each DMC.

5. The Parties shall follow this process for identifying witnesses in good faith, and the Parties shall not abuse the process of identifying witnesses for deposition and shall not abuse

1 the Joint Deposition Status Chart (and related custodial file) procedure by over-designating and
2 then later withdrawing persons to be deposed. The Parties shall be prepared to report to the Court
3 at each month's DMC how the process is working and whether any reasonable modifications
4 need to be proposed. The Court will consider modifications to this process as appropriate, and
5 may impose sanctions for abuse of this deposition process..

6 6. As an incentive for the Parties to disclose witnesses each side intends to depose
7 and thus start the discussion as to scheduling depositions as early as possible:

8 a) If a Party first identifies a witness for deposition on or before April 30, 2024, that
9 identifying Party shall be permitted one (1) hour of additional deposition time for that
10 identified witness, where that additional one hour (if taken) shall not be counted against
11 that identifying Party's cumulative time limits allocated for depositions.

12 b) Absent agreement between the Parties, that additional one hour, if unused for that
13 particular witness, shall not carry over to another witness, and that additional one hour is
14 "additional" in the sense that the deposing Party can take one more hour of deposition of
15 that witness over and above the total time that Party could otherwise take under the
16 Court's prior hours limits per deposition. For example, as the Court stated at the March
17 18, 2024 hearing, if a Party has a twelve-hour time limit for a deposition of a witness
18 under the existing discovery limits, that Party can take a total of thirteen hours of
19 deposition time for that witness if that witness is identified by April 30, 2024 (but if that
20 Party only uses, for example, six hours of deposition time for that witness, even though
21 that Party could have taken up to twelve hours, then the additional hour is unused and
22 does not subtract from the six hours actually used for purposes of calculating how much
23 time a Party has used for their total cumulative deposition hours allocated).

24 c) Following the same process explained in M.6(a)-(b), if a Party first identifies a
25 witness for deposition on or before May 31, 2024, that identifying Party shall be permitted
26 forty-five (45) minutes of additional deposition time for that identified witness, where that
27 additional forty-five minutes shall not be counted against that identifying Party's
28 cumulative time limits allocated for depositions.

1 d) If a Party first identifies a witness for deposition on or before June 30, 2024, that
2 identifying Party shall be permitted thirty (30) minutes of additional deposition time for
3 that identified witness, where that additional thirty minutes shall not be counted against
4 that identifying Party's cumulative time limits allocated for depositions.

5 7. A Party shall identify a witness for deposition and thus for placement on the Joint
6 Deposition Status Chart in writing to all Parties (either by email, fax, overnight express delivery
7 service, or by First Class mail with return receipt requested) by providing at least the first and last
8 name of the witness, their title (or last known title) or position if known, the Defendant who either
9 employs or employed them or with whom they are affiliated for purposes of discovery in this
10 MDL (or, if they are not affiliated with a Defendant, their current employer if known), and their
11 contact information (or last known contact information) if known. The date that a witness was
12 identified for purposes of the chart shall be the date of receipt of the writing identifying that
13 witness. Counsel for the Party with whom the witness is or was affiliated shall promptly confirm
14 to all Parties the date of receipt of the writing. A Party which receives a writing identifying a
15 witness which that receiving Party believes to be incomplete or inaccurate shall promptly and in
16 good faith meet and confer with the identifying Party to correct any information concerning that
17 witness for accuracy of the chart and for reasonable planning for depositions. The Parties shall
18 cooperate in drafting the Joint Deposition Chart to agree upon and insert the date each witness
19 was identified.

20 8. The Parties shall meet and confer to discuss swapping any additional time from
21 depositions of minors to other witnesses, where appropriate, to limit the amount of deposition
22 time for witnesses who are minors.

23 **N. Documents Used in Connection with Depositions**

24 1. Custodial Files. The custodial file for each deponent identified in the Joint
25 Deposition Status Chart shall be produced by the Party by whom that deponent is (or was)
26 employed (or by the Party who is otherwise representing that deponent for purposes of discovery
27 in this case) within sixty (60) days after each such person is identified for inclusion in the Joint
28 Deposition Status Chart. The Parties shall cooperate in good faith to discuss extensions of time

1 for such productions of custodial files. If, after following the Court's dispute resolution
2 procedures for discovery disputes, the Parties cannot resolve a dispute concerning production of a
3 custodial file, the Parties shall file a Joint Discovery Letter discussing the issue in dispute
4 regarding timing of such production. As noted at the March 18, 2024 hearing and to provide the
5 Parties guidance, the Court will grant reasonable extensions of time to complete a production for
6 good cause shown. The Joint Deposition Status Chart shall include a column identifying the date
7 on which production of the custodial file for each identified witness has been produced⁴.

8 2. Production of Documents by Third-Party Witnesses. Third-party witnesses
9 subpoenaed to produce documents shall, to the extent possible, be served with the document
10 subpoena at least thirty (30) calendar days before a scheduled deposition, with a copy of the
11 subpoena served as required by Fed. R. Civ. P. 45.

12 3. Copies. Hard copies of documents which the examining attorney expects to use to
13 examine a deponent should be provided to primary Counsel for the Parties and the deponent
14 during the course of any in-person deposition.

15 4. Objections to Documents. Objections to the relevance or admissibility of
16 documents used as deposition exhibits are not waived and are reserved for later ruling by the
17 Court.

18 5. Translation of Documents. Objections as to the accuracy of any translations of
19 documents shall be reserved unless a stipulation is reached by the Parties in advance of the
20 deposition.

21 6. Confidential and Highly Confidential (Competitor) Documents. Nothing in this
22 Order modifies or reduces the obligations of the Parties as it pertains to disclosure of Highly
23 Confidential (Competitor) documents to third parties, including deponents, which shall be
24 governed by the Protective Order.

25 7. Marking of Deposition Exhibits. Unless otherwise agreed, each document referred
26 to at a deposition shall be referred to by its alpha-numeric production number except in the case

27 ⁴ The production date provided in the Deposition Status Chart does not preclude limited follow-
28 on document productions, such as the production of documents downgraded during privilege
review and the production of redacted documents.

1 of documents which have not yet received production numbering at the time of the deposition.
2 Documents that are produced in native format shall have the slip sheet with the Bates number
3 affixed to the front of the document. Counsel shall use best efforts to mark exhibits sequentially
4 during each deposition and across depositions, consistent with Northern District of California
5 Local Rule 30-2.

6 **O. Video Depositions**

7 1. All depositions will be recorded by videotape or digitally recorded video pursuant
8 to Fed. R. Civ. P. 30(b)(3) unless the Noticing Party expressly states in the deposition notice that
9 the deposition will not be video recorded or otherwise agreed-to by the Parties. Where a non-
10 Noticing Party wishes to video record the proceeding, a notice to video record the deposition shall
11 be submitted in writing to all Parties no later than seven days before the date on which the
12 deposition is scheduled to occur. The Party wishing to video record the deposition, if not
13 originally noticed as such, shall be responsible for arranging and paying for the video recording.
14 Video recorded depositions shall be subject to the following rules:

- 15 a) Video Operator. The operator(s) of the video recording equipment shall be subject
16 to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the
17 operator(s) shall swear or affirm to record the proceedings fairly and accurately.
- 18 b) Index. The video record operator shall use a counter on the recording equipment,
19 and after completion of the deposition shall prepare a log, cross-referenced to counter
20 numbers, that identifies the counter number on the tape where examination by different
21 Counsel begins and ends, where objections are made and examination resumes, where
22 exhibits are identified, and where an interruption of continuous tape-recording occurs,
23 whether for recesses, "off-the-record" discussions, mechanical failure, or otherwise.
- 24 c) Attendance. Each witness, attorney, and other person attending the deposition shall
25 be identified on the record at the commencement of the deposition. To the extent any
26 person joins attendance of a deposition after its commencement, such person shall be
27 identified on the record prior to or immediately following the next recess.
- 28 d) Standards. Unless physically incapacitated, the deponent shall be seated at a table

