

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

In re SanDisk SSDs Litigation

In re SanDisk SSDs Litigation · No. 23-cv-04152-RFL (LJC) · Decided May 2, 2025

OPINION

In re Sandisk SSDS Litigation

PER CURIAM.

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4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6 7 In re SANDISK SSDs LITIGATION. Case No. 23-cv-04152-RFL (LJC) 8

ORDER RESOLVING JOINT

9 DISCOVERY LETTERS REGARDING

DEPOSITIONS

10 Re: Dkt. Nos. 152, 156 11 12 A. Deposition of David Goeckeler 13 The Court previously
struck a joint letter regarding Plaintiffs’ request to depose SanDisk 14 CEO David Goeckeler and
Defendants’ arguments that Plaintiffs had not shown sufficient cause to 15 depose that “apex”
witness. ECF No. 150. In doing so, the Court provided guidance for any 16 renewed letter on that
topic. First, the Court advised the parties that “this Court does not take a 17 formalistic approach
to the ‘apex doctrine’ imposing strict requirements of exhaustion or unique 18 knowledge before
such a deposition will be permitted, although such considerations may be 19 relevant factors,” and
that the “Court recognizes that in typical, ordinary circumstances deposing a 20 large company’s
chief executive imposes a substantial burden.” Id. at 1–2 (citing In re Uber 21 Techs., Inc.
Passenger Sexual Assault Litig., No. 23-md-03084-CRB (LJC), 2025 WL 896412 22 (N.D. Cal.
Mar. 24, 2025). Second, the Court noted that Plaintiffs’ arguments suggested that 23 “there is very
little direct evidence of Goeckeler’s direct involvement in the events at issue,” and 24 advised the
parties that “mere speculation of Goeckeler’s possible involvement or relevant 25 knowledge”
would not likely suffice to justify his deposition. Id. at 2. 26 The parties have now filed a renewed
letter addressing Goeckeler’s deposition. ECF No. 27 152. Ignoring this Court’s stated view of the
apex doctrine, Defendants argue for the same 1 Court’s previous Order specifically rejected. Id. at
2–3. For the reasons stated in the Uber 2 decision cited above, such arguments are not persuasive.
See 2025 WL 896412, at *2. 3 That said, Plaintiffs still have not offered more than speculation
that Goeckeler had any 4 involvement in, or particularly relevant knowledge of, either the alleged
product defects or 5 decisions regarding whether or how to disclose that defect. Plaintiffs offer
evidence that someone 6 who was probably involved in such decisions (Lisa Neitzel) reported to

someone who might also 7 have been involved in them (Lynne Cox), who in turn reported to Goeckeler. ECF No. 151-6 at 8 10 (Andrade Dep. at 44:2–16, provisionally under seal). The witness who testified to Neitzel’s 9 and Cox’s potential involvement in relevant decisions about communications stated that she did 10 not know whether Goeckeler was involved. Id. (Andrade Dep. at 44:17–20). Another witness 11 testified that she “believe[d] David Goeckeler would have been made aware of this situation,” 12 although she disclaimed any knowledge of how that might have happened. ECF No. 151-3 at 2 13 (Garza Dep. at 109:2–14, provisionally under seal). Plaintiffs also assert that emails indicate 14 Goeckeler was aware of customer complaints and inquired about press coverage, although their 15 quote from the email is non-specific, and they failed to provide those emails with the joint letter. 16 Plaintiffs have not substantiated their claim that Goeckeler was involved in, or had particularly 17 relevant knowledge of, either the alleged product defects or related decisions. 18 The mere fact that a chief executive had some general awareness of alleged product defects 19 does not in itself indicate that he would be in a position to offer relevant testimony. Plaintiffs have 20 not shown any greater degree of Goedecker’s involvement in or knowledge of the events at issue. 21 The Court concludes that deposing SanDisk’s chief executive would be unduly burdensome as 22 compared to his testimony’s likely relevance to the case. Defendants’ request for a protective 23 order is GRANTED, and Plaintiffs may not depose Goedecker. 24 B. Depositions of Lisa Neitzel and Lynne Cox 25 As mentioned above, Defendants’ employee Joanna Andrade testified at her April 24, 2025 26 deposition that she believed Lisa Neitzel was involved with Defendants’ communications strategy 27 regarding the alleged defect at issue, and that Neitzel would probably, typically consult with her 1 served notices of depositions of Neitzel and Cox later that day, with the depositions to occur on 2 May 1, 2025—the day that fact discovery closed. ECF No. 156 at 1. “On April 29 Defendants 3 informed Plaintiffs they would not produce the witnesses on May 1 on the basis that the notice 4 was untimely.” ECF No. 156 at 1. Plaintiffs offered to include Neitzel and Cox on a list of 5 witnesses for whom the parties jointly requested an extension of fact discovery to complete 6 depositions (which Judge Lin has since granted, ECF No. 155), but Defendants refused. 7 Defendants now argue that Plaintiffs’ notices for these depositions were not timely. 8 Although Defendants assert briefly that “no witness has identified Ms. Cox as having any 9 involvement with the issues relevant,” they do so only in the context of arguing that no late- 10 breaking evidence justified Plaintiffs serving deposition notices so late in the case. ECF No. 156 11 at 4. The Court does not construe Defendants’ arguments as seeking a protective order on the 12 basis of irrelevance—and if they did, their passing reference to the issue would not be sufficient to 13 carry their burden. Defendants also have not argued that the apex doctrine (applied above in the 14 context of Plaintiffs’ efforts to take Goeckeler’s deposition) bars these depositions. The Court’s 15 analysis therefore focuses on the timing of Plaintiffs’ notices. 16 A party seeking to take a deposition must provide “reasonable notice.” Fed. R. Civ. P. 17 30(b)(1). As Plaintiffs correctly note, “courts in this Circuit have found that a week to ten day[s] 18 notice is reasonable where

