

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Pennington v. Tetra Tech, Inc.

Pennington · No. 18-cv-05330-JD; related cases 19-cv-01417-JD, 20-cv-01480-JD, 20-cv-01481-JD, 20-cv-01485-JD, and 13-cv-03835-JD · Decided May 7, 2025

SUMMARY

The United States District Court for the Northern District of California resolves numerous discovery disputes in several related cases concerning alleged environmental contamination and fraud at the Hunters Point Naval Shipyard. The court addresses deposition requests, privilege and work-product assertions, document production, interrogatories, sanctions motions, government-investigator depositions, and destruction of inadvertently produced presentence reports.

CASE DETAILS

COURT	United States District Court for the Northern District of California
JURISDICTION	United States District Court for the Northern District of California
DECIDED	May 7, 2025
DOCKET	18-cv-05330-JD; related cases 19-cv-01417-JD, 20-cv-01480-JD, 20-cv-01481-JD, 20-cv-01485-JD, and 13-cv-03835-JD
DISPOSITION	other
PROCEDURAL POSTURE	Omnibus order resolving multiple parties' pending discovery disputes and two Rule 37 sanctions motions in related civil actions.
STANDARD OF REVIEW	The court applied the scope, proportionality, and limitation provisions of Federal Rule of Civil Procedure 26(b), the enforcement and sanctions provisions of Rule 37, and the applicable privilege and protective-order standards.
PRECEDENTIAL VALUE	Unknown; district-court omnibus discovery order

TOPICS

discovery dispute civil procedure sanctions commercial litigation environmental law

PRACTICE AREAS

civil procedure commercial litigation environmental law discovery privilege and work product

QUESTIONS PRESENTED

1. Whether the parties were entitled to reopen or reconvene depositions of various witnesses.
2. Whether documents clawed back during depositions were protected by the attorney-client privilege or work product doctrine.
3. Whether the court should compel additional document production, interrogatory responses, or discovery concerning databases, damages, insurance, board materials, fraud allegations, and economic relationships.
4. Whether the United States was entitled to a protective order barring depositions of former government counsel and investigators.
5. Whether the parties were required to answer thousands of requests for admission directed to document authenticity.
6. Whether evidentiary and monetary sanctions were warranted under Federal Rule of Civil Procedure 37(d) for alleged failures to appear or produce witnesses.
7. Whether inadvertently produced presentence reports and related information had to be destroyed, retrieved, and accounted for.

HOLDINGS

1. Discovery must concern nonprivileged matters relevant to a claim or defense and proportional to the needs of the case, and the court may limit discovery that is cumulative, duplicative, obtainable from a more convenient source, previously available, or outside Rule 26(b)(1)'s scope.
2. Documents created by investigators or other agents for attorneys in anticipation of litigation are protected by the work product doctrine, and the representations submitted by Tetra Tech were sufficient to establish that protection for the George Chiu and Andy Bolt documents.
3. The request to compel Dan Batrack's deposition was granted because the parties proffered evidence that he was personally involved in the relevant facts and likely possessed unique, first-hand, nonrepetitive knowledge.
4. Rule 37(d) sanctions were not warranted because the record did not establish a sanctionable failure by a party to appear at its own deposition or establish that sanctions were appropriate for the four witnesses who were no longer employed by the relevant party.
5. The United States was entitled to a protective order barring the noticed depositions of former AUSA Philip Kearney and former investigators George Wright and Jerome Bigoness because the proposed testimony was unnecessary and cumulative of existing sworn statements and the record.
6. The parties and document vendors were required to destroy copies of the inadvertently produced presentence reports and related notes or information, take reasonable steps to retrieve disclosed copies, and notify the United States of disclosures and retrieval efforts.

KEY QUOTATIONS

“obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case” (1)

“The work product doctrine protects from disclosure documents created by investigators and other agents for attorneys, provided the documents were created in anticipation of litigation.” (6-7)

“Discovery is closed and no additional disputes will be entertained.” (11)

FACTUAL BACKGROUND

The related actions concern disputes arising from work performed by Tetra Tech entities at the Hunters Point Naval Shipyard, including alleged environmental and radiological data issues, fraud-related allegations, damages claims, and a False Claims Act settlement. The parties disputed the adequacy and scope of depositions, document productions, interrogatory responses, requests for admissions, privilege assertions, and access to government witnesses and materials. The court resolved the disputes largely on the parties' representations, the existing discovery record, and proportionality considerations.

PROCEDURAL HISTORY

The court considered joint statements, letters, and separately noticed motions concerning depositions, document production, interrogatories, privilege assertions, protective orders, requests for admissions, and sanctions. The court granted some discovery requests, denied others, directed a limited inspection of chain-of-custody documents, ordered destruction and retrieval efforts concerning inadvertently produced presentence reports, and administratively terminated additional expert-discovery disputes.

DISPOSITION

other

CASES CITED

- United States v. Gonzalez, 669 F.3d 974, 978, 980 (9th Cir. 2012)
- In re Grand Jury Subpoena (Mark Torf/Torf Environmental Management), 357 F.3d 900, 907 (9th Cir. 2004)