

CALIFORNIA

FRESNO OFFICE

SUCCESSFULLY OPPOSE MOTION FOR PROTECTIVE ORDER REGARDING PLAINTIFF'S IN-PERSON DEPOSITION



David J. Frankenberger, Esq. and Keren H. Wasserman, Esq. successfully opposed a hotly-contested motion for a protective order regarding the in-person deposition of Plaintiff in an ongoing personal injury lawsuit venued in Kern County, CA. Defendants properly noticed the in-person deposition of Plaintiff pursuant to California Rules of Court 3.1010(c) and California Code of Civil Procedure § 2025.250. Plaintiff's counsel responded with an objection to the notice of deposition, citing the COVID-19 pandemic as grounds to not produce their client. Meaningful "meet and confer" efforts failed, ultimately leading Plaintiff's counsel to file for a protective order. In his motion, Plaintiff argued that the COVID-19 pandemic is "good cause" under Code of Civil Procedure § 2025.420 for the Court to issue a protective

order against Defendants taking his deposition in person, citing Governor Newsom's ban on gathering with members from other households. Plaintiff further argued, inter alia, that: (1) he is sixty-five years old and therefore a member of a COVID-vulnerable class; (2) an in-person deposition would require all counsel and the deposition officer to be confined in one room; (3) a deposition via remote electronic means is a sufficient substitute for an in-person deposition; and, (4) there is no discernable reason why a video conference deposition would be inferior to an in-person deposition.

In their clients' opposition, attorneys Frankenberger and Wasserman argued, inter alia, that legal services are an essential service and are therefore exempt from the Governor's prohibition on gathering with members of other households. Further, there are perceivable benefits to conducting in person depositions, including, but not limited to, the ability to reliably know whether any other person is



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in the room, the ability to properly gauge the deponent's responses, the ability to ascertain whether the deponent is being fed responses, the ability to determine if the deponent has residual injuries, pain, and discomfort, and the ease of sharing/marking exhibits. Defendants argued that those perceivable benefits would in fact prejudice Defendants if a protective order was issued. Finally, pursuant to California Code of Civil Procedure § 2025.310, Plaintiff's counsel could elect to personally appear via remote means and elect to have the deposition officer appear remotely, therefore negating the "confined room" argument asserted.

Following oral argument, the Court sided with the Defendants and denied Plaintiff's motion for protective order, and held that Plaintiff's deposition was to proceed in-person as set forth in Defendants' notice of taking deposition.

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