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Fall 2025, No. 4
ACFLS
FAMILY LAW SPECIALIST
JOURNAL OF THE CALIFORNIA ASSOCIATION OF CERTIFIED FAMILY LAW SPECIALISTS

# SELECTED EVIDENCE ISSUES WITH DEPOSITIONS OF THE PERSON MOST "KNOWLEDGEABLE"/"QUALIFIED" IN CALIFORNIA AND FEDERAL COURTS[1]

HON. ALLAN J. GOODMAN (RET.)

Family Law practitioners have two sets of discovery statutes to help them in representing their clients in court proceedings: Family Code sections 2100 et seq. and Code of Civil Procedure sections 2016.010 et seq.[2]

When seeking to establish the value of the client's community property interest in a family business, for example, certain discovery provisions of the Code of Civil Procedure can be of particular assistance.

The quest for such information often includes the demand for identification and production of internal company documents and for deposition testimony from one or more company representatives to give context to those documents and to practices of the company—to respond on its behalf as its "[person] most qualified" (PMQ). Requests of this type, authorized section 2025.230, have important limita-tions, highlighted by cases discussed in this article.[3]

In *LAOSD Asbestos Cases* (*Ramirez v. Avon Products, Inc.*) (2023) 87 Cal.App.5th 939 ("*LAOSD*"), the Second District Court of Appeal reversed the trial judge's admission of evidence contained in the declaration of a witness offered by the defendant—its previously designated PMQ—evidence which included the product of a PMQ deposition at which the PMQ had produced documents and provided testimony about facts she had located in the files of the defendant but of which she had no personal knowledge. Explaining the reversal, the appellate court pointed out that the circumstance that the PMQ had testified at her deposition that she had conducted her own investigation upon which her deposition testimony and declaration were based, did not equate to the personal knowledge required by the Evidence Code.[4]

Briefly stated, the holding of *LAOSD* is: In California state courts, a fact witness must testify based on personal knowledge. As this PMQ lacked that essential predicate, the

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FAMILY LAW SPECIALIST

FALL 2025, NO. 4

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Family Law Specialist is a publication of the Association of Certified Family Law Specialists.

Send your submissions in Word by email to:
Tracy Duell-Cazes
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For circulation, membership, administrative and event registration requests, contact:

Leanna Reynolds, ACFLS Executive Director
1296 E. Gibson Rd, Ste. #A253
Woodland, CA 95776
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objection to her testimony should have been sustained. (As will be discussed, the ruling could be different in federal court.)

## *Background and Analysis*

### California State Courts

We begin with the mechanics of section 2025.230; the statute which addresses depositions of the PMQ.[5] A party to litigation may take the deposition of an *entity* (which "is not a natural person") in addition to any other depositions. After naming the entity, the deposition notice "shall describe with reasonable particularity the matters on which examination is requested."

Ideally, this subject matter list should be agreed upon in a meet and confer session before issuance of the formal notice for the PMQ deposition notwithstanding the absence of such a requirement in the Civil Discovery Act.

Resolving the scope and details of the matters to be the subject of the PMQ deposition can be difficult; one lawyer's specificity can be another's vagueness. If/when issues arise with respect to the matters designated for examination that the parties do not resolve, section 2025.410 authorizes the filing of objections to the notice to produce; however, the objections must be filed within the three-day time limit specified in the statute. Alternatively, the objecting party can apply for a protective order as authorized by section 2025.420.

Determining who is *"most qualified to testify"* raises its own set of issues. The statute limits the persons who may be designated to those *current* "officers, directors, managing agents, employees or agents who are most qualified to testify on [the entity's] behalf as to [the matters designated] to the extent of any information known or reasonably available to the deponent." A rule of reason applies to the designation.

In *Maldonado v. Superior Court* (2002) 94 Cal.App.4th 1390 ("*Maldonado*"), the court pointed out that the person designated is required to be within the group of persons specified in the statute[6] and the burden is on the entity to identify the appropriate witness(es).[7] The *Maldonado* court also noted that former employees, etc. are *not* among those who may be designated (even though they may have the knowledge to respond to issues identified in the deposition notice).[8] Nothing in the PMQ statute prevents a party from separately taking the depositions of former employees, however, as fact witnesses.

