

1 **MEMORANDUM DECISION GRANTING MOTION TO OVERRULE DEFENDANT'S**
2 **OBJECTIONS TO PLAINTIFFS' TAKING AND TRANSCRIPTION OF DEPOSITIONS IN THE**
3 **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**
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5 BLAKE SLAUGHTER, an individual and JAMES STARR, an individual, Plaintiffs, v. THE
6 BOEING COMPANY, a Delaware Corporation, Defendant. Case No. 2:11-cv-537-DN-BCW
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8 District Judge David Nuffer
9 Magistrate Judge Brooke Wells
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11 Plaintiffs employed Lee Richan of AVLawDepot, LLC to administer, videotape,
12 transcribe and certify the depositions. Mr. Richan is notary, licensed by the State of Utah.
13 Defendant objects to the notice and the method of taking the depositions because the
14 notice did not clarify exactly how the deposition was to be taken. Defendant further objects
15 to the deposition because Defendant alleges that the Mr. Richan is not certified to prepare
16 transcriptions in state or federal courts. Defendant requests that the depositions be
17 stricken and not be available for use in the proceedings.

18 Conversely, Plaintiffs contend that the use of videotape and notaries in Utah are
19 proper methods for recording and transcribing depositions under the Federal Rules of Civil
20 Procedure.
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22 I. DEPOSITION NOTICES

23 Rule 30 of the Federal Rules of Civil Procedure states, in relevant part, that “[t]he
24 party who notices the deposition must **state in the notice the method for recording the**
25 **testimony**. Unless the court orders otherwise, **testimony may be recorded by audio,**
26 **audiovisual, or stenographic means [and] any party may arrange to transcribe a**
27 **deposition.**” Rule 30 further states that “[w]ith prior notice to the deponent and other
28 parties, any party may designate another method for recording the testimony in addition to
29 that specified in the original notice.” Plaintiffs have met the requirements of these
30 provisions. **In the notice of depositions, Plaintiffs indicated that the depositions**
31 **would be taken “...before a certified court reporter, notary public or some other official**
32 **authorized by law to administer oaths...[.] The oral examination will be videotaped...”**
33 The depositions were taken as noticed in the deposition notices sent to the Defendant.
34 Further, the rules regarding notice contemplate that if counsel for the Defendant had
35 objections to the method of recording or were concerned that they would not be recorded
36 to its satisfaction, Defendant could have arranged for another method of recording or
37 transcription. Here, counsel for the Defendant did not arrange for another means of
38 recording or transcription and **the deposition notices were proper.**
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40 II. THE USE OF VIDEOTAPE AND A NOTARY PUBLICS DURING DEPOSITIONS

41 Next, Defendant argues that Mr. Richan, a notary, who videotaped and later
42 transcribed and certified the deposition transcript is not qualified to prepare a transcript of
43 the deposition and therefore such transcripts should be stricken and not allowed for use in
44 these proceedings.

45 First, under the Federal Rules of Civil Procedure, **videotaped depositions are**
46 **allowed.** Rule 28 provides that a deposition may be taken before “an officer authorized to
47 administer oaths either by federal law or by the law in the place of examination.”

48 Here, as stated in the notice, the depositions at issue took place in Salt Lake City,
49 Utah. In Utah, notaries are statutorily authorized to administer oaths. Although there is
50 statutory support for notaries taking depositions, Utah case law with regard to this subject
51 is virtually silent. However, in dicta to Wooley v. Wight, the Utah Supreme Court applying
52 Utah law stated that “[a] deposition may be taken before an officer authorized to
53 administer oaths. **A notary public is such an officer.**”

54 Moreover, it appears that neither the 10th Circuit or courts within this District have
55 ruled on this specific issue regarding the nonstenographic video recording of a deposition
56 which is administered and later certified by a notary. However, in looking to other states, it
57 appears that at least both Colorado and Texas statutorily allows notaries to take
58 depositions. Further, an opinion issued by the Attorney General of Texas has explicitly
59 found that “notaries public have authority to take written depositions in non-stenographic
60 form.”

61 In addition, the Federal Rules of Civil Procedure provide additional safeguards for
62 depositions that are taken non-stenographically. Under Rule 30(b)(5)(B), “[i]f the
63 deposition is recorded non-stenographically, the officer must repeat the items in Rule
64 30(b)(5)(A)(i)-(iii) [the officer’s name and place of business; the date, time and place of the
65 deposition; and the deponent’s name]. Further, Rule 30(5)(B) requires that “[t]he
66 deponent’s and attorney’s appearance or demeanor must not be distorted through
67 recording techniques.” Here, at least from the deposition transcript excerpt provided as an
68 exhibit to Defendant’s objection, it appears that Mr. Richan did comply with the
69 requirements of Rule 30(b)(5)(A)(i)-(iii). Mr. Richan provided his name, place of business,
70 time and place of deposition and the deponent’s name. **The videotape**, provided it is of
71 good quality (which there has been no argument that it is not) **ensures the accuracy**
72 **contemplated by the Federal Rules**. Moreover, if the Defendant was truly concerned
73 about the accuracy of the transcript of the depositions could have hired their own certified
74 court reporter to transcribe the depositions from the videotape as contemplated by the
75 Federal Rules of Civil Procedure. Thus, although Utah does not explicitly spell out within a
76 statute that notaries can take depositions as in other states, **the language of the statute**
77 **and the Federal Rules of Civil Procedure together allow for a notary to videotape and**
78 **certify a transcript.**

79 CONCLUSION

80 For the foregoing reasons, it is HEREBY ORDERED that the Plaintiff’s Motion to
81 Strike Objections, or Overrule Defendant’s Objections to Plaintiffs’ Taking and
82 Transcription of Depositions of Tracy Gertino and Jeremy Fox is HEREBY GRANTED. **The**
83 **depositions as well as the notices were proper under both the Federal and Utah Rules**
84 **of Civil Procedure**. Accordingly, the oral depositions of Tracy Gertino and Jeremy Fox **were**
85 **appropriately conducted and as such the testimonies of both witnesses will not be**
86 **stricken.**

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89 DATED this 9th day of November, 2012.

[signed] Brooke C. Wells
United States Magistrate Judge

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92
93 [emphasis added; full Case 2:11-cv-00537-DN-BCW Document 66 Filed 11/09/12]