

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Michael Zaccardo v. Horne Motors of Gilbert LLC, et al.

Zaccardo · No. CV-24-00767-PHX-SHD · Decided March 18, 2026

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Michael Zaccardo, No. CV-24-00767-PHX-SHD 10 Plaintiff, ORDER 11 v. 12
Horne Motors of Gilbert LLC, et al., 13 Defendants. 14 15 The parties were before the Court for a
Discovery Dispute Hearing on March 17, 16 2026, to address, among other things, three discovery
disputes relating to Plaintiff Michael 17 Zaccardo's proposed deposition of Robert C. Horne,
Defendants' alleged discovery 18 deficiencies, and Zaccardo's alleged discovery deficiencies.

(Docs. 65, 66, 67.) Having 19 considered the parties' written position statements and the
arguments presented at the 20 hearing, the Court issues the following findings and orders. 21 I.
DISCOVERY DISPUTE NO. 1 22 The parties' Joint Discovery Dispute 1, (Doc. 67), concerns
three related issues: 23 (1) whether Robert C. Horne, Defendant Horne Motors of Gilbert, LLC's
("Horne 24 Motors") majority owner, must sit for deposition; (2) whether Zaccardo's associated
25 document request was timely; and (3) the proper scope of Zaccardo's noticed 30(b)(6) 26
deposition topics.

27 A. Horne Deposition 28 Defendants seek to quash the deposition of Mr. Horne on the basis that
he lacks 1 personal knowledge of Zaccardo's claims and that four other past and present managers
2 with relevant knowledge are already scheduled for deposition. (Id. at 1–2.) At the hearing, 3
defense counsel represented that Mr. Horne has executed a declaration to that effect, and 4 the
Court directed Defendants to file the declaration.

Defendants filed the declaration. 5 (Doc. 69.) 6 "Parties may obtain discovery regarding any
nonprivileged matter that is relevant to 7 any party's claim or defense and proportional to the
needs of the case." Fed. R. Civ. P. 8 26(b)(1). Rule 26(c) allows courts to limit discovery "to
protect a party or person from 9 annoyance, embarrassment, oppression, or undue burden or
expense." Pursuant to this 10 rule, "[c]ourts have recognized that seeking the deposition of a high-
level executive within 11 an organization (an apex deposition) creates a tremendous potential for
abuse or 12 harassment." *Topete v. City of Mesa*, 2020 WL 8872800, at *1 (D.

Ariz. 2020) (quotation 13 marks omitted). "In determining whether to allow an apex deposition,
courts consider 14 (1) whether the deponent has unique first-hand, non-repetitive knowledge of
the facts at 15 issue in the case and (2) whether the party seeking the deposition has exhausted
other less 16 intrusive discovery methods." *Id.* (quotation marks omitted.)

17 Having reviewed Mr. Horne's declaration, the Court finds that both prongs of the 18 apex test weigh against permitting the deposition. As to the first prong, Mr. Horne declares 19 that he is generally not involved in the day-to-day operations of Horne Motors, that his 20 duties do not extend to routine personnel matters, and that he has no personal knowledge 21 of the decisions to hire or terminate Zaccardo.

(Doc. 69 at ¶¶ 5–10.) Mr. Horne further 22 declares that Managers Josh Bauman and Gerald Marsh—defendants in this case—had 23 independent authority to change Zaccardo's compensation plan and terminate his 24 employment without Mr. Horne's approval, confirming that Mr. Horne possesses no 25 unique, first-hand knowledge of the facts at issue. (Id. at ¶¶ 8–9.)

As to the second prong, 26 Zaccardo has not exhausted less intrusive discovery methods—Bauman and Marsh, the 27 individuals with direct personal knowledge of the decisions at issue, are among the four 28 managers already scheduled for deposition. Zaccardo will have a full opportunity to obtain 1 the relevant testimony from those witnesses.

