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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA

City of Philadelphia	:	CASE NO.: 230702394
Plaintiff	:	CIVIL DIVISION
v.	:	
Tanner Operations, LLC, *et. al.*	:	
Defendants	:	

DEFENDANTS MAD MINUTE ENTERPRISES, LLC'S MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT MAD MINUTE ENTERPRISES, LLC's OMNIBUS MOTION TO EXTEND DISCOVERY, TO COMPEL RULE 4.007.1(e) DEPOSITION, AND FOR SANCTIONS

I. MATTER BEFORE THE COURT

Before the Court is Defendants Mad Minute Enterprises, LLC d/b/a Delia's Gun Shop's ("Defendant's") Omnibus Motion to Extend Discovery, to Compel Rule 4.007.1(e) Deposition, and for Sanctions against Plaintiff City of Philadelphia ("City").

II. STATEMENT OF THE QUESTIONS PRESENTED

1. Did the City violate Pennsylvania Rule of Civil Procedure 4007.1(e) by producing, as its Rule 4007.1(e) designee, a witness who had never seen the deposition notice, reviewed no documents, spoke to no one at the City about the noticed topics, and could not answer basic questions about the subjects noticed in the subpoena, thereby failing to testify to "matters known or reasonably available to the organization."?

   Suggested answer: **Yes**.

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2. Should this Court reopen and extend discovery for the limited purpose of obtaining a meaningful Rule 4007.1(e) deposition of the City, where Defendant diligently sought that deposition during the discovery period, agreed to accommodate the City's schedule by taking it shortly after the deadline, and the City's failure to produce a prepared designee deprived Defendant of the discovery the rules guarantee?

   Suggest answer: **Yes**.

3. Are sanctions appropriate under Pennsylvania Rule of Civil Procedure 4019 where the City failed to produce a prepared Rule 4007.1(e) witness?

   Suggest answer: **Yes**.

III. FACTS

On September 16, 2025, Defendant served a subpoena on the City pursuant to Rule 4007.1(e) seeking testimony on specified topics, including the creation, structure, operations, and oversight of the Gun Violence Task Force and the City's policies, practices, and knowledge concerning firearms trafficking and straw purchasing. However, due to scheduling constraints and by mutual agreement, the parties agreed that Defendant could take the City's Rule 4007.1(e) deposition after the nominal discovery end date, with the express understanding that Defendant did not waive the right to seek relief if the City's designee was inadequately prepared or otherwise failed to satisfy Rule 4007.1(e).

On October 16, 2025, the City produced Sergeant Mark Hiller ("Hiller"), an ATF Task Force Officer for the City, as its Rule 4007.1(e) designee. Hiller previously served a two-year appointment as Supervisor for the Gun Violence Reduction Task Force.

Unfortunately, upon questioning, Defendants' counsel discovered Hiller had not been shown the deposition notice, had not reviewed any documents, had not spoken to anyone at the City about the deposition topics, and was unable to testify about basic historical and institutional

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facts the City would or should know. In fact, when shown the subpoena, Hiller testified that he had never seen it before. Mot. Ex. A, at 13-14.

When asked how he prepared, Hiller testified that he "reviewed a draft affidavit" prepared with the assistance of the City's Law Department, but that he did not review any documents, did not bring any documents, and did not meet with any other City representatives or agents in preparation for the deposition. Mot. Ex. A, at 15-16. He confirmed that his only preparation was virtual conversations with counsel and reading the draft affidavit. *Id.*

When questioning turned to the substance of the noticed topics, Hiller was unable to answer basic questions such as when the Gun Violence Task Force was formed, when the City began participating in the Gun Violence Task Force, and the identity of the founding members of the Gun Violence Task Force. Mot. Ex. A, at 23-25. Instead, he repeatedly stated that he did not know the answers to those questions. Hiller further explained that his first encounter with the Gun Violence Task Force was in or around 2013, when he was a City detective and referred a case to the Gun Violence Task Force. Beyond his own personal experiences beginning in 2013, he could not provide information about the City's institutional knowledge or involvement. Mot. Ex. A, at 26-30, 109.

In sum, Hiller had not done any document review, conducted any inquiry of other City personnel, and or educated himself about the most basic historical or institutional facts relevant to the Gun Violence Task Force. The net result was that Hiller arrived at the City's Rule 4007.1(e) deposition without knowing the topics, without preparation, and without the ability to testify about information that the City could readily have gathered from its own records and personnel.

After Hiller's deposition, Defendant's counsel met and conferred with the City's counsel and requested that the City produce a properly prepared Rule 4007.1(e) witness or witnesses and

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agree to a limited extension of discovery for that purpose. However, the City refused to do so absent a court order.

IV. ARGUMENT

The City failed to comply with Rule 4007.1(e) by providing a witness capable of "testify[ing] as to matters known or reasonably available to the organization." Pa. R. Civ. P. 4007.1(e)(4). Accordingly, this Court should extend applicable discovery deadlines, order the City to submit to a proper Rule 4007.1(e) deposition, and impose sanctions against the City for failure to adhere to the Pennsylvania Rules of Civil Procedure.

