

LITIGATION

By: Keith Langley

The system of civil justice in the United States is the worst in the world, except for all the others. We have a difficult and disputatious as well as very expensive system, I know it, you know it, the opponent knows it, and the judge knows it. It is generally to the advantage of the opponent to perhaps actively conceal but as least not reveal damaging evidence. There are ways to get the evidence including a corporate representative deposition which is Federal Rule 30(b)(6).



When a deposing party thinks that a Rule 30(b)(6) witness has not been adequately prepared, the normal remedy is a motion to compel.

A corporate representative deposition is a vital tool, and should be used properly and thoughtfully, and a motion to compel (not a sanctions motion) may be in order. *Stemmelin v. Matterport, Inc.*, 2022 WL 818654 (N.D. Cal. 2022). A sanctions motion requires that ESI must be lost, which can be very hard to prove.

When you know that there is information that's out there and you feel like the request that you've sent should cover that information, but you're getting the run around from the other side or the other side is saying that we produced all the information that we had an obligation to produce, the question is, how do you go about resolving that issue? You're going to have to use data that you have. You're going to have to find some outside source of information that's going to persuade the Court that there is additional information here that needs to be provided. Use the data that is produced and use metadata.



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To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

Well done is better than well said.

- Benjamin Franklin



A movant must provide some factual basis to the Court, that additional people should be implicated based on the data that was produced and why the opponent should have known to preserve that evidence. The movant must provide a legitimate factual basis to allow the Court to do some analysis.

Get a court order to compel production of specific information and then move for sanctions based on a failure to comply with that court order, and then show the intent to deprive that falls under Rule 37(e).

If there is not cooperation with the corporate representative deposition and if it appears that evidence is missing or has been spoliated, it is time to advise the judge and get the involvement of the judge, all the while keeping in mind proportionality. That means be precise and direct and show the judge why the evidence obtained indicates that there is definitely evidence missing. Perhaps the threat itself is sufficient as the Sword of Damocles to obtain compliance. Do not hesitate, however, to involve the judge where appropriate.

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