The limitation to current employees can make preparation difficult, particularly when the topics designated require knowledge that predates the PMQ's tenure with the entity, such as the early history of contributions to capital of a family business, issuances of incentive stock options or, as in *LAOSD*, allegations of long-term exposures to toxic materials.

*Determining when to schedule the PMQ deposition.* Scheduling is a function of the nature and complexity of the case. For example, PMQ depositions can be useful to get "the lay of the land" in complex cases, including business valuations and separate vs. community property issues in marital dissolutions. If the case involves multiple rounds of financing raised to create and sustain a family business or one in which a party (or the community) received grants of unregistered securities, scheduling a PMQ deposition early in discovery can yield information on initial and early rounds of financing and the bases for valuation of the business and of those securities, as well as the identity of employees and investors who were important to those financings—all as precursors to more targeted discovery; and eventually to developing data for the party's valuation expert. Other discovery may lead to developing a set of categories to be explored with the PMQ or other witnesses. Ultimately, the PMQ deposition can lead to identification of persons to be deposed for *their personal knowledge*—testimony which may well be admissible at trial.

When the PMQ deposition notice includes a request to produce documents, it is the obligation of the PMQ to seek those documents from throughout the organization.[9]

*How detailed must the PMQ's inquiry and preparation to testify be?* Notwithstanding a literal reading of the term PMQ, the statute contemplates that the person designated *need not have personal knowledge* of the subjects identified in the PMQ deposition notice; rather, the designated PMQ is obligated to conduct an inquiry to be prepared to respond at the deposition with information on the subject(s) identified that is "reasonably available" to the deponent as that information is identified by the responding entity through its PMQ.

Determining what is "reasonably available" can lead to difficulties. Two examples: (1) if there is no one currently within the organization with knowledge that would be responsive, the entity cannot be required to produce a former employee to testify—as noted above, that is precluded by the statute itself; (2) the more detail in the requests made, the more difficult it likely would be for the PMQ to recall those details when being questioned at the deposition notwithstanding that the PMQ conducted a rigorous review of company data in good faith. Cases occasionally point out that a PMQ deposition is "not a memory test."

A related problem is determining when, if at all, advice given by counsel for the responding entity to the PMQ must be revealed to the party taking the deposition. Work product and attorney-client privilege issues can and do arise.

Section 2025.230 is premised on the good faith of the parties—in making workable designations of matters which will be the subject of the deposition(s), and in designating person(s) who will conduct investigation(s) in good faith and who will carefully prepare to testify. Marital dissolution proceedings may test this premise.

If a PMQ deposition reveals that the PMQ designated was not the appropriate person, there is no statutory restriction on serving a new PMQ deposition notice.

*Time limit and sanctions.* The presumptive seven-hour time limit does not apply.[10] The location of the PMQ statute in the Civil Discover Act means a PMQ notice of deposition is enforceable in the same manner as other deposition notices.

## *Further discussion of LAOSD*

While, as noted, *LAOSD* arose in the context of an appeal from the granting of a motion for summary judgment, the trial evidence analysis is the same: Matters which would be excluded under the rules of evidence if proffered by a witness as lacking personal knowledge (or as hearsay, opinion, etc.) are inadmissible at any stage of the case when offered by the party whose PMQ was deposed.[11]

The trial court in *LAOSD* described the PMQ's testimony as the PMQ having made an "independent review," which was the basis for the 'facts' set out in her declaration.[12] The appellate court found this description to be inadequate, pointing out there is no such thing as a "corporate representative witness," explaining:

> The Evidence Code recognizes only two types of witnesses: lay witnesses and expert witnesses [citing Evidence Code] sections 702, subd. (a) and 801]. The Evidence Code also does not recognize a special category of "'person previously designated as most knowledgeable" witness. 'Person most qualified' is a term from the Code of Civil Procedure pertaining to the deposition of entities which are not natural person... This section is part of the Civil Discovery Act. [Citation omitted]. To state what should be obvious, the purpose of discovery is to permit a party to learn what information the opposing party possesses on the subject matter of the lawsuit, and the scope of discovery is not limited to admissible evidence. (Code Civ. Proc., § 2017.010 [discovery must be relevant but may be of 'matter [that] either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence'].) Thus, the mere fact that a person is asked about a matter at a deposition and provides information in response does not make that testimony admissible at trial. As [ ] section 2025.620 makes clear, deposition testimony 'may be used against any party who was present or represented at the taking of the deposition ... so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness.' (Code Civ. Proc., § 2025.620.)13

As for the specific defects in that PMQ's testimony, the *LAOSD* court pointed out that the PMQ had *no personal knowledge* that the entity had never used asbestos in its products; nor was the PMQ an expert witness who could rely on hearsay to form an opinion on a relevant matter. (The court also rejected the attempt to use documents attached to the PMQ's declaration, pointing out they were hearsay, and some contained double hearsay.)[14] Thus, even PMQ testimony authenticating documents can be problematic.