1 except when reviewing or presenting demonstrative materials for which a change in
2 position is needed. If the deponent is a Party or affiliated with a Party, the defending Party
3 shall be responsible for ensuring that the deposition will be conducted in an appropriate
4 setting, against a solid background with only such lighting as is required for accurate
5 video recording; if the deponent is a third party, the Noticing Party shall have this
6 responsibility. Lighting, camera angle, lens setting, and field of view will be changed only
7 as necessary to record accurately the natural body movements of the deponent. Sound
8 levels will be altered only as necessary to record satisfactorily the voices of Counsel and
9 the deponent. The witness shall appear in ordinary business attire (as opposed to, for
10 instance, a lab coat) and without objects such as a bible, medical equipment, or other
11 props. The video recording shall include the court reporter administering the oath or
12 affirmation to the witness. Thereafter, the deponent and, if necessary, exhibits and any
13 demonstratives will be videotaped.

14 e) Filing and Preservation. After the deposition is completed, the video operator shall
15 certify on camera the correctness, completeness, and accuracy of the video recording in
16 the same manner as a stenographic court reporter, and file a true copy of the video record,
17 the transcript, and the certificate with Counsel for whomever noticed the deposition.

18 f) Protective Order. No part of the video or audio recording of a video deposition
19 shall be released or made available to any member of the public, except for use in these
20 proceedings in accordance with the terms of the Protective Order.

21 **P. Remote/Virtual Depositions**

22 1. For depositions noticed as in-person, participating attorneys (i.e., those examining
23 or defending) and witnesses are expected to attend that deposition in-person rather than remotely
24 (except by agreement of the Parties, or by operation of section II.O.2, or by order of the Court).
25 For depositions noticed as virtual ("Remote Deposition"), attorney(s) defending the deposition
26 (and, if the witness has separate representation, the witness' Counsel) may be present with the
27 witness, and such Counsel must alert the Noticing Party seven business days in advance of the
28 deposition and must be present on camera at all times that the witness is. Regardless of whether a

1 deposition is taken in person or is a Remote Deposition, the Noticing Party shall make
2 arrangements to have each deposition video conferenced, so that all other persons who are
3 permitted to attend a deposition under Section I.B, of this Order may attend the deposition via
4 Zoom or a similar videoconferencing platform.

5 2. By indicating in its notice of deposition that it wishes to conduct a Remote
6 Deposition, a Party shall be deemed to have moved for such an order under Fed. R. Civ. P.
7 30(b)(4). Unless an objection is filed and served within ten (10) calendar days after such notice is
8 received, the Court shall be deemed to have granted the motion.

9 3. To avoid any potential disruptions of a Remote Deposition, those attending shall
10 silence notifications for applications not in use, including but not limited to instant messaging
11 and/or e-mail notifications. The Court recognizes that the microphones for certain attendees (such
12 as the witness, the court reporter, the attorney taking the deposition, and the attorney defending
13 the deposition) must remain on when the deposition is on the record. Other attendees should mute
14 microphones when not speaking. All examining attorneys and all attorneys defending the
15 depositions must be visible to all other participants during the deposition.

16 4. During the deposition examination, no person attending the deposition, or anyone
17 acting on their behalf, shall be permitted to communicate with the witness by any means not
18 recorded in the same manner as the deposition itself (e.g., no text or email exchanges with the
19 witness and no additional means of communicating with the witness, such as an additional
20 computer or tablet). However, the witness's Counsel may communicate with the witness,
21 including telephonically, by other electronic means, or directly (if he or she is present with the
22 witness), during breaks as consistent with FRCP 30(c)(1) and other applicable law.

23 5. If any privileged information is disclosed during a Remote Deposition due to a
24 technical disruption, or to the extent any privileged conversation between a witness and his or her
25 Counsel is inadvertently heard by any other Party and/or captured by any recording device, such
26 disclosure shall not be deemed a waiver of privilege.

27 6. Use of Electronic and Hard Copy Exhibits in Remote Depositions. Counsel taking
28 a Remote Deposition shall use electronic exhibits pursuant to the following provisions:

1 a) For any exhibit presented electronically, the exhibit must be made available to the
2 deponent to review in its entirety, the witness must be afforded the independent ability to
3 review the exhibit in its entirety, and the witness must be afforded the independent ability
4 to control manipulation of the document (scrolling, etc.) to facilitate that review. Full
5 electronic copies of the exhibit must be transmitted to all Participants, and received by
6 them, before questioning begins on the exhibit. The attorney using the exhibit will be
7 responsible for providing the marked original to the court reporter.

8 b) If a questioning Party wishes also to show or share an electronic version of an
9 exhibit during the course of the deposition, it may do so, but, the witness may not be
10 required to review a document on the screen if he or she chooses instead to review the
11 downloaded electronic document on their own.

12 c) While the default assumption shall be that electronic exhibits will be used in most
13 instances, the Parties agree to work in good faith to reach agreements regarding the
14 provision of hard copy exhibits to a deponent on request. To the extent hardcopy exhibits
15 are provided to the deponent, the package containing the documents shall be sealed, and
16 the witness shall unseal it only when asked to do so on the record at the deposition.

17 7. Defending lawyers and the witness shall take appropriate steps in advance of the
18 deposition to ensure that the witness is reasonably capable of using the Remote Deposition
19 technology, which can be satisfied by arranging a test of the witness's video/audio equipment and
20 internet connection in advance of the deposition by the vendor retained for the Remote
21 Deposition.

22 **Q. Stipulation Regarding the Transcript**

23 1. Depositions of Parties. Unless otherwise agreed, the following stipulation shall
24 apply to all depositions taken of Parties and Party-affiliated witnesses and shall be included in
25 each transcript by the court reporter:

26 Upon completion of the transcription of this deposition, the original transcript shall be
27 sent to Counsel for the witness by the court reporter. Counsel shall promptly forward it to
28 the witness for review, correction, and signature under penalty of perjury. Within 45 days
of receiving the final transcript from the court reporter, the witness' Counsel shall forward
the original transcript plus corrections to the court reporter, who will promptly notify all

1 Counsel who questioned the witness and all Counsel who requested a certified copy of the
2 transcript of its receipt and any changes made by the witness. The Parties may shorten this
3 time period by agreement and, if the Parties cannot agree, the Party seeking a shortened
time period may seek relief from the Court.

4 2. If a Party or Party-affiliated witness is not represented by Counsel, the original
5 transcript will be sent to the witness by the court reporter. After review, correction, and signature
6 within 45 days from the date of receipt, the witness shall return the original transcript to the court
7 reporter, who will notify all Counsel of its receipt and any changes to testimony made by the
8 witness. The Parties may shorten this time period by agreement and, if the Parties cannot agree,
9 the Party seeking a shortened time period may seek relief from the Court.

10 3. The court reporter will provide the original transcript to the first examining
11 attorney. That attorney shall be responsible for maintaining the original transcript and will make it
12 available for any hearings or trials upon reasonable request by another Party. In the event the
13 original transcript is lost, stolen, or otherwise unavailable, a certified copy reflecting any changes
14 made to the original transcript may be used in place of the original.

