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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 SOUTHERN DIVISION

11 MASIMO CORPORATION, a  
12 Delaware corporation; and  
13 CERCACOR LABORATORIES,  
INC., a Delaware corporation,

14 Plaintiffs,

15 v.

16 APPLE INC., a California corporation,  
17 Defendants.  
18

CASE NO. 8:20-cv-00048-JVS (JDEx)  
ORDER RE: DEFENDANT'S *EX*  
*PARTE* APPLICATION (DKT. 371)

19 This matter is before the Court pursuant to Defendant Apple Inc.'s  
20 ("Apple") *Ex Parte* Application for an Order Directing Depositions to Proceed  
21 Remotely (Dkt. 371, "Application"), supporting Memorandum of Points and  
22 Authorities (Dkt. 371-1, "Mem."), and Declaration of Counsel (Dkt. 371-2) with  
23 supporting Exhibits (Dkt. 371-3).

24 By its Application, Apple seeks an order that 11 depositions of Apple  
25 employees, noticed by Plaintiffs Masimo Corporation and Cercacor Laboratories,  
26 Inc. ("Plaintiffs") to proceed in May and June 2021, in-person, in San Francisco,  
27 California, instead proceed remotely by videoconference under Rule 30(b)(4) of  
28 the Federal Rules of Civil Procedure due to the continuing COVID-19 pandemic

1 and Apple’s assertion that “due to Apple’s COVID-19 precautions, the noticed  
2 deponents were working remotely for the foreseeable future, likely at least until  
3 September 2021. See Mem. at 2-4. Apple seeks “expedited consideration” of the  
4 “urgent” Application. Mem. at 1, 2, 9. Plaintiffs oppose the Application. Dkt. 373.

5 Apple did not provide declarations from the deponents, nor did Apple’s  
6 declaration of counsel attest that counsel had personally spoken to the deponents  
7 to ascertain the deponents’ positions. See Dkt. 371-2. Thus, the Court does not  
8 have sufficient evidence upon which to conclude that the deponents themselves  
9 have concerns about appearing in-person for depositions. Further, during the meet  
10 and confer process, Apple argued that “it is not reasonable for Plaintiffs to insist  
11 that the noticed deponents take risks that they are not required to take as part of  
12 their regular job duties.” Dkt. 371-2 at 66. However, Apple did not provide  
13 evidence that the deponents have not recently attended in-person work meetings  
14 “as part of their regular job duties” and are not expected to do in the immediate  
15 future. Despite these evidentiary deficiencies, due to the seriousness of the issues  
16 raised, the Court will not deny the Application outright, but will instead provide  
17 Apple with an opportunity to make an appropriate showing in a timeframe  
18 consistent with the “urgency” Apple asserts exists.

19 THEREFORE, having considered the documents filed in support of and in  
20 opposition Application,


21 IT IS HEREBY ORDERED that the Application (Dkt. 371) is GRANTED,  
22 in part, subject to the following condition. If Apple’s counsel provides a  
23 declaration by counsel to counsel for Plaintiffs by 5:00 p.m. on May 12, 2021, that  
24 identifies by name each of the 11 Apple employee-deponents who are the subject  
25 of the Application, and, for each deponent, attests that counsel has either spoken  
26 with or received an electronic communication directly from each such deponent,  
27 and answers, for each such deponent based on such communication: (a) whether  
28 the deponent states the deponent uncomfortable proceeding with an in-person

1 deposition due to COVID-19; (b) whether the deponent has, for the preceding 30  
2 days, worked for Apple remotely-only; (c) whether the deponent has attended any  
3 in-person work-related meeting during the preceding 30 days; and (d) whether the  
4 deponent has been advised that Apple requires the deponent to work remotely for  
5 the next 60 days. Confirmation of items (b), (c), and (d) are included based on the  
6 arguments and assertions made by Apple in the Application.

7 For each Apple employee-deponent referenced in a timely declaration by  
8 counsel who has advised counsel that the deponent is not comfortable proceeding  
9 with an in-person deposition due to COVID-19, has only worked remotely for  
10 Apple in the preceding 30 days, has not attended any in-person work meetings in  
11 the preceding 30 days, and has been advised by Apple that the deponent-employee  
12 will be required by Apple to continue to work remotely for the next 60 days, good  
13 cause will have been shown, the Application is GRANTED, and each such  
14 deponent may appear remotely on the date Apple has agreed to make such  
15 deponent available in May and June 2021, or on another date mutually agreeable  
16 by the parties. For any deponent as to whom such a certification is not timely  
17 made, good cause has not been shown, and the Application is DENIED. This  
18 order relates solely to the in-person or remote appearance of the deponents; other  
19 persons are authorized to appear remotely at any of the 11 depositions. This Order  
20 is based on the information provided in and the relief sought by the Application. It  
21 does not preclude any person from seeking other relief relating to in-person or  
22 remote deposition procedures, upon an appropriate showing, by way of a regularly  
23 noticed motion pursuant to Local Civil Rule 37-1 to 37-14.

24 IT IS SO ORDERED.

25 Dated: May 11, 2021

26   
27 JOHN D. EARLY  
28 United States Magistrate Judge