Accordingly, the deposition of Mr. Horne 2 will be quashed. 3 B. Rule 30(b) Document Request 4 Defendants object to Zaccardo's document request served in connection with Mr. 5 Horne's noticed deposition, arguing that it is an untimely Rule 34 production demand 6 disguised as a Rule 30(b)(2) request.¹ (Doc. 67 at 2.) Zaccardo served a document request 7 on March 4, 2026, in connection with Mr. Horne's noticed deposition, characterizing it as 8 a Rule 30(b)(2) request incidental to that deposition.

(Id. at 2.) The deadline for written 9 discovery was February 27, 2026. (See Doc. 45.) The Court finds that the request is in 10 substance a Rule 34 request for documents and that permitting it would circumvent the 11 Court's discovery deadlines. *A.S. v. Point Quest*, 2025 WL 3214616, at *5 (E.D. Cal. 2025) 12 (“Plaintiff may not use document requests served with a deposition notice to circumvent 13 the fact discovery deadline....”).

Accordingly, Zaccardo's document request will be 14 denied as untimely. 15 C. 30(b)(6) Topics 16 Zaccardo noticed the 30(b)(6) deposition of Horne Motors and identified topics for 17 examination. Defendants object to several of those topics.

The Court addressed each 18 contested topic at the hearing and ruled on the record. Those rulings are set forth below. 19 1. Topic 1 (Commission Calculations) 20 Topic 1 concerns the calculation of Zaccardo's commissions over the course of his 21 employment. (Doc. 67 at 2.) Defendants object to Topic 1 as overbroad, arguing that the 22 relevant period is limited because “there is no disclosed evidence of any commission 23 dispute except for 4 months prior to termination.” (Id.)

The Court overrules Defendants' 24 objection. The full period of Zaccardo's employment is a proper subject for 30(b)(6) 25 examination on commission calculations, and Defendants' assertion that compensation 26 changed only once does not justify limiting the scope of the topic.

Defendants, however, 27 1 In his position statement, Zaccardo erroneously characterized the request as a Rule 28 30(b)(5) request.

Rule 30(b)(2) is the proper provision governing document requests made in connection with a deposition notice 1 retain the right to raise appropriate objections during the deposition itself. 2 2. Topics 2 and 8 (Corporate Structure and Management Authority) 3 Defendants “object to Topics 2 & 8 concerning the legal and operational 4 management structure of [Horne Motors] and its decision-making procedures because it is 5 overbroad and corporate authorization is not relevant or a disputed fact.” (Id.)

The Court 6 overrules Defendants’ objections. Zaccardo is entitled to understand who was making 7 decisions at Horne Motors and what authority those individuals had to make them. 8 Defendants, however, retain the right to raise appropriate objections during the deposition 9 itself. 10 3. Topics 6 and 11 (Document Search and Production Procedures) 11 Topic 6 concerns the chain of custody for documents in this litigation from creation 12 through production.

(Id.) Topic 11 concerns the process by which documents were 13 identified and produced in this litigation and in prior administrative proceedings, including 14 the timing and circumstances of any documents produced after April 28, 2025. (Id.) 15 Defendants object to both topics as vague and overbroad, arguing they are not limited to 16 specific documents at issue.

(Id.) At the hearing, Zaccardo contended that targeted 17 examination on these topics is warranted given that documents were produced on the last 18 day of written discovery after Defendants had previously certified completion of all 19 production.

The Court partially sustains and partially overrules Defendants’ objections. 20 The Court finds that Zaccardo is entitled to examine the 30(b)(6) witness about the efforts 21 undertaken to find and produce responsive documents in this litigation—including why 22 certain documents were not produced until the last day of the written discovery period— 23 as assurance that a diligent search has been conducted and that all relevant and responsive 24 documents have been produced.

However, the topics as written are overbroad and 25 examination on this basis does not extend to every document in the case. Examination will 26 be permitted but narrowed to the procedures and efforts undertaken to search for and 27 produce documents in this litigation. 28 1 4. Topic 7 (Treatment of Other Service Advisors) 2 Topic 7 concerns “the Company’s treatment of other service advisors employed 3 during [Zaccardo’s] employment with respect to: EPST [Earned Paid Sick Time] requests 4 and approvals; performance documentation and discipline; and termination, including the 5 reasons for and decision-making process behind any such terminations.” (Id.)