15 4. Depositions of Third-Party Witnesses. The stipulation set forth above shall be proposed to
16 Counsel for any third-party witness, or, if such witness is not represented by Counsel, to the
17 witness.

18 **III. USE OF DEPOSITIONS**

19 1. This Order does not address the admissibility for trial purposes of any testimony
20 taken by deposition. Determinations on the admissibility of any such testimony shall be made by
21 the trial court.

22 2. Third parties in any other cases (such as a Related Action) who seek copies of a
23 deposition transcript from this MDL (such as by way of discovery in such other cases) shall first
24 agree to be bound by the Protective Order governing this case (by signing Exhibit A to the
25 Protective Order) or by a substantially similar Protective Order in that other Related Action
26 before receipt of any such deposition transcript and shall treat any such deposition transcript
27 pursuant to the terms of the applicable Protective Order. To the extent copies of a deposition
28 transcript from this MDL are sought from a Party other than the Designating Party under the

Protective Order, Counsel for the Party receiving such request shall notify the Designating Party of the request before producing the transcript.

IV. AMENDMENTS TO THIS ORDER

1. Minor amendments and changes to this Order for any deposition, such as the time allotted for questioning, dates, and Counsel permitted to attend depositions, may be made by agreement of the Parties without further order of the Court. All such minor amendments shall be placed on the record at the beginning of the deposition or as soon as practicable. Changes to the terms of this Order that apply to the procedure as a whole shall be brought to the Court after the Parties first meet and confer in good faith.

V. FEDERAL RULES OF CIVIL PROCEDURE APPLICABLE

1. The Federal Rules of Civil Procedure and Federal Rules of Evidence shall apply to the taking of depositions pursuant to this Order unless specifically modified herein.

IT IS SO STIPULATED, through Counsel of Record.

DATED: April 3, 2024

Respectfully submitted,

/s/ Lexi J. Hazam

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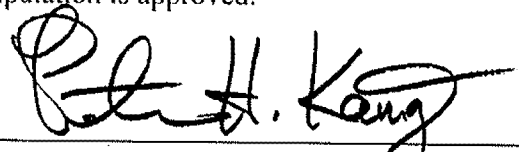
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IT IS SO ORDERED that the foregoing Stipulation is approved.

DATED: April 3, 2024



HONORABLE PETER H. KANG
United States District Court Magistrate Judge

APPENDIX A – META RELATED ACTIONS

Meta lists below the litigations within the scope of Related Actions*:

- *State of Arkansas, ex rel. Tim Griffin, Attorney General v. Meta Platforms, Inc.; Facebook Holdings, LLC; Facebook Operations, LLC; Meta Payments Inc.; Facebook Technologies, LLC; Instagram, LLC; and Siculus, Inc.*, Case No. 57CV-23-47 (Arkansas Circuit Court, Polk County).
- *District of Columbia v. Meta Platforms, Inc. and Instagram, LLC*, Case No. 2023 CAB 006550 (D.C. Superior Court).
- *Commonwealth of Massachusetts v. Meta Platforms, Inc. and Instagram, LLC*, Case No. 2384CV02397 (Massachusetts Superior Court, Suffolk County).
- *State of Mississippi, ex rel. Lynn Fitch, Attorney General v. Meta Platforms, Inc.; Instagram, LLC; Meta Payments, Inc., and Meta Platforms Technologies, LLC*, Case No. 25CH1:23-cv-01205 (Mississippi Chancery Court, First Judicial District).
- *State of New Hampshire v. Meta Platforms, Inc., and Instagram, LLC*, Case No. 217-2023-CV-00594 (New Hampshire Superior Court, Merrimack, SS).
- *State of Oklahoma, ex rel. Gentner Drummond, Attorney General of Oklahoma v. Meta Platforms, Inc., and Instagram, LLC*, Case No. CJ-2023-00180 (Oklahoma District Court, Osage County).
- *State of Tennessee, ex rel. Jonathan Skrmetti, Attorney General and Reporter v. Meta Platforms, Inc., and Instagram, LLC*, Case No. 23-1364-IV (Tennessee Chancery Court, Davidson County).
- *Utah Division of Consumer Protection v. Meta Platforms, Inc., and Instagram, LLC*, Case No. 230908060 (Utah Third District Court, Salt Lake County).
- *State of Vermont v. Meta Platforms, Inc., and Instagram, LLC*, Case No. 23-CV-04453 (Vermont Superior Court, Chittenden County).
- *State of New Mexico, ex rel. Raul Torrez, Attorney General v. Meta Platforms, Inc.; Instagram, LLC; Meta Payments Inc.; Meta Platforms Technologies, Inc; and Mark Zuckerberg*, Case No. D-0101-CV-202302838 (New Mexico First Judicial District Court,

1 Santa Fe County).

- 2 • *State of Nevada v. Meta Platforms, Inc., and Instagram, LLC*, Case No. A-24-886110-B
3 (Nevada District Court, Clark County).
- 4 • *State of Nevada v. Meta Platforms, Inc., and Instagram, LLC*, Case No. A-24-886115-B
5 (Nevada District Court, Clark County).
- 6 • *State of Nevada v. Meta Platforms, Inc., and Instagram, LLC*, Case No. A-24-886120-B
7 (Nevada District Court, Clark County).
- 8 • *M.G. v. Meta Platforms, Inc.; Instagram, LLC; Facebook Payments, Inc.; Siculus, Inc.;*
9 *Facebook Operations, LLC; and Tory Dwanell Saidstuart* , Case No. 3:23-cv-01861 (D.
10 Or.).
- 11 • *Norma Nazario, individually and as Administrator of the Estate of Zackery Nazario v.*
12 *Bytedance LTD.; Bytedance, INC.; TikTok, Inc.; Meta Platforms, Inc.; Metropolitan*
13 *Transportation Authority, and New York City Transit Authority*, Case No. 0151540/2024
14 (N.Y. Supreme Ct., New York County).

15 *Upon agreement between the Plaintiffs and Meta, this list may be updated without leave of
16 Court and by serving it on all Parties.

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APPENDIX B – SNAP RELATED ACTIONS

Snap lists below the litigations within the scope of Related Actions*:

- *State AG Nevada v. Snap, Inc.*, A-24-886113-B (Nevada District Court, Clark County)
- *Kennedy Harris, et al v. Snap*, 05251 LACV044283 (Iowa District Court, Dallas County)
- *Linda Blea v. Snap*, D-412-CV-2022-00236 (New Mexico – 4th Judicial District, San Miguel County)
- *V.V. and E.Q., individually and as next friends to minor C.O., v. Meta, et al.*, FBT-CV-23-5050779-S (Conn. Superior Court, Judicial District of Fairfield at Bridgeport); 3:23-cv-00284-SVN (D. Conn.); UWYCV235032685S (Conn. Superior Court, Complex - Waterbury Dist.)
- *Cody Dahl and Tonya Cole Dahl v. Alphabet, Inc., et al.*, 4:23-cv-9472 (W.D. Tex.)

* Upon agreement between the Plaintiffs and Snap, this list may be updated without leave of Court and by serving it on all Parties.

