

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

RUTHELLE FRANK, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

SCOTT WALKER, in his official capacity as  
Governor of the State of Wisconsin, et al.,

Defendants.

Civil Action No. 2:11-cv-01128 (LA)

**PLAINTIFFS' EXPEDITED NON-DISPOSITIVE MOTION UNDER LOCAL  
RULE 7(h) TO INCREASE NUMBER OF DEPOSITIONS THAT MAY BE  
TAKEN BY PLAINTIFFS**

According to Federal Rule of Civil Procedure 30(a)(2)(A)(i), Plaintiffs are allotted a maximum of 10 depositions, unless this cap is modified by order of this Court. In its Scheduling Order, entered on March 7, 2012, Doc. 36, the Court did not alter the default number of depositions, although the parties noted in their Joint Rule 26(f) Report and Discovery Plan that Plaintiffs did anticipate needing additional depositions. Doc. 29 at 3. Plaintiffs make the following expedited non-dispositive motion pursuant to Local Rule 7(h) to increase the number of depositions they may take. On Wednesday July 11, 2012, Plaintiffs and Defendants met and conferred telephonically about this issue, among others, and Defendants refused to stipulate to an increase in the number of depositions, other than to permit the deposition of Defendants' expert witness, M.V. Hood III.

Before the close of discovery on August 1, 2012, Plaintiffs wish to depose several additional officials and/or employees with the Wisconsin Government Accountability Board ("GAB") and the Wisconsin Department of Transportation Division of Motor Vehicles ("DMV"), including: a DMV supervisor or team leader at a Customer Service Center ("CSC") in Milwaukee, Diane Lowe (GAB), Shane Falk (GAB), Alison Coakley (GAB), and Lorraine Lathan, an employee of the communications firm KW2 (Knupp & Watson & Wallman), who has served as a consultant to GAB. During the July 11, 2012 meet and confer, Defendants' counsel represented to Plaintiffs' counsel that they do not consider Ms. Lathan a client. These depositions are necessary to develop facts pertaining to the implementation of Act 23 by GAB personnel and consultants, including photo ID implementation team members focused on, among other things, training, legal interpretation, public education, and fielding voter problems with compliance. Plaintiffs have only previously deposed one prior DMV CSC team leader, but practices differ

across CSCs so it is imperative to depose an additional CSC team leader. Assuming there is no obstructive or dilatory behavior, Plaintiffs will limit the length of the above additional depositions to no more than 3 hours each. Additionally, Plaintiffs will seek to depose Defendants' expert witness, M.V. Hood III.<sup>1</sup> Plaintiffs do not agree to restrict this expert deposition to 3 hours.<sup>2</sup>

Since Defendants have refused to stipulate to the increase in the number of depositions Plaintiffs may take, Plaintiffs request that this Court grant Plaintiffs an additional 8 depositions for a total of 18. Given the complexity of the legal and factual issues in this matter, as well as the number of claims pending, Plaintiffs submit that this is a reasonable number of depositions.

Given the straightforward nature of this dispute and the limited number of days remaining before the close of discovery, Plaintiffs request expedited briefing on this motion, with Defendants' response due Friday July 13, 2012.

Dated this 11th day of July, 2012.

Respectfully submitted,

/s/ Jon Sherman

---

<sup>1</sup> It is unclear whether expert witness depositions may be counted towards the total of ten depositions allotted under Federal Rule of Civil Procedure 30(a)(2)(A)(i). At least one court has excluded expert depositions from the default limit of 10. *See, e.g., C & C Jewelry Mfg., Inc. v. West*, No. C09-01303 JF (HRL), 2011 WL 767839, at \*1 (N.D. Cal. Feb. 28, 2011) (granting motion to exclude expert depositions from the "presumptive 10-deposition limit").

<sup>2</sup> Plaintiffs have informed Defendants that they will seek to depose and thereby preserve the testimony of certain non-party witnesses and named plaintiffs who may be unavailable for trial under Federal Rule of Civil Procedure 32(a)(4)(C) due to age, illness, and/or infirmity. Defendants' counsel have not yet informed counsel of their position on these depositions of elderly and/or infirm plaintiffs or non-party witnesses. If Defendants are ultimately unwilling to stipulate to these depositions of potentially unavailable witnesses, Plaintiffs will file a separate expedited, non-dispositive motion under Local Rule 7(h) to seek a further increase in the number of depositions that Plaintiffs may take.

JON SHERMAN  
M. LAUGHLIN MCDONALD  
NANCY ABUDU  
American Civil Liberties Union Foundation, Inc.  
230 Peachtree Street, Suite 1440  
Atlanta, GA 30303  
Phone: (404) 523-2721  
Fax: (404) 653-0331  
jsherman@aclu.org  
lmcdonald@aclu.org  
nabudu@aclu.org

KARYN L. ROTKER  
State Bar No. 1007719  
LAURENCE J. DUPUIS  
State Bar No. 1029261  
American Civil Liberties Union of Wisconsin  
Foundation  
207 East Buffalo Street, Suite 325  
Milwaukee, WI 53202  
(414) 272-4032  
(414) 272-0182 (fax)  
krotker@aclu-wi.org  
ldupuis@aclu-wi.org

HEATHER MARIA JOHNSON  
KAREN E. CUNNINGHAM  
National Law Center on Homelessness & Poverty  
1411 K Street NW, Suite 1400  
Washington, DC 20005  
Phone: (202) 638-2535  
Fax: (202) 628-2737  
hjohnson@nlchp.org  
kcunningham@nlchp.org

NEIL STEINER  
DIANE PRINC  
Dechert LLP  
1095 Avenue of the Americas  
New York, NY 10036-6797  
Phone: (212) 698-3822  
Fax: (212) 698-3599  
neil.steiner@dechert.com  
diane.princ@dechert.com

CRAIG FALLS

Dechert LLP  
1775 I Street, NW  
Washington, DC 20006-2401  
Phone: (202) 261-3373  
Fax: (202) 261-3333  
craig.falls@dechert.com

Attorneys for Plaintiffs.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

RUTHELLE FRANK, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

SCOTT WALKER, in his official capacity as  
Governor of the State of Wisconsin, et al.,

Defendants.

Civil Action No. 2:11-cv-01128 (LA)

**PROPOSED ORDER REGARDING PLAINTIFFS' EXPEDITED NON-  
DISPOSITIVE MOTION UNDER LOCAL RULE 7(h) TO INCREASE NUMBER  
OF DEPOSITIONS THAT MAY BE TAKEN BY PLAINTIFFS**

IT IS HEREBY ORDERED that the number of depositions Plaintiffs may take is increased from the maximum of 10 depositions set by Federal Rule of Civil Procedure 30(a)(2)(A)(i) to a maximum of 18 depositions.

So Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT:

\_\_\_\_\_  
LYNN ADELMAN  
U. S. District Court Judge