Defendants 6 object to Topic 7 as overbroad and irrelevant, asserting “[t]here is no evidence of a differing 7 EPST policy with respect to other service advisors.” (Id.) Zaccardo contends that a June 8 9 EPST request was approved without prior authorization while his June 28 request was 9

denied on exactly that basis, raising a legitimate comparator question that cannot be 10 resolved on a bare assertion.

(Id. at 3–4.) The Court sustains Defendants’ objection in 11 part. The Court finds the topic as written is overbroad. Examination of the 30(b)(6) witness 12 on Topic 7 will be limited to documents and materials previously produced in this litigation 13 relating to the disciplinary records of comparator service advisors. 14 II. DISCOVERY DISPUTE NO. 2 15 The parties’ Joint Discovery Dispute 2, (Doc.

65), concerns Zaccardo’s claims that 16 Defendants have failed to fully comply with their discovery obligations. Specifically, 17 Zaccardo contends that Defendants’ February 18, 2026 Rule 26(g) certification of 18 completed production was false when signed, that numerous documents remain 19 unproduced, and that Defendants have engaged in active suppression of discovery 20 materials through the use of an improper “AEO-CLAWBACK” designation.

(Id. at 1–2.) 21 A. Rule 26(g) Certification 22 At the hearing, Zaccardo contended that Defendants’ February 18, 2026 Rule 26(g) 23 certification of completed production was false when signed, because Defendants produced 24 additional responsive documents on February 27, 2026—the last day of written discovery. 25 Defendants asserted that any supplemental production was part of an agreed process 26 negotiated at the parties’ meet and confer.

The Court finds that the number of documents 27 Zaccardo has identified as having been withheld and produced late raises sufficient concern 28 to warrant further briefing. The Court makes no finding at this time as to whether 1 Defendants or their counsel engaged in improper conduct.

The Court will direct Zaccardo 2 to file a supplement to Joint Discovery Dispute 2 no later than March 27, 2026. The 3 supplement shall include: (1) a list identifying each document Zaccardo contends was 4 produced after Defendants’ February 18, 2026 certification, with a brief description of each 5 document and the date it was produced; and (2) a copy of each such document attached as 6 an exhibit.

Defendants shall file a response no later than April 6, 2026. For each document 7 identified by Zaccardo, Defendants’ response shall confirm whether the document had 8 been previously produced prior to the February 18 certification and, if not, provide an 9 explanation for why the document was not produced until after that date. 10 B. Outstanding Document Production 11 Zaccardo contends that numerous documents remain unproduced.

(Id. at 2.) 12 However, the record does not contain sufficient detail to allow the Court to determine what 13 specifically is missing. (See id.) Accordingly, Zaccardo shall also include in the 14 supplement to Joint Discovery Dispute 2 a bullet-point list identifying every document he 15 contends remains outstanding. Defendants’ response shall address each item on that list 16

specifically, confirming whether the document has been produced and, if not, providing an explanation for why it has not been produced.

18 C. Attorney's Eyes Only Designations and Document Redactions 19 The third issue in Joint Discovery Dispute 2 concerns the designation of certain 20 documents as Attorney's Eyes Only ("AEO") and Defendants' associated clawback 21 demands. (Id.) At the hearing, Zaccardo contended that certain documents have been 22 improperly designated AEO, that some documents have been re-produced with additional 23 redactions after previously being produced without them, and that the inconsistent 24 designations and redactions will interfere with his ability to use documents at upcoming 25 depositions.

26 At the hearing, it became apparent that the parties had not adequately met and 27 conferred on this issue prior to raising it with the Court, and that defense counsel was 28 hearing the specifics of Zaccardo's concerns for the first time at the hearing.