APPENDIX C – TIK TOK RELATED ACTIONS

TikTok lists below the litigations within the scope of Related Actions*:

- *Nasca, et al. v. ByteDance Ltd., et al.*, No. 2:23-cv-02061 (E.D.N.Y.)
- *Anderson, et al. v. TikTok Inc., et al.*, No. 2:22-cv-01849-PD (E.D. Pa.), appeal docketed, No. 22-3061 (3d Cir.)
- *Bogard, et al. v. TikTok Inc., et al.*, No. 3:23-cv-00012 (S.D. Ind.)
- *Nazario, et al. v. ByteDance Ltd., et al.*, No. 151540/2024 (New York Supreme Court, New York County)
- *Nevada v. TikTok Inc., et al.*, No. A-24-886127-B (Nevada District Court, Clark County)
- *Utah v. TikTok Inc., et al.*, No. 230907634 (Utah Third District Court, Salt Lake County)
- *Arkansas v. TikTok Inc., et al.*, No. 12CV-23-65 (Arkansas Circuit Court, Cleburne County)
- *Iowa v. TikTok Inc., et al.*, No. 24-1522 (Iowa District Court, Polk County)
- *Kansas v. TikTok Inc., et al.*, (Kansas District Court, Shawnee County)
- *Indiana v. TikTok Inc., et al.*, No. 23A-PL-03110 (Ind. Ct. App.)

* Upon agreement between the Plaintiffs and TikTok, this list may be updated without leave of Court and by serving it on all Parties.

APPENDIX D –YOUTUBE RELATED ACTIONS

YouTube lists below the litigations within the scope of Related Actions*:

- *Cody Dahl et al. v. Alphabet, Inc. et al.*, Case No. 1:23-cv-01496 (W.D. Tex.) (removed December 11, 2023)

* Upon agreement between the Plaintiffs and YouTube, this list may be updated without leave of Court and by serving it on all Parties.

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ATTESTATION

I, Jesse S. Krompier, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: April 3, 2024

/s/ Jesse S. Krompier
Jesse S. Krompier

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: UBER TECHNOLOGIES, INC.
PASSENGER SEXUAL ASSAULT
LITIGATION

MDL No. 3084 CRB

**PRETRIAL ORDER NO. 16:
STIPULATED DEPOSITION PROTOCOL**

This Document Relates to:

ALL ACTIONS

This Order shall govern the conduct of all depositions¹ in the following cases: (1) those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation (“JPML”) pursuant to its order entered on October 4, 2023, (2) any tag-along actions transferred to this Court by the JPML pursuant to Rules 7.1 and 7.2 of the Rules of Procedure of the Panel, after the filing of the final transfer order by the Clerk of the Court, and (3) all related actions originally filed in this Court or transferred or removed to this Court and assigned thereto as part of *In re: Uber Technologies, Inc. Passenger Sexual Assault Litigation*, MDL No. 3084 (“MDL 3084”). These cases will be referred to as the “MDL Proceedings.”

¹ The Court anticipates entering a subsequent order addressing in more detail the depositions of Plaintiffs and other plaintiff-specific witnesses, including their health care providers and any Uber employees or other individuals who were specifically involved in responding to the alleged incident. This subsequent order will address limitations on the number and length of examinations, as well as any issues relating to the identity of Plaintiff and disclosure of confidential documents to third parties.

1 **I. General Provisions**

2 The Parties and their counsel acknowledge their duty to work together cooperatively in
3 both scheduling and conducting depositions. Any Party's agreement to and appearance on this
4 Stipulation does not constitute a waiver of any defense or right not specifically addressed.

5 **A. Noticing Depositions**

6 1. *Notice of Deposition Procedures.* All deposition notices shall comply with the
7 requirements of Federal Rule of Civil Procedure 30(b) and include the name, address, and
8 telephone number of an attorney point of contact designated by the Party noticing the deposition
9 (the "Deposition Liaison Counsel") as well as the date, time, and place of the deposition, including
10 whether the deposition will proceed in person or remotely. The Deposition Liaison Counsel will
11 be responsible for all logistical issues and communications related to the noticed deposition. If a
12 deposition is cross-noticed, the notice shall comply with the rules of the relevant jurisdiction. A
13 party that cross-notices a deposition in one or more cases outside the MDL Proceedings is
14 responsible for service of both the original notice and cross-notice on all parties entitled to receive
15 such notice, both in this MDL and the other action(s). All depositions noticed or properly cross-
16 noticed in this MDL are subject to this deposition protocol. Defendants shall include the following
17 E-mail address [email to be provided] on all communications requesting deposition testimony
18 and/or document production. Plaintiffs shall include the following E-mail address [email to be
19 provided] on all communications requesting deposition testimony and/or document production.

20 2. *Third-Party Depositions.* All third-party subpoenas seeking deposition testimony shall
21 comply with Federal Rule of Civil Procedure 45. A copy of this Protocol shall be attached to each
22 third-party subpoena issued or served in the MDL Proceedings requesting deposition testimony.
23 All third-party subpoenas requesting deposition testimony and/or document production shall be
24 served as provided in Section I.A.1.

25 **B. Scheduling and Production of Custodial Files**

26 Absent extraordinary circumstances, counsel for the noticing party should consult in
27 advance ("Initial Notification") with counsel for the deponent to schedule depositions at mutually
28 convenient times and locations.

1 The parties agree that ten (10) days after a party makes an "Initial Notification" that it
2 would like to schedule a deposition (the "Requesting Party"), the party receiving that notification
3 (the "Receiving Party") shall either:

- 4 1. Propose 2 dates for the witnesses' deposition; or
- 5 2. Notify the Requesting Party that the Receiving Party cannot yet propose dates for the
6 requested deposition(s) and provide the basis for the Receiving Party's inability to provide such
7 dates.

8 Within three days of receiving proposed deposition dates from the Receiving Party under
9 paragraph (1) above, the Requesting Party will confirm by e-mail acceptance of the proposed dates
10 or ask for alternative dates. If the Requesting Party accepts the proposed dates, the Requesting
11 Party will issue a Deposition Notice ("First Confirmed Date").

12 The portions of the custodial file that a party is obligated to produce shall be produced at
13 least twenty-one (21) days in advance of the First Confirmed Date. If a First Confirmed Date is
14 subsequently rescheduled, the production of the custodial file shall not be delayed because of the
15 rescheduling, unless the rescheduling occurs because of an issue concerning production of a
16 custodial file. If there is an issue with the timely production of a custodial file, the producing party
17 must upon learning of the issue promptly notify the Receiving Party, describe the issue, and
18 provide a good-faith estimated date as to when the issue is expected to be resolved and its
19 production will be substantially complete.

20 If the initial response by the Receiving Party is to notify the Requesting Party that there is
21 no date pursuant to paragraph (2) above, the Receiving Party shall have seven (7) additional days
22 to either provide reasonable proposed dates for the deposition or a further update on the Receiving
23 Party's efforts to provide dates for the deposition ("Second Response"). If no date is proposed by
24 the Second Response deadline, then the Receiving Party shall produce the custodial file on the
25 earlier of the following dates: twenty-one (21) days from the Second Response date or twenty-one
26 (21) days in advance of any deposition date subsequently agreed, whichever date is earlier.

27 Ten (10) days after any party produces a custodial file, the producing party shall provide a
28 privilege log that corresponds to the custodial file and complies with the requirements of the

1 Court's Order related to Privileged Materials. Any challenges to those privilege logs will be made
2 within seven (7) days. The Parties will meet and confer about any challenges within four (4) days.
3 The Parties will make good faith and reasonable efforts to produce documents initially withheld
4 in whole or in part on grounds of privilege that are downgraded in the privilege logging or meet
5 and confer process within five (5) calendar days of serving the log or the conclusion of the meet
6 and confer unless otherwise agreed upon by the parties. For Defendants' employee or former
7 employee witnesses, personnel files will be produced 14 days before the deposition.