Key to understanding the holding of *LAOSD* is its focus on the nature of the distinction between that which is *discoverable* from that which is *admissible*, whether on motion for summary judgment, motion for summary adjudication, or at trial. PMQ depositions are good vehicles to obtain discovery, but as the defense learned on appeal in *LAOSD*, additional foundational steps—and witnesses—are likely needed to make admissible information obtained in a PMQ deposition.

In some cases, the PMQ may also have personal knowledge of relevant facts; and the logic of *LAOSD* does not stand as an obstacle to the evidentiary value of that testimony.

More generally, not all questions are appropriate for a PMQ deposition.[15]

*So, if the results are not admissible, why bother with the PMQ deposition?* The utility of the PMQ deposition depends on the particular matters at issue. If the PMQ deposition produces "fruit," or even a path to clarity on matters at issue, that testimony can be processed into admissible evidence, for example, by following the PMQ deposition with depositions of persons whose identities were learned during the PMQ deposition who do have personal knowledge; with interrogatories; with requests for production of documents; with requests for admissions; or as in the case of business

valuations issues, the basis for consideration by a later-retained valuation expert.

And, if the PMQ witness turns out to be someone with personal knowledge valuable to the inquiring party, there is no restriction on taking the PMQ's deposition in a personal capacity; only the latter deposition is subject to the presumptive seven hour limit of section 2025.290, subdivision (a) as section 2025.610, subdivision (c)(1) specifically authorizes a later deposition of the PMQ in his or her individual capacity. (In some cases, counsel will take the PMQ and "personal" deposition simultaneously; managing the seven-hour time limit becomes an issue in that circumstance.)

## *Federal District Courts*

*Determining who is/are to testify.* Rule 30(b)(6) of the Federal Rules of Civil Procedure (hereinafter referred to as the "Rule") sets the parameters for the similar process in federal court: The party noticing a deposition of an adverse entity under the Rule must name the "public or private corporation, [] partnership, [] association, [] governmental agency, or other entity"; and must describe "with reasonable particularity the matters for examination." Once the notice or subpoena is served, the entity "must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf." In addition, the party noticing the deposition "set[s] out the matters on which each person designated will testify." The Rule requires the parties to "meet and confer in good faith" about the matters which are to be the subject of the deposition. To prepare for the deposition, the deponent identified must prepare to "testify about information known or reasonably available to the organization."

While similar to section 2025.230 in several respects, the Rule expands the scope of those who may be deposed to include "other persons who consent to testify on its behalf," thus expanding the universe of persons the responding party can designate beyond current officers, etc. This expansion of potential deponents can be helpful, for example, when events at issue occurred years earlier (e.g., in early rounds of entity financing, "marital asset" acquisition, or in environmental exposure cases) before the tenure—and knowledge—of current officers, managers or employees. With any designation, it is up to the target entity to select the person or persons to prepare and to be deposed. Designating a person not currently affiliated with the entity opens the entity's files to that person, of course. And designating someone other than a current officer, employee, etc. can affect (e.g., expand) the boundaries of the "personal knowledge" requirement, as is discussed below. (As many of the federal cases use the designation PMK to describe the witness, that term is used in this article when referring to federal court procedures.)

*How has this requirement been implemented?* Ninth Circuit cases often state that the Rule requires the person designated to be the "most knowledgeable" or "most qualified." Thus, in *Mattel, Inc. v. Walking Mountain Productions* (9th Cir. 2003) 353 F.3d 792 [*Mattel*], the court stated that issuance of a deposition notice under the Rule obligates the target to produce the most qualified person to testify on its behalf.[16] In practice, the PMK is someone who has made the search and investigation to prepare to be deposed rather than the person who has the most knowledge of anyone in the target entity.