The Court 1 declines to resolve this dispute at this time. The parties will be directed to meet and confer, 2 at which time Zaccardo shall specifically identify each document at issue, and the parties 3 shall attempt to reach agreement on whether designations should be withdrawn or modified 4 and whether documents may be used in their unredacted form at depositions.

If the parties 5 are unable to reach agreement, they may raise the dispute with the Court in accordance 6 with the procedures set forth in the Scheduling Order, (Doc. 20). 7 III. Discovery Dispute No. 3 8 The parties' Joint Discovery Dispute 3, (Doc. 66), concerns alleged deficiencies in 9 Zaccardo's own discovery responses. Defendants contend that Zaccardo has failed to 10 produce documents responsive to RFP No. 9, which seeks records relating to medical 11 leaves, FMLA requests, and accommodation requests; that Zaccardo has refused to return 12 documents Defendants contend were improperly retained; and that Zaccardo's Fourth 13 Supplemental Nonuniform Interrogatory ("NUI") response was untimely and inadequately 14 notated.

(Id. at 1–2.) 15 A. RFP No. 9 16 Defendants contend that Zaccardo has failed to produce any documents responsive 17 to RFP No. 9, which seeks records relating to medical leave requests, FMLA requests, and 18 accommodation requests, and that Zaccardo missed the deadline to supplement his 19 response. (Id. at 2.) At the hearing, Zaccardo represented that he does not have responsive 20 documents, but his written position statement indicated that he would produce responsive 21 documents within the relevant employment period, creating some ambiguity as to his actual 22 position.

Defendants clarified that they do not seek to compel production if no responsive 23 documents exist, they simply seek a clear, supplemented response so the record is 24 definitive. The Court finds that a supplemented response is warranted. Zaccardo will be 25 directed to supplement his response to RFP No. 9 and either: (1) state that he has no 26 responsive documents and explain the

steps he took to reach that conclusion; or (2) produce 27 any responsive documents he has withheld.

Zaccardo must do so no later than March 24, 28 2026. 1 B. RFP No. 25 2 Defendants contend that Zaccardo is in possession of documents that were 3 designated AEO, as well as documents Defendants contend were in his possession without 4 authorization, and that despite several written demands, Zaccardo has not returned them. 5 (Id. at 2.) At the hearing, Defendants clarified that the AEO-designated documents at issue 6 are summaries of other service advisors' compensation and performance, which were 7 originally produced to Zaccardo's former counsel on an AEO basis.

Following counsel's 8 withdrawal, those documents were transmitted to Zaccardo directly. 9 At the hearing, the Court raised the question of what legal basis exists for 10 withholding AEO-designated documents from Zaccardo now that he is proceeding pro se. 11 Defense counsel acknowledged that the primary concern is protecting the confidentiality 12 of other employees' identifying information contained in those documents, and conceded 13 that as a practical matter Zaccardo already has the documents.

14 The Court finds that compelling return of the documents at this stage is not 15 warranted. However, Zaccardo is required to comply with the Protective Order (Doc. 26) 16 with respect to any AEO-designated documents in his possession. If Zaccardo intends to 17 use any such documents in depositions or filings, he must first meet and confer with defense 18 counsel to reach agreement on how those documents will be handled.

If the parties cannot 19 reach agreement, they may seek leave of the Court to address the issue in advance of the 20 relevant deposition or filing. 21 C. Fourth Supplemental Nonuniform Interrogatory Responses 22 Defendants contend that Zaccardo's supplemental Nonuniform Interrogatory 23 ("NUI") responses lacked notations identifying what was changed and were not 24 accompanied by a verification.

(Doc. 66 at 2.) Zaccardo responds that his Fourth 25 Supplemental NUI was served on March 9, 2026, along with a redline comparison 26 document showing all tracked changes from the Third Supplemental. (Id. at 3.) At the 27 hearing, defense counsel indicated he had not received the redline. Zaccardo represented 28 that he would transmit the redline to defense counsel and confirmed that a verification had 1 already been included with the Fourth Supplemental.