8 When counsel have agreed on mutually acceptable dates and location for a deposition, all
9 parties shall be notified of the scheduled deposition pursuant to Section I.A.1. If the parties cannot
10 agree on a date, time, or location for the deposition after undertaking good faith efforts to reach
11 agreement, the deposition may still be noticed, subject to appropriate motions to quash.

12 Once a deposition has been scheduled, except upon agreement of counsel for the noticing
13 party and the deponent, or upon leave of the Court, it shall not be taken off calendar, postponed,
14 or rescheduled fewer than three (3) calendar days in advance of the date upon which the deposition
15 has been scheduled to occur.

16 **C. Location for Depositions**

17 Unless the parties agree otherwise, depositions of Defendant and their current or former
18 officers and employees will take place within seventy-five (75) miles of the location where the
19 deponent resides, is employed, or regularly transacts business in person, or, where agreed by both
20 the noticing party and the deponent, at the offices of counsel for the parties, the federal courthouse
21 in the witness's home federal jurisdiction, or the courthouse in the Northern District of California.
22 Counsel will make reasonable efforts to obtain the agreement of former employees to appear at
23 designated locations.

24 Unless otherwise agreed, the deposition of an expert witness will take place in the expert
25 witness's home federal jurisdiction or, where agreed, at the offices of counsel for the party who
26 has retained the expert witness.

27 Federal Rule of Civil Procedure 45(c) shall govern the location of third-party depositions.
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1 **D. Remote Depositions**

2 Conducting in-person depositions is not always feasible. A noticing party may choose to
3 conduct the deposition remotely (remote deposition), that is, in a manner that allows for the
4 deponent, all other persons entitled to attend, and all other necessary persons (e.g., the officer/court
5 reporter) to participate without attending the deposition in person. A remote deposition may be
6 conducted by a video-conferencing platform, or by another means agreed to by the parties. A
7 remote deposition shall be considered taken in the county and at the place where the deponent is
8 located, or other reasonable location agreed to by the parties.

9 If a deposition proceeds remotely (“Videoconference Deposition”), the following shall also
10 apply:

11 1. If the witness’s counsel or any Party’s counsel is physically located in the room or
12 facility where the witness is located, then the noticing counsel has the right to be physically located
13 in the room or facility where the witness is located. This arrangement shall be disclosed to the
14 requesting or noticing counsel as soon as practicable within fourteen (14) days of the initial request
15 to deponent’s counsel for a deposition and, if any event, no later than twenty-one (21) days in
16 advance of the confirmed deposition as reflected in a formal deposition notice.

17 2. Any Videoconference Deposition taken pursuant to this Court’s Orders must
18 comply with the requirements in Rule 30(b)(5). This includes the requirements that, (1) “[u]nless
19 the parties stipulate otherwise, a deposition must be conducted before an officer appointed or
20 designated under Rule 28,” and (2) that officer must administer the oath or affirmation to the
21 deponent. Fed. R. Civ. P. 30(b)(5). A Videoconference Deposition taken pursuant to this Order
22 will be deemed to have been taken before an appropriate officer despite the court reporter not being
23 in the same physical location as the witness—as long as the court reporter attends the deposition
24 by the same remote means as the other participants and is able to hear and communicate with other
25 attendees. To the extent permitted by the law of the state in which the witness is located, the witness
26 may be sworn in remotely with the same effect as an oath administered in person.

1 3. The deposition notice for any Videoconference Deposition pursuant to Rule 30
2 must list the location(s) (city and state) from where the witness will attend and which information
3 the witness's counsel must provide upon request of the noticing party.

4 4. All deposition notices must identify the company that will host and record the
5 remote deposition (the "Remote Deposition Vendor") and contain a general description of how
6 those attending may access the remote connection being utilized (*e.g.*, Zoom, GoToMeeting,
7 WebEx). The party noticing the deposition must provide the witness and all other attendees with
8 detailed instructions regarding how to participate in the Videoconference Deposition at least three
9 (3) business days before the deposition.

10 5. At the time of the deposition, the witness must advise the court reporter of their
11 physical location. The witness should endeavor to participate in the deposition from a quiet, well-
12 lit, indoor location, while seated in front of a neutral background and facing the camera being used
13 to record the witness. To avoid any potential disruptions of a Videoconference Deposition, those
14 attending must enable "do not disturb" settings for applications not in use, including but not limited
15 to, Skype, instant messaging, and/or e-mail notifications. The Court recognizes that the
16 microphones for certain attendees (such as the witness, the court reporter, the attorney taking the
17 deposition, and the attorney defending the deposition) must remain on when the deposition is on
18 the record. Other attendees should mute microphones when not speaking. The Remote Deposition
19 Technology must be able to show in real-time a list of all persons attending the Videoconference
20 Deposition.

21 6. Counsel serving as a first or second chair and/or the interpreter shall be on camera,
22 including counsel present in the room with the witness, and shall ensure no audio disruption if
23 there are multiple remote attendees in a single location.

24 7. During live testimony on the record, no one, including attorneys, shall
25 communicate in any manner with the deponent in any way that cannot be heard or seen by all
26 Participants to the deposition. This includes silent signals and private messages of any kind,
27 including, but not limited to, instant messages or text messages conveyed through phones, smart
28 watches, or similar devices. Such prohibition shall not affect the right of the deponent and their

1 lawyer(s) to communicate in private off the record to the extent otherwise permitted under Federal
2 Rule of Civil Procedure 30(c)(1).

3 8. During the deposition, full and complete copies of deposition exhibits must be
4 provided to the witness and counsel who are attending the deposition. Deposition exhibits may be
5 made available in physical (hardcopy) form or via the Remote Deposition Technology, file sharing
6 software, or other electronic means. A witness may be required to use a keyboard, mouse, or other
7 similar means to open and/or advance the pages of an exhibit. Access to a full copy of the
8 deposition exhibit electronically via iPad, tablet, laptop, or other device, will be deemed to equate
9 to hardcopy access. During the deposition, the Remote Deposition Technology must allow: (1) the
10 witness to privately access any part of the exhibit; (2) counsel to display and annotate exhibits for
11 the witness; (3) counsel to add and remove exhibits; and (4) counsel to change the order in which
12 the exhibits are presented to the witness.

13 9. Any pauses, lags, and/or disruptions in technology, including but not limited to
14 interruptions in Internet connectivity, will not result in waiver of objections by any party. If any
15 pauses, lags, and/or disruptions are persistent or prolonged, the Parties should: (1) extend the
16 remote deposition by an amount of time equal to the duration of the pause, lag, and/or disruption,
17 provided that the additional time is less than an hour; or (2) consider rescheduling the remote
18 deposition for a later date, if the *additional* time required is an hour or more.

19 E. Attendance

20 1. *Who May Be Present.* Unless otherwise ordered under Federal Rule of Civil
21 Procedure 26(c) and subject to the terms of the Protective Order entered in the MDL Proceedings,
22 only the following individuals may attend depositions: attorneys of record in the Uber MDL and
23 the State Court JCCP Case;² attorneys specially engaged by a party for purposes of the deposition;
24 parties or in-house attorneys of a party; court reporters; videographers; the deponent; and counsel
25 for the deponent. An expert or non-testifying consultant for a party may attend if the party
26 employing that expert or non-testifying consultant provides: (a) advance notice of their attendance,
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28 ² *In Re Uber Rideshare Cases*, Case No. CJC-21-005188, Judicial Council Coordination
Proceeding No. 5188.

1 per section E.3; and (b) confirmation that the expert or consultant has signed attestations
2 confirming adherence to all applicable protective orders. Any party that objects to the attendance
3 of such expert or consultant may seek relief from the Court in advance of the deposition.

