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FILED
Superior Court of California
County of Los Angeles

08/31/2023

David W. Slayton, Executive Officer / Clerk of Court

By: _____ A. He _____ Deputy

5 Attorneys for Defendants Melissa Bacelar,
Wagmor Pets and Wyler's Holistic Pet Center, Inc.
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10
11 TALIA JACKSON, an individual; NATHAN)
ALFANO, an individual; KRISTEN MOORE,)
12 an individual; on behalf of themselves and all)
others similarly situated,)

13 Plaintiffs,)

14 vs.)

15)
16 MELISSA BACELAR, an individual;)
WAGMOR PETS, a California non-profit)
17 corporation; WYLDER'S HOLISTIC PET)
CENTER, INC. dba THE WAGMOR, a)
18 Delaware corporation; and DOES 1 through 10,)
inclusive,)

19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO.: 22STCV20771

Hon. Stuart M. Rice – Dept. 1

**JOINT STATEMENT RE: INFORMAL
DISCOVERY CONFERENCE [LOCATION
OF PLAINTIFF'S DEPOSITION]**

Date: September 5, 2023

Time: 10:00 a.m.

Dept.: 1

Case Filed: 6/24/22

Trial Date: Not Assigned

Electronically Received 08/31/2023 09:59 AM

1 **Defendants' Position**

2

3 Defendants wish to take the deposition of plaintiff Talia Jackson. Although Jackson lived
4 in Los Angeles when she filed suit, she subsequently relocated to Bozeman, Montana. Code of
5 Civil Procedure §2025.250 allows Defendants to notice the deposition within 75 miles of Jackson’s
6 home, which would mean taking the deposition in Montana.¹ Defendants intend to ask the Court to
7 set a more convenient location, under Code of Civil Procedure §2025.260, cited in full below.

8

9 While Defendants have offered several different locations for the deposition,² Denver
10 seems like the obvious compromise choice. The relevant facts are as follows:

- 11
- 12 1. Plaintiff Talia Jackson resides in Bozeman, Montana
 - 13 2. Counsel for Defendants resides in San Luis Obispo, California
 - 14 3. Counsel for Plaintiff resides in St. George, Utah
 - 15 4. There are nonstop flights to Denver from all three of the cities listed above
 - 16 5. Jackson’s counsel reports that their client, “is traveling for work the rest of
17 September and into early October, and therefore could be available for deposition in
18 Montana in mid-to-late October.”

19 The three people attending this deposition are coming from three separate cities. The
20 reasonable solution is to pick a central location, with convenient flights, and set the deposition on a
21 date that works for all three participants. Moreover, the fact that Jackson will be traveling for
22 business the next six weeks almost certainly means that she will be passing through Denver
23 anyway; there are not a lot of flights in and out of Bozeman. Defense counsel is flexible as to the
24 date of the deposition, so long as the delay is not too significant.

25

26 ¹ The statute also allows the noticing party to select a location that is up to 150 miles from the
27 witnesses’ home and also within the County where the action is pending. In this instance,
28 however, no such location exists, as all of Los Angeles County is more than 150 miles from
Bozeman, Montana.

² Defense counsel offered San Francisco, Seattle and Santa Barbara, in addition to his hometown of
San Luis Obispo. He further noted that Los Angeles is his last choice, and if the Court does not
grant relief, he will take the deposition in Bozeman.

1 Plaintiff's position is that she should be deposed in Los Angeles, despite defense counsel's
2 repeated statements that that is his last choice. Moreover, the statutes give Defendant the right to
3 either take the deposition in Bozeman, or at another location if the Court allows. Offering Los
4 Angeles is not a meaningful offer.
5

6
7 Finally, economics play a role in this matter. Defendants are substantially behind on their
8 bill with counsel, and, as a practical matter, defense counsel will be fronting the travel costs.
9 Plaintiffs, on the other hand, have insisted that four different attorneys from two different firms be
10 copied on all communications in this case. Clearly, they are well funded. And, in the end, it is
11 Plaintiffs who filed the litigation. The litigation might well force Defendants into bankruptcy,
12 regardless of the outcome. That is a result which would benefit no one.
13

14 Code of Civil Procedure §2025.260

15 (a) A party desiring to take the deposition of a natural person who is a party to the action or
16 an officer, director, managing agent, or employee of a party may make a motion for an
17 order that the deponent attend for deposition at a place that is more distant than that
18 permitted under Section 2025.250. This motion shall be accompanied by a meet and confer
19 declaration under Section 2016.040.

20 (b) In exercising its discretion to grant or deny this motion, the court shall take into
21 consideration any factor tending to show whether the interests of justice will be served by
22 requiring the deponent's attendance at that more distant place, including, but not limited to,
23 the following:

- 24 (1) Whether the moving party selected the forum.
- 25 (2) Whether the deponent will be present to testify at the trial of the action.
- 26 (3) The convenience of the deponent.
- 27 (4) The feasibility of conducting the deposition by written questions under Chapter 11
(commencing with Section 2028.010), or of using a discovery method other than a
28 deposition.
- (5) The number of depositions sought to be taken at a place more distant than that permitted
under Section 2025.250.
- (6) The expense to the parties of requiring the deposition to be taken within the distance
permitted under Section 2025.250.
- (7) The whereabouts of the deponent at the time for which the deposition is scheduled.

1 (c) The order may be conditioned on the advancement by the moving party of the
2 reasonable expenses and costs to the deponent for travel to the place of deposition.