*What type of preparation is the PMK to make?* The court in *Proskosch v. Catalina Lighting, Inc.* (D. Minn. 2000) 193 F.R.D. 633 ("*Catalina*")[17] described the obligation of the party responding to the notice for a PMK deposition as requiring it "to make a conscientious, good-faith effort to designate knowledgeable persons for Rule 30(b)(6) depositions and to prepare them to fully and unevasively answer questions about the designated subject matter."[18] The court explained:

> to allow the Rule to effectively function, the requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute. Correlatively, the responding party "must make a conscientious good-faith endeavor to designate the persons having knowledge of the matters sought … and to prepare those persons in order than they can answer fully, completely, unevasively, the questions posed ... as to the relevant subject matters.[19]

[T]he Rule only operates effectively when the requesting party specifically designates the topics for deposition, and when the producing party produces such number of persons as will satisfy the request…. [The responding party has] a duty to make a conscientious good-faith effort to designate knowledgeable persons … to fully and unevasively answer questions about the designated subject matter.[20]

Again, the PMK is not required to be the *most knowledgeable* person. The responding party "need only produce a *person with knowledge* whose testimony *will be binding on the party*"[21] and who is prepared to answer "fully" the questions asked on the subjects designated in the notice."[22]

Designation of appropriate deponents is aided when (1) the requesting party specifically designates the topics for deposition, and (2) the responding party produces "such number of persons as will satisfy the request," *and* "prepare[s] them so that they may give complete, knowledgeable and binding answers on behalf of the corporation"[23]

Further, designation of the PMK is to be made in good faith. In an effort to end the technique of identifying a series of PMKs who were not actually qualified as required by the Rule, a practice known as "bandying," the Rule was amended in 1970 to reduce the use of this obfuscatory technique.[24]

Rule 26(c) applies in the event a party needs a protective order to address disputes over the terms, conditions, time or location of the deposition.

*How detailed must the PMK's inquiry and preparation to testify be?* The relevant clause in the Rule has been the subject of discussion in many cases. What emerges is that the designated witness must review all matters known or reasonably available to [the PMK] with the objective that the deposition will be a meaningful one; that the responding party will not "sandbag" the opponent by "conducting a

half-hearted inquiry before the deposition but a thorough and vigorous one before the trial [as [t]his would totally defeat the purpose of the discovery process."[25]

*Scope of the examination.* Authorities in the Ninth Circuit extend the scope of the permitted examination beyond that merely responsive to the subjects listed in the deposition notice; any question relevant to the claims or defenses of any party may be asked even though not specified in the list provided or agreed upon. Thus, in *Detoy v. City and County of San Francisco* (N.D. Cal. 2000) 196 F.R.D. 362 ("*Detoy*"), the court stated that such a limit would "ignore the liberal discovery requirements of Rule 26(b)(1)…."[26] In reaching this conclusion, the *Detoy* court reasoned that the PMK deposition notice is "the minimum about which the witness must be prepared to testify, not the maximum."[27]

*Time limit.* Unlike the California procedure, there is a presumptive seven-hour time limit on each PMK deposition subject to the Rule.[28] Federal district courts vary on whether the presumption applies when the witness is being deposed both as a PMK and as a fact witness.[29]

*Number of PMK Depositions.* The Ninth Circuit has indicated that a Rule 30(b)(6) deposition is "treated as a single deposition even though more than one person may be designated to testify."[30] Thus, in this circuit, federal courts count PMK depositions as part of the ten deposition presumptive limit of Rule 30(a)(2)(A)(ii) aggregating all PMK depositions as one.

*Is the evidence rule discussed in LAOSD also the rule in federal court?* There is no Ninth Circuit authority on point. Review of recent rulings of district courts indicate a difference in outcomes. In *Tijerina v. Alaska Airlines, Inc.* (S.D. Cal. Jan. 24, 2024) 2024 WL 270090 ("*Tijerina*"), a district court considered whether PMK testimony should be excluded at trial as it lacked personal knowledge and was "impermissible lay opinion," among other arguments.