4 2. *Unnecessary Attendance.* Unnecessary attendance by counsel is discouraged.
5 Counsel who have only marginal connection with a deposition or who expect their interests to be
6 adequately represented by other counsel should not attend.

7 3. *Notice of Intent to Attend a Deposition.* In order for counsel to make arrangements
8 for adequate deposition space, representatives for Plaintiffs and Defendants shall share the number
9 of expected attendees with each other no fewer than five (5) business days prior to the deposition,
10 whenever feasible. Nothing in this section shall prevent a party or counsel hosting a deposition
11 from requiring, for security purposes, the names of all attendees appearing at the deposition. If
12 requested, this information must be provided at least two (2) business days in advance of the
13 deposition.

14 4. *Remote Attendance:* The noticing party shall provide a call-in number and any other
15 information necessary to attend a deposition by phone or alternatively provide a zoom link and
16 other information necessary to attend a deposition via remote video and audio means.

17 5. *Identify Attendance on the Record:* Under no circumstances shall a person attend
18 any part of a deposition in person, or by any remote means such as telephone, internet link-up,
19 videoconference, or any other kind of remote-access communication, without being identified on
20 the record.

21 **F. Coordination of Depositions**

22 1. *Coordination with State Court Proceedings:* The parties to this MDL shall use their
23 best efforts to communicate, cooperate, and coordinate with state court litigants in the pending
24 Judicial Council Coordination Proceeding Case No. 5188, Case No. CJC-21-005188, assigned to
25 the Honorable Ethan P. Schulman (hereafter the "JCCP Proceedings") to schedule and take
26 depositions, including working on agreements for the cross-noticing of depositions that are
27 common to the JCCP and MDL Proceedings. The Court recognizes that the state courts are
28 independent jurisdictions; the parties in the MDL shall facilitate communication with counsel in

the JCCP Proceedings to efficiently conduct discovery.³ Absent good cause or court order, common witnesses should not be deposed separately in this MDL Proceeding and the JCCP case.

2. *Limitation on Repeated Depositions.* Depositions taken in this MDL pursuant to this Order shall not be retaken in this MDL without a further Order of the Court upon good cause shown, e.g., incomplete custodial file initially produced, or an agreement of the parties. Counsel for any witness, and, in the case of former employees, for a party affiliated with that witness, shall use best efforts to minimize the necessity for the continued or further deposition of any witness by ensuring that deposing counsel have the complete production of information relevant to the witness sufficiently in advance of the deposition to permit proper and comprehensive examination of the witness on the dates scheduled. The Court may enter additional provisions regarding repeated depositions in subsequent Orders.

3. *Use of Depositions.* All depositions noticed in this MDL or appropriately cross-noticed pursuant to this Protocol are deemed noticed and taken in the MDL Proceedings, subject to appropriate evidentiary objections to the admission of deposition testimony or exhibits on summary judgment or at trial.

II. Conduct of Depositions

A. Examination

1. *Examiners:* Absent extraordinary circumstances, questioning related to the MDL deposition notice or cross-notice should be conducted by no more than two MDL Plaintiffs' attorneys for all Plaintiffs in the case of depositions noticed by Plaintiffs. Likewise, for depositions noticed by Defendants, questioning should be conducted by no more than two attorneys for Defendants. Nothing in this protocol requires parties to waive their rights to question a witness. Counsel shall confer prior to the deposition concerning allocation of time to question a deponent. Counsel's failure to allocate time among themselves or to enforce that allocation of time among themselves during a deposition shall not constitute grounds to extend a deposition. Counsel should cooperate in the allocation of time to ensure efficiency for witnesses, and to comply with the time limits set by the Court.

³ The Court expects this issue will be subject to a separate agreement involving those parties.

1 2. *Sequence of Questioning.* The questioning of current or former employees of
2 Defendant(s) will be conducted in the following presumptive sequence: (1) examination by the
3 opposing parties, (2) questioning by other parties; (3) counsel for the witness and the witness's
4 employer; (4) any reexamination by the counsel listed above. The questioning of a third-party will
5 be conducted in the following presumptive sequence: (1) examination by the noticing party, (2)
6 questioning by other parties; (3) counsel for the witness and/or the witness's employer; (4) any
7 reexamination by the counsel listed above. If a party contends that the presumptive examination
8 sequence should not apply to a particular deposition, the affected parties shall, upon receipt of the
9 notice, promptly meet and confer to try to resolve the matter; if the matter cannot be resolved by
10 agreement of counsel, it shall be submitted to the Court so that the deposition can proceed without
11 delay. Counsel designated to conduct the examinations shall coordinate with each other to conduct
12 as thorough and non-duplicative and non-repetitive an examination as is practicable and to ensure
13 that the needs of all examining parties are reasonably accommodated. Sequencing of plaintiff-
14 specific depositions, including depositions of health care providers, will be set by separate order.

15 3. *Production of Documents by Third-Party Witnesses.* If a third-party witness
16 subpoenaed to produce documents does not provide documents within ten (10) calendar days
17 before the date of a scheduled deposition, the noticing party shall have the right to reschedule the
18 deposition to allow time for inspection of the documents before the examination commences.

19 4. *Copies.* Counsel conducting an examination should have at least five (5) copies of
20 all exhibits utilized with the witness available for use by the witness (1 copy), the witness's counsel
21 (1 copy), other counsel (2 copies), and the Court reporter (1 copy).

22 5. *Objections to Documents.* Objections to the relevance or admissibility of
23 documents used as deposition exhibits are not waived and are preserved pending a later ruling by
24 the Court or by the trial judge. All parties shall cooperate as necessary so that the Court may issue
25 a ruling on any objection to a document prior to trial or prior to any remand of cases for trial in the
26 transferor courts.

27 6. *Adherence to the Protective Order.* All parties shall adhere to all Protective Orders
28 entered in this matter and shall take steps to ensure deponents adhere to Protective Orders as

1 applicable. Nothing in this Protocol modifies the terms of any Protective Order entered by the
2 Court in the MDL Proceedings.

3 **B. Duration**

4 Absent agreement of the Parties or a Court order allowing additional time or reducing the
5 allowed time, the time limits for depositions are (a) seven (7) hours of direct examination by the
6 MDL Plaintiffs' attorneys of a witness whom the JCCP has not elected to depose, (b) ten and one
7 half (10.5) hours for the combined direct examination by MDL and JCCP Plaintiff attorneys
8 (subject to agreement or Court order from the JCCP), and (c) seven (7) hours for the combined
9 direct examination by all the Defendants' attorneys, in each case depending on whether a Plaintiff
10 or Defendants noticed the deposition. The seven (7) hours of examination (or 10.5 if combined
11 examination by MDL and JCCP Plaintiff attorneys) shall not include questioning by the party
12 defending the deposition or other opposing counsel, or time on re-direct or re-cross. Additionally,
13 Plaintiffs shall be allowed to designate fifteen (15) depositions that will last 14 hours for the
14 combined examination by MDL and JCCP Plaintiff attorneys. The noticing party shall be entitled
15 to a minute-for-minute re-cross following any examination conducted by the defending party
16 and/or other opposing counsel. To the extent that the party defending the deposition and/or other
17 opposing counsel conducts a further re-direct examination following the noticing party's re-cross,
18 the noticing party shall be entitled to a minute-for-minute re-recross.