the party is seeking a deposition without the production of documents.” 19 RG Abrams Ins. v. L. Offs. of C.R. Abrams, No. 2:21-cv-00194-FLA-MAAx, 2021 WL 4974049, 20 at *5 (C.D. Cal. Aug. 19, 2021) (citation and internal quotation marks omitted); see also Meeks v. 21 Nunez, No. 13cv973-GPC(BGS), 2016 U.S. Dist. LEXIS 66292, at *4 (S.D. Cal. May 19, 2016) 22 (citing authority recognizing five days’ notice as typically reasonable). Defendants are correct that 23 the degree of notice needed will vary depending on circumstances, but the cases they cite are not 24 at all analogous to the circumstances here. Meeks, 2016 U.S. Dist. LEXIS 66292, at *4–5 25 (holding that two days’ notice over a weekend for the deposition of an imprisoned pro se plaintiff 26 who had not yet received a relevant court order was not reasonable); Ultratech, Inc. v. Tamarack 27 Sci. Co., No. C 03-3235 CRB (JL), 2005 WL 696979, at *1 (N.D. Cal. Mar. 17, 2005) (holding 1 Plaintiffs took a risk in waiting so long to notice these depositions and to conduct 2 discovery more generally. The Court has serious concerns about Plaintiffs’ overall diligence in 3 completing discovery within the time allotted by applicable scheduling orders. The Court is 4 particularly concerned by Plaintiffs’ failure to seek Neitzel’s deposition sooner in light of 5 Defendants’ assertion that they disclosed her as a relevant witness in their initial disclosures more 6 than a year ago, although Defendants did not provide a copy of those disclosures or any details as 7 to how they referenced Neitzel’s potential relevance. ECF No. 156 at 4. If the witnesses had not 8 been available on the noticed date, Plaintiffs might have faced difficulty in seeking an extension of 9 the fact discovery deadline. 10 But Defendants have not argued or offered evidence that the witnesses or defense counsel 11 were unavailable for depositions on May 1st, or that they could not reasonably have prepared for 12 depositions on that date—which fell within the fact discovery period, albeit barely. Based on the 13 record available, no reason is apparent why Defendants could not have produced Neitzel and Cox 14 on the noticed date except that they did not want to. And the seven days’ notice that Plaintiffs 15 provided here was not unreasonable on its face. See RG Abrams Ins., 2021 WL 4974049, at *5; 17 Defendants also cite the section of Judge Lin’s Standing Order addressing case 18 management orders as a basis for barring these depositions. ECF No. 156 at 5. That Standing 19 Order provides in relevant part: 20 Parties are typically expected to propose a schedule at the initial case management conference along the following lines: 21 [. . .] 22 • The schedule shall include a last date to notice depositions, 23 which shall be at least 30 days before the close of fact discovery. 24 Standing Order for Civil Cases Before Judge Rita F. Lin, at 3, available at 25 <https://cand.uscourts.gov/wp-content/uploads/judges/lin-rfl/2024-09-18-Civil-Standing-Order.pdf> 26 (emphasis added). 27 That provision does not itself set a deadline for noticing depositions, but instead provides 1 guidance on how the parties should prepare case schedules for the Court’s approval. Defendants 2 || have not identified any such deadline actually imposed in this case. As far as this Court can tell 3 from the docket, the parties never proposed a deadline to notice depositions, see ECF No. 82 at 3— 4 || 4, and none of Judge Lin’s orders setting or extending the fact discovery cutoff have imposed one, 5 see ECF Nos. 83, 109, 115, 137, 155. If Judge Lin had set a deadline for noticing depositions in 6

this case, this Court would of course enforce it, but with no such deadline having been set, the 7 Court declines to infer such a limitation from her Standing Order's guidance for a typical case 8 schedule. 9 Accordingly, Defendants are ORDERED to produce Neitzel and Cox for depositions no 10 later than May 31, 2025. 11 IT IS SO ORDERED. a 12 Dated: May 2, 2025 □ es, | art

A J. CISNEROS

ited States Magistrate Judge 15 16 17 Z 18 19 20 21 22 23 24 25 26 27 28