The Tijerina court discussed the issues as follows: "The question posed by the present Motion is more complex than either party lets on…. "[C]ase authority is split on the issue of whether a corporate designee may testify concerning matters outside of his or her personal knowledge at trial."31 The Ninth Circuit has yet to weigh in on this issue.32 Courts generally agree that when a party calls the opposing side's 30(b)(6) designee at trial, the designee may provide testimony not based on personal knowledge if said testimony stays within the bounds of the 30(b)(6) deposition.33 This conclusion follows from FRCP 32(a)(1) under which a deposition may be used against a party at trial if "(A) the party was present or represented at the taking of the deposition or had reasonable notice of it"; (B) the deposition is "used to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying"; and "(C) the use is allowed by Rule 32(a)(2) through (8)."

"The first condition is met where a corporate party offers its own designee. The second also poses no barrier under these circumstances, as statements made during a FRCP 30(b)(6) deposition constitute "statement[s] of a party opponent" and are thus non-hearsay under FRE 801(d)(2).[34] And the third requirement is handled by FRCP 32(a)(3), [] which allows "[a]n *adverse party*" to "use for any purpose the deposition of a party or anyone who, when deposed, was the party's ... designee under Rule 30(b)(6)."[35]

"FRCP 30(b)(6) designees may not, however, offer testimony at trial that consists of "hearsay not falling within one of the authorized exceptions."[36] And the exceptions provided by FRE 801(d)(2) and FRCP 32(a)(3) do not apply when an organization wishes to elicit testimony from its own corporate designee.[37]

> *In other words, Rule 30(b)(6) does not eliminate Rule 602's personal knowledge requirement for trial witnesses. Brooks v. Caterpillar Glob. Mining Am., LLC*, No. 4:14CV-00022-JHM, 2017 WL 3426043, at *5 (W.D. Ky. Aug. 8, 2017). This is not surprising, as FRCP 30(b)(6) is designed to streamline the discovery process, *SEC v. Hemp, Inc.*, No. 216CV01413JADPAL, 2018 WL 4566664, at *3 (D. Nev. Sept. 24, 2018), not alter the rules of evidence to be applied at trial.[38]

Irrespective of at least "hints" that it would have allowed admission of evidence at trial that the *LAOSD* court specifically would exclude, the *Tijerina* court's ruling allowed testimony by the PMKs only "to the extent such information is based on [the witness's] personal knowledge and not on hearsay, or to the extent that an exception to the hearsay rule applies.[39]

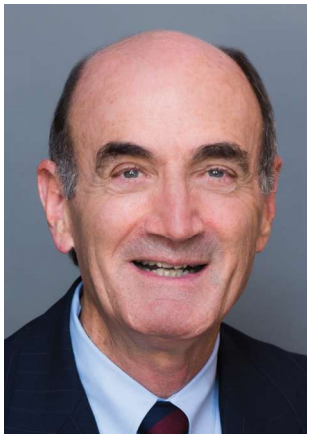
On the other hand, in *Russell v. Walmart, Inc.* (C.D. Cal. 2023) 2023 WL 2628699 ("*Russell*"), the court noted the absence of a definitive ruling by the Ninth Circuit and "the split in authority as to whether a corporate witness must have personal knowledge of the topics he or she will testify to at trial."[40] The *Russell* court then stated it agreed with other courts "that have concluded that 'strictly imposing the personal knowledge requirement would only recreate the problems that Rule 30(b)(6) was created to solve,' by allowing a corporation to designate particular individuals that can testify to a wide range of topics.[41]

The *Russell* court concluded by stating as a "preview to its thinking" that it was not inclined to strictly adhere to the personal knowledge requirement when it comes to Walmart's corporate witnesses."[42]

## Conclusion

Whether evidence that would be excluded from admission at trial in California superior courts would be admitted in federal district courts in the Ninth Circuit remains unclear notwithstanding the similarity in wording of the relevant California and Federal Rules of Evidence.[43]

Fortunately, the family law practitioner is only occasionally affected by the potentially disparate treatment that the same testimony may encounter depending on the jurisdiction. Trial lawyers will want to take this potential difference into account, beginning with their pre-trial discovery plans.