19 Absent agreement of the parties or an Order of the Court, Plaintiffs shall be limited to 45
20 fact depositions of Uber witnesses, including 30(b)(6) witness depositions. This number is a "soft
21 cap," or a presumptive number subject to discussions between counsel for the parties to allow for
22 additional depositions if there is good cause for such depositions, taking into account discovery
23 already obtained, and whether or not additional depositions would be unreasonably cumulative or
24 duplicative. This number is not meant to be an absolute cut off of depositions and is intended to
25 allow for the flexibility for additional depositions as dictated by the discovery process generally,
26 including, but not limited to, the scope of discovery, document productions and supplementation
27 thereto, and the ability of Uber's witnesses to adequately cover the timeframes and issues relevant
28 to this litigation.

1 It is understood that the Plaintiffs may notice and take multiple Rule 30(b)(6) depositions
2 of Defendants. The party noticing a Rule 30(b)(6) deposition may limit a Rule 30(b)(6) deposition
3 notice to a discrete subject matter category and notice topics concerning that category (without
4 prejudice to serving additional Rule 30(b)(6) notices as the discovery period continues). For
5 depositions pursuant to Rule 30(b)(6), the noticing party shall make a good faith effort to include
6 all topics that relate to a discrete subject matter category in a single notice. Every ten and one half
7 (10.5) hours of Rule 30(b)(6) deposition testimony (or 14 hours, if Plaintiffs designate a Rule
8 30(b)(6) deposition for additional time pursuant to this Order) shall count as one (1) deposition
9 against the overall "soft cap" of forty-five (45) depositions of Uber defendants. The ten and one
10 half (10.5) hours (or 14 hours, if Plaintiffs designate a Rule 30(b)(6) deposition for additional
11 time pursuant to this Order) shall not include questioning by the party defending or other
12 opposing counsel, or time on re-direct or re-cross.

13 **C. Objections and Directions Not to Answer**

14 1. *Objections:* Counsel shall comply with the Federal Rules of Civil Procedure and
15 the local rules of the U.S. District Court for the Northern District of California. Any objection by
16 a Defendant at a deposition shall be deemed to have been made on behalf of all other Defendants.
17 Any objection by a Plaintiff shall be deemed to have been made on behalf of all other Plaintiffs.
18 All objections, except those as to form and privilege, are reserved until trial or other use of the
19 depositions. Once a question is asked, a lawyer should not coach the deponent or suggest answers,
20 whether through objections or other means. Counsel shall comply with Federal Rule of Civil
21 Procedure 30(c)(2). Deposition objections may be made as to privilege or may be made only where
22 required in order to preserve the objection. Speaking objections or those calculated to coach the
23 deponent are prohibited. Counsel shall refrain from engaging in colloquy during a deposition. A
24 person may instruct a deponent not to answer a question only when necessary to preserve a
25 privilege, to enforce a limitation directed by the Court, or to present a motion under Federal Rule
26 of Civil Procedure 30(d)(3). When a privilege is claimed, the witness should nevertheless answer
27 questions relevant to the existence, extent or waiver of the privilege, such as the date of the
28 communication, who made the statement, to whom and in whose presence the statement was made,

other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement, unless such information itself is privileged. Counsel may be subject to sanctions if they consistently impede, or otherwise unreasonably delay, the fair examination of the deponent. Private conferences between deponents and their attorneys in the course of deposition are improper and prohibited except for the sole purpose of determining whether a privilege should be asserted.

D. Authenticity of Documents.

1. *Authenticity of Documents Provided or Generated by a Party*

a. *Documents Presumed Authentic:* Documents produced and/or purportedly generated by any party that purport to be copies of documents prepared or received by the party, or by an officer, director, employee or agent of the party, shall—subject to Paragraphs 2–4 below—be presumed to be a faithful and authentic reproduction of the original and, subject to other applicable rules of evidence, admissible as such, unless any objecting party establishes, through a motion in limine or otherwise, that the document is not authentic. All other evidentiary objections other than authenticity are preserved.

b. *Presumption of Authenticity Limited to Portion Generated by Party:* For the purposes of this Order, a document in its entirety is deemed to have been generated by a party only if that party or one of its then-directors, officers, agents, or employees created all of the document. If a party or one of its then-directors, officers, agents, or employees created only part of a document, such as a part of a chain of electronic mail, only that part of the document is deemed to have been generated by that party.

2. *Objections to Documents Marked as Exhibits to Depositions*

Within 30 calendar days of the receipt of the transcript of a deposition hereafter taken in the coordinated and consolidated proceedings, any party wishing to contest the presumptive authenticity of any document(s) previously produced and/or purportedly generated by that party that were placed into the record of that deposition as deposition exhibits shall advise Plaintiffs' Lead Counsel and Defendants' Counsel in writing of: (a) the deposition and exhibit number, as well as the bates numbers, of any exhibit where the producing or purportedly generating party

claims lack of authenticity; and (b) a detailed statement (including if appropriate references to other pertinent documents and knowledgeable persons) of the grounds for the claim of lack of authenticity. Any objection shall be deemed to have been made for all depositions for which the exhibit is used in the future. Any such exhibits not so identified within that time shall be deemed faithful and authentic reproductions of the original. The parties shall not mark deposition exhibits en masse for the sole purpose of bringing those exhibits within the scope of this paragraph.

3. *Documents Provided by Nonparties*

Documents produced and/or purportedly generated by a nonparty shall be presumed to be a faithful and authentic reproduction of the original, unless any objecting party establishes, through a motion in limine or otherwise, that a document is not authentic. Documents produced and/or purportedly generated by a nonparty that are placed into the record as deposition exhibits in any deposition in the coordinated and consolidated proceedings shall be deemed to be faithful and authentic reproductions of the original unless any party raises an objection within the requisite time frames set forth above in paragraph D.2.

4. *Remedies After Notification of Any Objection to Authenticity*

Upon being notified that an exhibit is claimed to be inauthentic, after meeting and conferring with opposing counsel, either Plaintiffs' Lead Counsel or Defendants' Counsel may, with consent of opposing counsel or with leave of Court, initiate appropriate discovery limited to seeking to further establish authenticity.

a. *Limited Scope of Deposition:* Any deposition noticed solely to establish the authenticity of a document shall be limited strictly to that purpose for the specific document at issue and shall not address any other issues.

b. *Depositions Not Applicable to Other Established Limit:* Where such a deposition is taken, that deposition shall not be counted towards the "soft cap" and/or limits on the number, days, or hours of depositions that may otherwise be imposed by this Order.

c. *Additional Time for Discovery:* In the event any written objection to the authenticity of a document within the meaning of Rule 902(11) is made near or after the close of fact discovery, the objecting party agrees to allow for additional discovery for up to thirty days

1 after written objection is received by the nonobjecting party, regardless of whether the discovery
2 period is closed, for the sole purpose of establishing the authenticity of documents that are the
3 subject to the challenge.

4 5. *Limitations of Protocol Regarding Authenticity Challenges*

5 a. *No En Masse Marking of Deposition Exhibits to Trigger Presumptions:* The
6 parties may not mark deposition exhibits en masse for the sole purpose of bringing those exhibits
7 within the scope of Paragraphs D.1–4.

8 b. *No Effect on Other Rules of Evidence:* This Order addresses only the authenticity
9 of any particular document and is without prejudice to application of any other rule of evidence
10 that may be implicated by a particular document. Further, in the event that the Court is called
11 upon to rule on the admissibility of a document, this Order does not alter the burdens of proof
12 with respect to admissibility.

13 c. *No Waiver of Objections to Similar Documents:* The failure of any party to object
14 to any document shall not constitute an admission or concession by that party that similar
15 documents to which the party does object are authentic under applicable federal or state laws. For
16 example, the failure to object to each email being treated as authentic does not foreclose such an
17 objection to any individual email.

