

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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E. JEAN CARROLL,

Plaintiff,

-against-

22-cv-10016 (LAK)

DONALD J. TRUMP,

Defendant.  
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**ORDER**

LEWIS A. KAPLAN, *District Judge.*

The Court’s rulings on the objections noted by the parties to the designations and counter-designations of certain portions of Mr. Trump’s deposition are set forth in the attached schedule. The notation “deferred” means that the Court reserves decision on the objection until it is raised, if it is raised, by counsel at trial.

With respect to Ms. Carroll’s objections to Mr. Trump’s counter-designations, the Court has sustained those objections it has determined are inadmissible under Federal Rule of Civil Procedure 32. Rule 32(a)(6) provides that “[i]f a party offers in evidence only part of a deposition, an adverse party may require the offeror to introduce other parts that in fairness should be considered with the part introduced, and any party may itself introduce any other parts.” “This rule represents an attempt to preclude the selective use of deposition testimony that might convey a misleading impression,”<sup>1</sup> and permits an adverse party to “supplement [portions of a deposition designated by the offering party] in the interest of completeness.”<sup>2</sup> Mr. Trump’s argument that Rule 32(a)(6) authorizes a party to use “any other parts” of a deposition of which parts are offered by its adversary is unsupported by the great weight of authority.<sup>3</sup> Such an interpretation of the rule also would render

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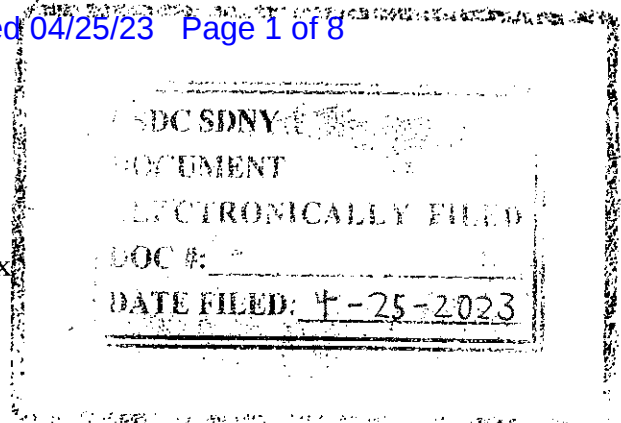
*Farr Man Coffee Inc. v. Chester*, No. 88-cv-1692 (DNE), 1993 WL 248799, at \*19 (S.D.N.Y. June 28, 1993), *aff’d*, 19 F.3d 9 (2d Cir. 1994).

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*In re Sims*, 534 F.3d 117, 141 (2d Cir. 2008).

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*See* Dkt 152 (Pl. Opposition Letter) at 1-3 (citing cases).

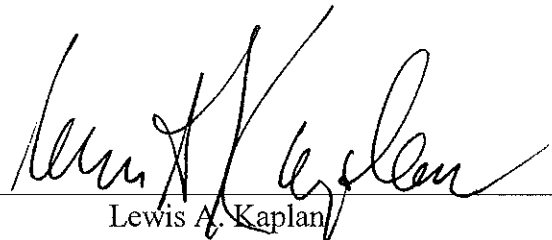


its first part, which reflects the purported policy objective of the rule, superfluous.<sup>4</sup>

With respect to those objections noted by Ms. Carroll which the Court has overruled, the Court has determined that those counter-designations serve the interest of completeness and therefore are permitted pursuant to Rule 32(a)(6). As to the other grounds on which Ms. Carroll has objected to the counter-designations that the Court has marked “overruled” in the attached ruling, the basis for objecting on those other grounds is not now clear based on the parties’ submissions. Any such objections therefore are overruled subject to renewal at trial only on any non-Rule 32(a)(6) grounds noted in Dkt 129.

SO ORDERED.

Dated: April 25, 2023



Lewis A. Kaplan  
United States District Judge

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*See* Rule 1-07 and accompanying Note, PRELIMINARY DRAFT OF PROPOSED RULES OF EVIDENCE FOR THE UNITED STATES DISTRICT COURTS AND MAGISTRATES, 21-22 (March, 1969) (“The rule is an expression of the rule of completeness. . . . The rule is based on two considerations. The first is the misleading impression created by taking matters out of context. The second is the inadequacy of repair work when delayed to a point later in the trial.”); Fed. R. Civ. P. 32(a)(6), Advisory committee’s note to 1970 amendment (“The new standard is contained in a proposal made by the Advisory Committee on Rules of Evidence. See Rule 1-07 and accompanying Note, *Preliminary Draft of Proposed Rules of Evidence for the United States District Courts and Magistrates 21-22* (March, 1969).”).

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

E. JEAN CARROLL,

*Plaintiff,*

v.

DONALD J. TRUMP,

*Defendant.*

No. 22 Civ. 10016 (LAK)

**DEPOSITION DESIGNATIONS AND OBJECTIONS**

The parties, having conferred among themselves, designate and counter-designate the below portions of the October 19, 2022 Deposition of Donald J. Trump (“Defendant’s Deposition”), and note their objections for the Court.

