

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**IN RE: TEPEZZA MARKETING,            )**  
**SALES PRACTICES, AND PRODUCTS )**  
**LIABILITY LITIGATION,                )**     **No. 23 C 3568**  
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**ORDER**

On October 31, 2024, the Court heard argument on the PLC’s motion for entry of an order to remedy improper deposition conduct by Horizon’s counsel. (ECF 248.) The Court reviewed and summarized its impressions and findings as to the conduct of defense counsel during the deposition of Nicole Potthast. In short, defense counsel’s objections (and other conduct) were obstructionist and not well-founded. To begin, defendant’s repeated foundation objections regarding documents shown to the witness were generally misplaced. The “very act of production [of documents during discovery is] implicit authentication.” *Vulcan Golf, LLC v. Google Inc.*, 726 F. Supp. 2d 911, 915 (N.D. Ill. 2010) (citing *U.S. v. Brown*, 688 F.2d 1112, 1116 (7th Cir. 1982) and *Thanongsinh v. Bd. of Educ.*, 462 F.3d 762 (7th Cir. 2006)). Second, defense counsel could simply have employed a “running objection” document-by-document. Defendant’s argument that plaintiff’s counsel did not “offer” such an option is disingenuous. Mr. Johnston is an experienced and aggressive litigator who chose not to employ that option. Third, and relatedly, after viewing the video clips provided by the PLC in their totality, the Court finds that Mr. Johnston’s behavior was hyper-aggressive and his objections were clearly obstructive, including objecting to clearly foundational questions based on lack of foundation and/or speculation. There are other observations that could be made, but the Court believes the point is made.

All that said, the Court notes that the questioning by the PLC, while not always objectionable, seemed less than productive. The PLC is warned that the Court expects the PLC to use the deposition time productively.

The Court also heard argument on defendant’s motion for relief based on the last-minute cancellation of depositions (ECF 249) and is inclined to award costs defendant incurred for cancelling the reserved conference space for each deposition (represented to be \$900 per day plus taxes) but does not believe any further relief is appropriate under the circumstances. Given the conduct outlined above, the PLC’s concerns that this conduct would impact future depositions, and defendant’s position at last week’s emergency hearing as well as in response to the PLC’s motion for relief that Mr. Johnston’s conduct was appropriate, the Court finds that the PLC’s decision to address these issues before proceeding with further depositions was well founded.

That said, Mr. Becker indicated that his schedule was also a motivating factor in the decision to reschedule at least one of the depositions. Balancing the equities as the Court currently understands the issues, the Court believes that the PLC should reimburse defendant for the hard costs related to conference space rental. That said, the PLC may file a response to defendant's motion by 11/8/24 to set forth its position, and the Court will rule on the motion at that time.

Finally, the Court warns the PLC that the scheduling of depositions must be collaborative. And, as the Court has previously noted, the PLC advocated for a tighter discovery timeline and cautioned the Court that it would need to guard against slippage. The PLC got its wish. The Court will expect all parties to work together to schedule remaining depositions. If that does not occur or there are future unexplained cancellations, the Court will consider other options to discourage such conduct.

**SO ORDERED.**

**ENTERED: November 1, 2024**



**M. David Weisman**  
**United States Magistrate Judge**