Rule 4007.1(e) provides that when a governmental agency is named as a deponent and topics are described with reasonable particularity, the agency must designate one or more persons to testify on its behalf, and "[t]he designated person or persons shall testify as to matters known or reasonably available to the organization." Pa. R. Civ. P. 4007.1(e)(3). Whether a person is qualified to serve as a Rule 4007.1(e) designee "is to be answered pragmatically on an ad hoc basis." *El v. Murzyn*, 831 A.2d 724, 727 (Pa. Super. 2003) (quoting *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 474 A.2d 605, 616 (Pa. Super. 1984), *modified on other grounds*, 507 A.2d 1 (Pa. 1986)). However, the Superior Court "has held that where an individual's interests are identified with those of his principal, and the nature of the individual's functions, responsibilities and knowledge pertain to the subject matter of the deposition and litigation," that person is at least a "managing agent" for purposes of Rule 4007.1(e). *El*, 831 A.2d at 727.

Under the analogous federal rule, Federal Rule of Civil Procedure 30(b)(6), courts have recognized that the corporate designee requirement is designed to prevent "bandying," where institutional litigants send a series of witnesses to disavow knowledge of facts clearly known to the organization. Thus, federal courts have held that an organizational designee must be *prepared*,

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not merely available. A Rule 30(b)(6) designee has "an affirmative obligation to educate himself as to the matters regarding the corporation," *Remigio v. Eagle Rock Resort Co.*, No. 3:21-CV-01756, 2022 WL 4002894, at *3 (M.D. Pa. Sept. 1, 2022) (quoting *Concerned Citizens of Belle Haven v. Belle Haven Club*, 223 F.R.D. 39, 43 (D. Conn. 2004)), and must be prepared to testify "to 'the extent matters are reasonably available, whether from documents, past employees, or other sources.'" *TIG Ins. Co. v. Tyco Int'l Ltd.*, 919 F. Supp. 2d 439, 454 (M.D. Pa. 2013), *amended* (Apr. 8, 2013) (quoting *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.,* No. 09–290, 2010 WL 4922701 at *3 (W.D. Pa. Nov. 29, 2010)).

Additionally, federal courts applying Rule 30(b)(6) have repeatedly held that producing an unprepared designee is equivalent to a failure to appear for a deposition and warrants sanctions under the discovery rules. See, e.g., *Black Horse Lane Assoc., L.P. v. Dow Chem. Corp.*, 228 F.3d 275, 304 (3d Cir. 2000) ("[W]hen a witness is designated by a corporate party to speak on its behalf pursuant to Rule 30(b)(6), 'producing an unprepared witness is tantamount to a failure to appear' that is sanctionable under Rule 37(d)") (quoting *United States v. Taylor*, 166 F.R.D. 356, 363 (M.D.N.C.), *aff'd*, 166 F.R.D. 367 (M.D.N.C. 1996)).

Likewise, under Pennsylvania Rule of Civil Procedure 4019, trial courts are generally authorized "to impose sanctions for a party's failure to comply with a discovery order." *Nat'l Brokers of Am., Inc. v. Jordan*, 307 A.3d 1206, 1219 (Pa. Super. 2023), *reconsideration denied* (Jan. 31, 2024), *reargument denied* (Feb. 9, 2024), *appeal denied,* 329 A.3d 585 (Pa. 2024). Rule 4019 provides, in relevant part:

> (a)(1) The court may, on motion, make an appropriate order if
>
> . . . .
>
> (iv) a party or an officer, or managing agent of a party or a person designated under Rule 4007.1(e) to be examined, after notice

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> under Rule 4007.1, fails to appear before the person who is to take the deposition.

Pa. R. Civ. P. 4019(a)(1)(iv).

That is precisely what should happen here. The City produced as its Rule 4007.1(e) witness an individual who had never seen the deposition notice, had not reviewed a single document, failed to speak to someone at the City, and disclaimed knowledge of basic facts about the Gun Violence Task Force and the City's role in it. As a practical matter, the City failed to appear for its own Rule 4007.1(e) deposition, wasting a day of deposition time, as well as the associated costs of counsel preparation and attendance, court reporter fees, and related expenses, without receiving the organizational testimony to which the rules entitle it. It was, as federal courts put it, tantamount to failure to appear entirely.

In sum, the City did not comply with Rule 4007.1(e) and should be sanctioned and ordered to submit to another deposition with a legitimate organizational designee capable of answering important questions about the Gun Violence Task Force and the City's participation in the Gun Violence Task Force.

V. CONCLUSION

For all the foregoing reasons, Defendants respectfully requests that this Honorable Court enter the attached Order extending discovery deadlines, ordering the City to submit to another 4007.1(e) deposition, and sanctioning the City for wasting Defendants' time and money.

Respectfully submitted,

GOLDSTEIN LAW PARTNERS, LLC

Dated: 11/25/2025

Britain R. Henry, Esq.

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