3 **Plaintiffs' Position**

4
5 Plaintiff Talia Jackson (“Ms. Jackson”) insists on her rights under Cal. Civ. Proc. Code §
6 2026.010(b) for her deposition to be taken within 75 miles of where she currently resides in
7 Boseman, Montana (zip code 59718), and could be available for deposition there in mid-to-late
8 October. Alternatively, as a compromise, Ms. Jackson is willing to appear for deposition in Los
9 Angeles, CA, on September 20, 2023. In support of this position, Ms. Jackson states as follows:

10 On Friday, August 25, 2023, via email, knowing that Ms. Jackson lives in Montana (based
11 on discovery responses to date), Defendants indicated their intention to notice Ms. Jackson’s
12 deposition to take place in San Luis Obispo (where defense counsel said he works and resides) on
13 September 20, 2023. That same day, Ms. Jackson objected to that location as bearing no
14 connection to this case, the courthouse or where Ms. Jackson resides. Ms. Jackson also pointed to
15 the requirements of Civ. Proc. Code § 2025.250 and then, later that day, the more apt requirements
16 Civ. Proc. Code § 2026.010(b) (since Ms. Jackson is a party to the suit residing outside of
17 California). Ms. Jackson nevertheless agreed to revert back to Defendants about whether a
18 compromise could be reached. In response, Defendants insisted that the deposition be taken in
19 California somewhere other than Los Angeles and refused the option of conducting Ms. Jackson’s
20 deposition remotely.

21 On Tuesday, August 29, 2023, the parties exchanged emails in which they arranged for
22 Defendants to take the deposition of the other two named Plaintiffs (Mr. Alfano and Ms. Moore)
23 in Los Angeles, CA, at defense counsel’s Los Angeles office, on October 30 and 31, 2023.
24 Defendant formally noticed those two depositions on August 30, 2023.

25 Later, on August 29, 2023, Ms. Jackson informed Defendants via email that she would be
26 willing to appear for a deposition in Los Angeles, CA on the September 20, 2023, date proposed
27 by Defendants, as a compromise, given that Ms. Jackson was already planning to attend a
28 conference in Los Angeles at that time but that she otherwise reserved her rights under Civ. Proc.

1 Code § 2026.010(b).

2 In its counsel’s emails on the matter, Defendants contend that offering Los Angeles as an
3 option on September 20, 2023, to find middle ground, is somehow vindictive or inconvenient to
4 Defendants. However, such a contention is baseless, especially when Defendants will be taking
5 the depositions of the other two Plaintiffs in Los Angeles in late October. Further, Ms. Jackson
6 noted that she could be available for deposition near where she lives in Montana in mid-to-late
7 October, as she will be traveling for work from late September to early October. Yet, Defendants,
8 via email, insisted on a different location, such as San Luis Obispo, San Francisco, Santa Barbara,
9 Denver or Seattle, none of which bear nexus to this case.

10 Surprisingly, in the afternoon on August 30th, *after* Defendants had already asked the
11 Court for an informal discovery conference and the Court indicated availability on September 5th
12 at 10:00 am, Defendants unilaterally served a notice of deposition (with a duces tecum) on Ms.
13 Jackson, setting her deposition for San Luis Obispo, CA, on September 20, 2023, thereby
14 violating Civ. Proc. Code § 2026.010(b), which states in part, “The deposition notice shall specify
15 a place in the state, territory, or insular possession of the United States that is within 75 miles of
16 the residence or a business office of a deponent.” (emphasis added).

17 Contrary to arguments of Defendants, Ms. Jackson does not believe that the location of
18 their parties’ attorneys is relevant to the consideration of where Ms. Jackson’s deposition should
19 be taken, as attorneys hired by litigants can be located almost anywhere. That one of Plaintiffs’
20 attorneys lives in Utah is irrelevant, especially when that attorney is not asking for Defendants to
21 consider his Utah office. Should the Court consider the location of counsel, however, nearly all of
22 Plaintiffs’ attorneys are in Southern California, with one attorney residing and working in Los
23 Angeles. Indeed, as previously mentioned, Defense counsel also has an office in Los Angeles.

24 Further, this action is pending in Los Angeles, and Defendants are understood to be in
25 either Los Angeles or Studio City, CA, both of which are in Los Angeles County. On the other
26 hand, Ms. Jackson is an individual consumer with arguably less resources than Defendants, which
27 are either businesses or the owner of those businesses.

28 Finally, Ms. Jackson believes that Defendants’ efforts concerning the location of her

1 deposition is calculated to substantially inconvenience Ms. Jackson, potentially with the improper
2 goal to dissuade her from continuing to pursue her claims against Defendants.

3 Therefore, the Court should reject Defendants’ inappropriate and meritless efforts to force
4 the deposition of Ms. Jackson somewhere other than within 75 miles from where she resides in
5 Bozeman, Montana (mid-to-late October dates are available), or somewhere other than Los
6 Angeles, CA, on September 20, 2023, as Ms. Jackson’s offered compromise.

7 Given that Defendants have now violated Civ. Proc. Code § 2026.010(b) by serving a
8 deposition notice on Ms. Jackson as described above for a location that is over 1,000 miles from
9 where Ms. Jackson resides, without leave of Court (*see* Civ. Proc. Code § 2026.260) and even
10 *before* the IDC scheduled for September 5th (which Defendants requested), Ms. Jackson intends to
11 move for a protective order and seek sanctions against Defendants and/or Defendants’ counsel for
12 their inappropriate bully tactics.

13 Ms. Jackson appreciates the Court’s consideration in making time for an informal
14 discovery conference, and she reserves the right to address at that conference all points raised by
15 Defendants in their portion of this joint statement and also to brief these issues.

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