*Hon. Allan J. Goodman (Ret.), an arbitrator, private judge and discovery referee since 2019, was a Superior Court Judge and an Associate Justice Pro Tem on the Second District Court of Appeal, from 1995 through 2019. Earlier, he served as a Deputy Attorney General of California, where among other cases, he represented California and 39 States in litigation in the United States Supreme Court. Immediately prior to his judicial service, he represented high net worth individuals in marital dissolution proceedings and development stage businesses and venture capital investors, frequently advising in valuation of the businesses and of stock options.*
*He is a member of the California and New York Bars.*

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1 This article includes discussion of issues which arise in applying the Federal Rules of Civil Procedure, as well as the California Code of Civil Procedure, because there are instances, albeit rare, when a federal court has either diversity or subject matter jurisdiction over all or part of what otherwise would be a state court family law proceeding, or a significant portion of it. (Treatises in which this jurisdictional issue is discussed include Hogoboom & King, California Practice Guide: Family Law (TRG); Chapter 3-A.)

2 Further references to sections of the Code of Civil Procedure are by number only.

3 This PMQ had not been employed by the target defendant for the earlier portion of the term for which documents had been requested and produced, and about which she was appropriately questioned at her deposition.

For an interesting application of discovery provisions of the Civil Discovery Act in a family law matter, see *Schnable v. Super. Ct.* (1993) 5 Cal.5th 704.

4 LAOSD Asbestos Cases (Ramirez v. Avon Products, Inc.) (2023) 87 Cal.App.5th 939, 944-945.]LAOSD presented this Evidence Code issue on motion for summary judgment; the same principles apply at trial, as is discussed in the text.

5 References to the term PMQ includes multiple PMQs as more than one may be required to respond in particular cases.

6 Maldonado v. Super. Ct. (2002) 94 Cal.App.4th 1390 1398.

7 Id. at pp. 1395-1396.

8 (Ibid..)

9 (See Maldonado, supra, 94 Cal.App.4th at p. 1396.)

10 Civ. Proc. Code, § 2025.290, subd. (b)(5).

11 (LAOSD, supra, 87 Cal.App.5th at p. 946; see Hayman v. Block (1986) 176 Cal.App.3d 629, 639.)

12 LAOSD, supra, 87 Cal.App.5th (Id. at 947.)

13 (LAOSD, supra,Ibid. at p. 947.)

14 LAOSD, supra, 87 Cal.App.5th (LAOSD, supra, at p. 946.)

15 (Cf. Rifkind v. Super.ior Court. (1994) 22 Cal.App.4th 1255, in which (the court of appeal pointed out that some lines of questioning may be more appropriate for, e.g., interrogatories than for depositions).)

16 (Mattel, Inc. v. Walking Mountain Productions (9th Cir. 2003) 353 F.3d 792, Id., supra, at p. 797 fn. 4.)

17 Cases from courts outside the Ninth Circuit are discussed as there are few Ninth Circuit cases which consider these issues.

18 (Mattel, Inc. v. Walking Mountain Productions, supra, 353 F.3d Id., supra, at p. 638; (additional citations omitted).)

19 (Id. at p. 638, quoting Protective Nat. Ins. v. Commonwealth Ins. (D. Neb. 1989) 137 F.R.D. 267, 278; (other citations omitted).)

20 (Catalina, supra, 193 F.R.D. at p. 638; additional citations omitted; see also, Marker v. Union Fidelity Life Ins. Co. (M.D. N.C. 1989) 125 F.R.D. 121, 126 ("[Marker")], in which the court ordered production of a second PMK when the first PMK was unable to give "complete, knowledgeable and binding answers on behalf of the corporation" with respect to the target's data processing system.)

21 Rodriguez v. Pataki (S.D.N.Y. 2003) 233 F.Supp.2d 305, 311 (italics added).

22 (Bank of New YorkN.Y. v. Meridien BIAO Bank Tanzania Ltd. (S.D. N.Y. 1997) 171 F.R.D. 135, 151.)

23 (Marker, supra, 125 F.R.D. at p. 126.)

24 (See Fed. Rules Civ. Proc., rRule 30 Notes of Advisory Committee on Rules–1970 Amendment.)

25 (U.S. v. Taylor (M.D. N.C. 1996) 166 F.R.D. 356, 362; accord Alexader v. F.B.I. (D.C. D.C. 1998) 186 F.R.D 137, 141 [(the responding PMK "has the duty of being knowledgeable on the subject matter identified as the area of inquiry, and a duty to substitute an appropriate deponent when it becomes apparent that the previous deponent is unable to respond to relevant areas of inquiry (citations omitted))].