**A. Plaintiff’s Designations of Defendant’s Deposition and Defendant’s Objections**

<b>Plaintiff’s Designations</b>	<b>Defendant’s Objections</b>
12:21 - 13:9	No objection
13:13 - 13:15	No objection
13:17 - 14:6	No objection
16:24 - 17:11	No objection
22:15 - 22:24	No objection
23:21 - 24:2	No objection
31:23 - 32:12	No objection
37:11 - 37:22	No objection
38:4 - 38:20 <b>Deferred</b>	FRE 402 (Defendant will file a letter brief on this issue)
42:6 - 42:8	No objection
43:4 - 43:10	No objection
44:10 - 44:16	No objection

<b>Plaintiff's Designations</b>	<b>Defendant's Objections</b>
44:20 - 45:4	No objection
45:9 - 45:11	No objection
45:16 - 46:7	No objection
46:15 - 47:10	No objection
50:9 - 50:12	No objection
54:9 - 55:3	No objection
55:7 - 55:18	No objection
56:8 - 56:13	No objection
57:6 - 57:11	No objection
57:15 - 57:18	No objection
61:6 - 61:14	No objection
61:22 - 62:18	No objection
67:22 - 68:21	No objection
69:7 - 69:23	No objection
78:6 - 78:18	No objection
79:4 - 79:7	No objection
80:17 - 80:23	No objection
80:25 - 83:2	No objection
87:6 - 88:3	No objection
88:7 - 88:17	No objection
89:18 - 90:11	No objection
93:19 - 94:20	No objection
95:4 - 95:5	No objection
95:8 - 95:8	No objection
125:22 - 126:3	No objection
127:5 - 127:20	No objection
131:11 - 131:13	No objection
131:16 - 131:20	No objection
131:24 - 132:5	No objection

<b>Plaintiff's Designations</b>	<b>Defendant's Objections</b>
136:24 - 137:3	No objection
137:9 - 137:17	No objection
138:4 - 139:6	No objection
140:17 - 141:2	No objection
141:21 - 142:14	No objection
146:16 - 146:21	No objection
147:3 - 147:17	No objection
147:20 - 148:7 <b>Deferred</b>	FRE 402 & 403 (Defendant will file a letter brief on this issue)
148:14 - 148:20 <b>Deferred</b>	FRE 402 & 403 (Defendant will file a letter brief on this issue)
148:22 - 149:2 <b>Deferred</b>	FRE 402 & 403 (Defendant will file a letter brief on this issue)
149:4 - 149:6 <b>Deferred</b>	FRE 402 & 403 (Defendant will file a letter brief on this issue)
158:4 - 158:12 <b>Sustained</b>	FRE 402 & 403 (Defendant will file a letter brief on this issue)
158:14 - 158:21 <b>Sustained</b>	FRE 402 & 403 (Defendant will file a letter brief on this issue)
168:20 - 168:25 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
169:4 - 169:21 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
170:2 - 170:4 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
173:3 - 173:22 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
174:5 - 174:21 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
176:8 - 176:11 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
180:23 - 181:14 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
182:23 - 183:2 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
183:25 - 184:9 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
184:13 - 184:22 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
193:4 - 193:20 <b>Overruled</b>	FRE 402 & 403 (preserving objection for appeal)
194:11 - 194:14 <b>Sustained</b>	FRE 402 (Defendant will file a letter brief on this issue)
209:4 - 209:21	No objection

**B. Defendant's Counter-Designations of Defendant's Deposition and Plaintiff's Objections**

Defendant's Counter-Designations	Plaintiff's Objections
50:25 - 51:6 <b>Sustained</b>	FRCP 32(a)(6); FRE 106 <sup>1</sup>
51:8 - 51:12 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
55:20 (starting with "it was") - 56:5 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
58:5 - 58:6 <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 403, 611
58:14 - 59:23 <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 403, 611
60:3 - 60:18 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
71:4 - 71:24 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
72:6 - 72:10 <b>Sustained</b>	FRCP 32(a)(6); FRE 106, 402, 403, 602; Memorandum and Order on Plaintiff's <i>in Limine</i> Motion, <i>Carroll v. Trump</i> , No. 22 Civ. 10016 (Mar. 27, 2023), ECF 95
72:14 - 73:16 <b>Sustained</b>	FRCP 32(a)(6); FRE 106, 402, 403, 602; Memorandum and Order on Plaintiff's <i>in Limine</i> Motion, <i>Carroll v. Trump</i> , No. 22 Civ. 10016 (Mar. 27, 2023), ECF 95
73:18 - 73:20 <b>Sustained</b>	FRCP 32(a)(6); FRE 106, 402, 403, 602; Memorandum and Order on Plaintiff's <i>in Limine</i> Motion, <i>Carroll v. Trump</i> , No. 22 Civ. 10016 (Mar. 27, 2023), ECF 95
77:14 (starting with "And if") - 78:5 <b>Sustained</b>	FRCP 32(a)(6); FRE 106, 403, 602, 802 <sup>2</sup>