18 d. *No Advance Rulings on Authenticity Without Leave of Court:* A party may only
19 seek a ruling on the authenticity of evidence by first securing leave of the Court to present the
20 dispute(s) for adjudication or filing (within thirty days after the close of fact discovery) their
21 request for a ruling. To request leave to seek an early ruling, the party shall file an administrative
22 motion pursuant to Civil Local Rule 7-11. If a dispute remains, MDL Lead Counsel may request
23 an in limine hearing on their objections. Absent exigent circumstances or Court Order, in limine
24 hearings may only occur every ninety (90) days or after the accumulation of 50 or more
25 unresolved written objections, whichever is sooner. All objected to exhibits will be presented in
26 one filing. Any ruling shall be treated as any other pre-trial ruling in limine at trial. Unless and
27 until the Court orders otherwise (upon application of a party or sua sponte), except to the extent
28 necessary to rule upon any application to take limited discovery pursuant to Paragraph 4 above,

1 the Court will not rule on disputes about the authenticity of any documents subject to this Order
2 until after the parties complete discovery. In advance of that time, the parties shall meet and
3 confer to propose a process and deadlines to resolve any disputes concerning the authenticity of
4 documents subject to this Order.

5 e. *Parties to Meet and Confer on Disputes:* The parties shall make good faith,
6 cooperative efforts, through the meet and confer process or otherwise, to resolve any issues or
7 disputes concerning this Order and the authenticity of documents subject to this Order to
8 minimize the time and resources of the parties and of the Courts devoted to such matters. A party
9 may seek relief from the Court only after meeting and conferring with the opposing parties.

10 **E. Disputes During Depositions**

11 Disputes between the MDL parties shall be addressed to this Court rather than the District
12 Court in the District in which the deposition is being conducted.

13 Disputes arising during depositions that cannot be resolved by agreement and that, if not
14 immediately resolved, will significantly disrupt the discovery schedule, or require rescheduling of
15 the deposition, or might result in the need to conduct a supplemental deposition, shall be presented
16 to Magistrate Judge Cisneros or, if she is unavailable, to the Court by telephone at 415-522-2043.

17 In the event the Court and Magistrate Judge Cisneros are unavailable by telephone to
18 resolve disputes arising during the deposition, the deposition shall nevertheless continue to be
19 taken as to matters not in dispute. Nothing in this Order shall deny counsel the right to (1) suspend
20 a deposition pursuant to Fed. R. Civ. P. 30(d)(3); (2) file an appropriate motion with Magistrate
21 Judge Cisneros after the deposition, and appear personally before Magistrate Judge Cisneros, or
22 (3) file a motion to prevent any decision or recommendation of Magistrate Judge Cisneros from
23 taking effect as may be otherwise permitted.

24 **F. Video Depositions**

25 By so indicating in its notice of a deposition, a party, at its expense, may record a deposition
26 by videotape or digitally recorded video pursuant to Fed. R. Civ. P. 30(b)(3) subject to the
27 following rules:
28

1 1. *Real-Time Feed.* All video depositions will be steno-graphically recorded by a court
2 reporter with real-time feed capabilities.

3 2. *Video Operator.* The operator(s) of the video recording equipment shall be subject
4 to the provisions of Fed. R. Civ. P. 28(c). At the commencement of the deposition, the operator(s)
5 shall swear or affirm to record the proceedings fairly and accurately.

6 3. *Attendance.* Each witness, attorney, and other person attending the deposition shall
7 be identified on the record at the commencement of the deposition. Under no circumstances may
8 a person attend the deposition remotely in any manner without being identified, pursuant to section
9 I(E)(5), above.

10 4. *Standards.* Unless physically incapacitated, the deponent and examiner shall be
11 seated at a table except when reviewing or presenting demonstrative materials for which a change
12 in position is needed. To the extent practicable, the deposition will be videotaped against a solid
13 background with only such lighting as is required for accurate video recording. Lighting, camera
14 angle, lens setting, and field of view shall be nonobtrusive to the deponent and will be changed
15 only as necessary to record accurately the natural body movements of the deponent. All parties
16 may inspect the image to be recorded, including the framing of the witness as it will appear on
17 camera. Exhibits or demonstrative aids used in the examination may be video recorded by separate
18 video recording equipment at the expense of the party wishing to do so. Any demonstrative aids
19 used in the examination will be marked as exhibits for future determination by the Court as to
20 whether inclusion on screen is appropriate. Sound levels will be altered only as necessary to record
21 satisfactorily the voices of counsel and the deponent.

22 5. *Filing.* The video operator(s) shall preserve custody of the original video medium
23 (tape or DVD) in its original condition until further order of the Court.

24 6. *Interruptions.* No attorney or party shall direct instructions to the video operator as
25 to the method of operating the equipment. The video camera operation will be suspended during
26 the deposition only upon stipulation by counsel.

27 7. *Other Recording.* No one shall use any form of recording device to record the
28 deposition during a deposition other than the designated videographer or court reporter. This shall

1 include recording using any form of remote transmitting device, computer recording device, laptop,
 2 camera, and personal device, including smart phones, tablets, iPads, Androids, iPhones,
 3 Blackberries, or other PDAs. Any person who violates this provision shall be immediately
 4 identified and reported to the Court for the possible imposition of sanctions. Nothing in this
 5 provision prevents or limits the taking of notes by those identified on record.

6 8. *Stenographic Record:* A written transcript by the Court reporter shall constitute the
 7 official record of the deposition for purposes of Federal Rules of Civil Procedure 30(e) and
 8 30(f).

9 **G. Correction and Signing of Depositions**

10 Unless waived by the deponent, the transcript of a deposition shall be submitted to the
 11 deponent for correction and signature within thirty calendar days after the end of the deposition.

12 The deposition may be signed by the deponent before any notary within thirty (30) calendar
 13 days after the transcript is submitted to the deponent. If no corrections are made during this time,
 14 the transcript will be presumed accurate. If the witness is not represented by counsel, the original
 15 transcript will be sent to the witness by the court reporter. After review, correction, and signature within
 16 thirty (30) days from the date of receipt, the witness shall return the original transcript to the court
 17 reporter, who will notify all counsel of its receipt and any changes to testimony made by the witness.
 18 If no corrections are made during this time, the transcript will be deemed to be accurate. The court
 19 reporter will provide the original transcript to the first examining attorney. If, for any reason, the
 20 original is lost, misplaced, not returned, not signed, or unavailable, a certified copy may be used in its
 21 place for all purposes.

22 **H. Cost of Deposition**

23 The noticing party shall bear the initial expense of both videotaping and stenographic
 24 recording. The parties shall pay for their own copies of transcripts and videotapes of depositions.

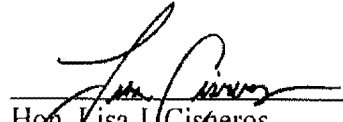
25 **III. Guidelines for Professional Conduct and Federal Rules of Civil Procedure**
 26 **Applicable**

27 The parties incorporate herein the Guidelines for Professional Conduct, including those
 28 related to Discovery and Depositions, of the United States District Court, for the Northern District

1 of California. Unless specifically modified herein, nothing in this order shall be construed to
2 abrogate the Federal Rules of Civil Procedure or the Local Rules of this Court.

3
4 **IT IS SO ORDERED.**

5
6 Date: August 9, 2024


Hon. Lisa J. Cisneros
United States Magistrate Judge

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