26 Detoy v. San Francisco (N.D.Cal. 2000) 196 F.R.D. 362, (Id. at 366.)

27 (Ibid., (agreeing with the reasoning in King v. Pratt & Whitney, etc. (S.D. Fla. 1995) 161 F.R.D. 475 and criticizing the more constrained interpretation of Rule 30 (b)(6) in Paparelli v. Prudential Ins. Co. of America (D. Mass. 1985) 108 F.R.D 727, 730.)

28 (See Advisory Committee Note to the 2000 Amendment to Fed. Rules Civ.Proc., Rrule 30.)

29 (Compare Sabre v. First Dominion Capital (S.D. N.Y. 2001, No. 01 Civ. 2145 (BSJ) (HBP)) 2001 WL 1590544 [(separate limits apply)] with Miller v. Waseca Medical Center (D.C. Minn. 2002) 205 F.R.D. 537 ([combined time limit applies)].)

30 (Stevens v. Corelogic, Inc. (9th Circ. 2018) 899 F.3d 666, 679, fn. 13; Saevik v. Swedish Medical Center (W.D. Wash. 2021) 2021 WL 5014087; Notes of Advisory Committee on Rules – 1993 Amendment.)

31 Lister v. Hyatt Corp., (W.D.Wash. Jan. 24, 2020, No. C18-0961JLR), 2020 WL 419454, at *2 (W.D. Wash. Jan. 24, 2020) (emphasis added) ("[Lister")].

32 See id. (finding "no authoritative ruling from the Ninth Circuit" on this topic).

33 (See, e.g., Brazos River Auth. v. GE Ionics, Inc. (5th Circ. 2006) 469 F.3d 416, 434.)

34 (Kraft Foods, supra, 2023 WL 5647204, at *8.)
35 Fed. Rules. Civ. Proc., rule 32(a)(3) (emphasis added)."
36 Brazos River, supra, 469 F.3d at p. 435.
37 See Union Pump Co. v. Centrifugal Tech. Inc., (5th Cir. 2010) 404 F. App'x 899, 907–08 (5th Cir. 2010) (holding where testimony is not sought by the adverse party, "a corporate representative may not testify to matters outside his own personal knowledge 'to the extent that information [is] hearsay not falling within one of the authorized exceptions.' " (alteration in original) (quoting Brazos River, supra, 469 F.3d at p. 435)); McGriff Ins. Servs., Inc. v. Madigan, (W.D.Ark. Nov. 4, 2022, No. 5:22-CV-5080,) 2022 WL 16709050, at *2 (W.D. Ark. Nov. 4, 2022) ("[W]hen a party seeks to introduce its own 30(b)(6) deposition testimony at trial ... 'it may be in conflict with both [FRCP] Rule 32(a)(1)(B) and[FRE] 602.' " (Quoting VIIV Healthcare Co. v. Mylan Inc., (D.Del. May 23, 2014) 2014 WL 2195082, at *2 (D. Del. May 23, 2014))."
38 (Tijerina, supra, 2024 WL 270090 at pp. *2-*3; italics added.)
39 Tijerina, supra, 2024 WL 270090 at pp. *2-*3(Ibid.)
40 Lister v. Hyatt Corp., supra, 2020 WL 419454 at *13.
41 See, e.g., Sara Lee Corp. v. Kraft Foods, Inc., (N.D.Ill. 2001) 276 F.R.D. 500, 503 (N.D. Ill. 2001) (noting that if a corporate witness is held to the personal knowledge requirement it "might force a corporation to take a position on multiple issues through a Rule 30(b)(6) deposition, only to be left with the daunting task of identifying which individual employees and former employees will have to be called at trial to establish the same facts, and declining to "'limit [the corporate representative's] testimony strictly to matters within [his] personal knowledge.'") (internal citations omitted)." (Russell v. Walmart, Inc., Russell, supra, 2023 WL 2628699.at p .13)
42 Russell v. Walmart, Inc., supra, 2023 WL 2628699.(Ibid.)
43 Cal. Evid. Code, § 702, subd. (a) states: "Subject to Section 801 [relating to expert testimony], testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter. Against the objection of a party, such personal knowledge must be shown before the witness may testify concerning the matter."
Fed. Rules of Evid., rule 602 states: "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703."