2 Zaccardo will be directed to transmit the redline comparison document to defense 3 counsel no later than March 24, 2026. Upon receipt, Defendants indicated they seek no 4 further relief on this issue. 5 Accordingly, 6 IT IS ORDERED that the deposition of Robert C. Horne is quashed. 7 IT IS FURTHER ORDERED that Defendants are not required to respond to 8 Zaccardo's document request served March 4, 2026.

9 IT IS FURTHER ORDERED that Defendants' objections to Zaccardo's 30(b)(6) 10 deposition topics are resolved as set forth in this order. 11 IT IS FURTHER ORDERED that Zaccardo shall file a supplement to Joint 12 Discovery Dispute 2, (Doc. 65), no later than Friday, March 27, 2026.

The supplement 13 shall include: (1) a list identifying each document Zaccardo contends was produced after 14 Defendants' February 18, 2026 Rule 26(g) certification, with a brief description of each 15 document and the date it was produced, and a copy of each such document attached as an 16 exhibit; and (2) a bullet-point list identifying every document Zaccardo contends remains 17 outstanding, with as much identifying information as is available for each item.

Defendants 18 shall file a response no later than Monday, April 6, 2026, confirming for each document 19 identified whether it had been previously produced prior to the February 18 certification 20 and, if not, providing an explanation for why it was not produced until after that date, and 21 addressing each outstanding document identified in Zaccardo's bullet-point list 22 specifically.

23 IT IS FURTHER ORDERED that the parties shall meet and confer regarding the 24 AEO designations and document redactions raised in Joint Discovery Dispute 2. Zaccardo 25 shall specifically identify each document at issue, and the parties shall attempt to reach 26 agreement on whether designations should be withdrawn or modified and whether 27 documents may be used in their unredacted form at depositions.

If the parties cannot reach 28 agreement, they may raise the dispute with the Court in accordance with the procedures set 1 forth in the Scheduling Order. 2 IT IS FURTHER ORDERED that Zaccardo is required to comply with the 3 Protective Order (Doc. 26) with respect to any AEO-designated documents in his 4 possession. If Zaccardo intends to use any such documents in depositions or filings, he 5 must first meet and confer with defense counsel to reach agreement on how those 6 documents will be handled.

If the parties cannot reach agreement, they may seek leave of 7 the Court to address the issue in advance of the relevant deposition or filing. 8 IT IS FURTHER ORDERED that Zaccardo shall supplement his response to RFP 9 No. 9 no later than Tuesday, March 24, 2026.

The supplemental response shall either: (1) 10 state that Zaccardo has no responsive documents and explain the steps taken to reach that 11 conclusion; or (2) produce any responsive documents that have been withheld. 12 IT IS FURTHER ORDERED that Zaccardo shall transmit the redline comparison 13 document to defense counsel, accompanied by a verification, no later than Tuesday, 14 March 24, 2026.

This redline shall show all tracked changes from the Third Supplemental 15 NUI to the Fourth Supplemental NUI. 16 IT IS FURTHER ORDERED that the case management deadlines in this

matter 17 are extended as follows: 18 1) Fact Discovery and Fact Witness Deposition Deadline is extended to April 30, 19 2026. This extension is for the sole purpose of resolving outstanding discovery 20 disputes.

The parties may proceed with depositions already noticed as of March 17, 21 2026. No new depositions may be noticed, and no new written discovery requests 22 may be served. 23 2) Rebuttal expert disclosures, if any, are due by May 14, 2026. 24 3) Expert depositions shall be completed by June 10, 2026. 25 4) Final disclosure statements, amendments and/or supplements exchanged by May 26 14, 2026; 27 5) Dispositive Motions shall be filed by July 15, 2026.

28 /// 1 IT IS FURTHER ORDERED that except as otherwise stated herein, the Rule 16 2|| Scheduling Order issued on July 8, 2024, (Doc. 20; modified at Docs. 30, 32, 45), shall 3 || remain in effect. 4 Dated this 18th day of March, 2026. 5 6 □ ° H le Sharad H. Desai 10 United States District Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 -ll-