<sup>1</sup> Plaintiff objects under Federal Rule of Civil Procedure 32(a)(6) and Federal Rule of Evidence 106 to the extent Defendant designates portions of Defendant's testimony that are not made "in the interest of completeness." *In re Sims*, 534 F.3d 117, 141 (2d Cir. 2008) (citing Fed. R. Civ. P. 32(a)(6)). Federal Rule of Civil procedure 32(a)(6) "represents an attempt to preclude the selective use of deposition testimony that might convey a misleading impression." *Farr Man Coffee Inc. v. Chester*, No. 88 Civ. 1692, 1993 WL 248799, at \*19 (S.D.N.Y. June 28, 1993), *aff'd*, 19 F.3d 9 (2d Cir. 1994); *see also Great Am. Ins. Co. v. Moye*, No. 10 Civ. 00330, 2010 WL 2889665, at \*2 (M.D. Fla. July 19, 2010) ("Rule [32(a)(6)] is similar to Rule 106 of the Federal Rules of Evidence, and differences between the two are largely semantic."). Where Defendant's counter-designations seek to "introduce new material" and "do not serve to 'give the whole picture' of a portion" of the deposition that Plaintiff designated, they "are inadmissible." *Farr Man Coffee Inc.*, 1993 WL 248799, at \*19; *accord In re Yasmin & Yaz (Drospirenone) Mktg., Sales Practs. & PMF Prod. Liab. Litig.*, No. 09 Civ. 10012, 2011 WL 6740391, at \*19 (S.D. Ill. Dec. 22, 2011); *Chaudhry v. Angell*, No. 173-182, 2021 WL 4461667, at \*7-8 (E.D. Cal. Sept. 29, 2021). Defendant will respond to this by Letter Brief.

<sup>2</sup> Plaintiff objects under Federal Rule of Evidence 802 where Defendant omits questions from the designated testimony or designates incomplete portions of an answer. A deposition may be used only "to the extent it would be admissible under the Federal Rules of Evidence if the deponent were present and testifying." Fed. R. Civ. P. 32(a)(1)(B). Where an answer is designated without a question and where only portions of an answer are designated, the designation material no longer constitutes "testimony" that might be admissible pursuant to Federal Rule of Civil Procedure 32

Defendant's Counter-Designations	Plaintiff's Objections
80:4 - 80:16	No objection
103:6 - 103:19 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
116:22 - 117:4 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
119:5 - 119:22 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
119:24 - 120:15 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
130:6 - 130:16 (ending with "would happen") <b>Sustained</b>	FRCP 32(a)(6); FRE 106
131:5 - 131:9 <b>Sustained</b>	FRCP 32(a)(6); FRE 106, 403
132:9 - 134:13 <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 403, 611
134:19 - 134:24 <b>Sustained</b>	FRCP 32(a)(6); FRE 106, 602, 802
137:18 - 138:3 <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 403
139:8 - 139:24 <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 602, 802
141:3 - 141:20 <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 403, 602
146:22 -147:2	No objection
148:9 - 148:13 <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 402, 403, 602, 802
172:3 - 172:10 (Defendant designates only because of <i>in limine</i> ruling on this issue and Plaintiff's designations on this issue, and reserves all rights on appeal) <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 402, 403, 802
174:22 - 175:4 (ending with "people talk") (Defendant designates only because of <i>in limine</i> ruling on this issue and Plaintiff's designations on this issue, and reserves all rights on appeal) <b>Overruled</b>	FRCP 32(a)(6); FRE 106
176:12 - 176:17 (ending with "remember it)	FRCP 32(a)(6); FRE 106, 403, 602, 802

and, here, instead constitutes inadmissible hearsay under Federal Rule of Evidence 802. *Compare* Fed. R. Evid. 801(d)(2) (excluding from the definition of hearsay an opposing party's statement only where the statement is offered *against* that opposing party). Defendant will respond to this by Letter Brief.

<b>Defendant's Counter-Designations</b>	<b>Plaintiff's Objections</b>
(Defendant designates only because of <i>in limine</i> ruling on this issue and Plaintiff's designations on this issue, and reserves all rights on appeal) <b>Overruled</b>	
176:19 (starting with "a long time") – 177:4 (ending with "phony charge") (Defendant designates only because of <i>in limine</i> ruling on this issue and Plaintiff's designations on this issue, and reserves all rights on appeal) <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 403, 602, 802
183:13 – 183:23 (ending with "disgrace, also.") (Defendant designates only because of <i>in limine</i> ruling on this issue and Plaintiff's designations on this issue, and reserves all rights on appeal) <b>Overruled</b>	FRCP 32(a)(6); FRE 106
185:3 – 187:3 (Defendant designates only because of <i>in limine</i> ruling on this issue and Plaintiff's designations on this issue, and reserves all rights on appeal) <b>Sustained</b>	FRCP 32(a)(6); FRE 106, 402, 403, 602, 802
191:25 – 192:22 <b>Overruled</b>	FRCP 32(a)(6); FRE 106, 403
210:17 - 210:19 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
210:22 - 210:25 <b>Sustained</b>	FRCP 32(a)(6); FRE 106
215:3 - 215:19 <b>Sustained</b>	FRCP 32(a)(6); FRE 106, 602