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28United States District Court
For the Northern District of California**NOT FOR CITATION**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

DOLLAR TREE STORES, INC.,

No. CV 10-0325 SI (NJV)

Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO RE-DEPOSE PLAINTIFF**

v.

TOYAMA PARTNERS LLC, *et al.*,

(Docket No. 219)

Defendants.

The district court has referred the parties' discovery disputes to this Court for determination. Doc. No. 202. On June 7, 2011, Defendants Toyama Partners, LLC, Peter Pau, Susana Pau, Sand Hill Property Management Co., and Capella-Mowry, LLC ("Capella") moved to re-depose Plaintiff Dollar Tree Stores, Inc. pursuant to Rule 30(a)(2) of the Federal Rules of Civil Procedure. Doc. No. 219. Plaintiff opposes Defendants' motion. Doc. No. 231. Pursuant to Local Rule 7-1(b), Defendants' motion is taken under submission without oral argument.

DISCUSSION

On March 14 and 15, 2011, Defendant Toyama deposed Plaintiff's corporate designee. At this time, Toyama was the only defendant in the action.¹ On March 22, 2011, Plaintiff filed its Second Amended Complaint adding Defendants Peter Pau, Susana Pau, and Sand Hill Property Management and alleging that the new defendants were alter egos of Defendant Toyama. Doc. No. 160. Pursuant to its stipulation with Defendant Toyama, on April 5, 2011, Plaintiff filed its Third

¹ On December 1, 2010, the court granted Comerica Bank's motion to dismiss without leave to amend. Doc. No. 112.

1 Amended Complaint alleging that Defendant Capella is liable as a successor to Defendant Toyama
2 because Defendant Capella acquired the Mowry Crossing Shopping Center from Defendant Toyama
3 in February 2011. Doc. Nos. 161-163. The court recently extended the non-expert fact discovery to
4 August 12, 2011. Doc. No. 213.

5 Defendants now seek to re-depose Plaintiff's corporate designee because Plaintiff has twice
6 amended its complaint to add new defendants and new claims since Plaintiff's March 2011
7 deposition. Defendants request a deposition for up to four (4) days. Defendants also argue that
8 Plaintiff previously agreed to a second deposition after Plaintiff amended its complaint. Plaintiff
9 does not oppose re-deposing its corporate designee regarding its alter ego and successor liability
10 claims, but argues that Defendants should not be permitted to re-depose Plaintiff on liability and
11 damages.

12 "A party must obtain leave of court, and the court must grant leave to the extent consistent
13 with Rule 26(b)(2)" if "the deponent has already been deposed." Fed. R. Civ. P. 30(a)(2)(A)(ii).
14 "Unless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours."
15 Fed. R. Civ. P. 30(d)(1). The rules clarify that "[t]he court must allow additional time consistent
16 with Rule 26(b)(2) if needed to fairly examine the deponent or if the deponent, another person, or
17 any other circumstance impedes or delays the examination." *Id.* The court may alter the limit on the
18 number of depositions and the length of depositions provided under Rule 30. Fed. R. Civ. P.
19 26(b)(2)(A). The court considers whether the discovery sought is cumulative or duplicative, or can
20 better be obtained from some another source; whether the party seeking discovery has had ample
21 opportunity to obtain the information by discovery in this action; and whether the burden or expense
22 of the proposed discovery outweighs its likely benefit. Fed. R. Civ. P. 26(b)(2)(C).

23 Here, good cause exists to permit Defendants to re-depose Plaintiff because Plaintiff has
24 added new defendants and new claims to its complaint since the deposition of Plaintiff's corporate
25 designee. The factors weigh in favor of permitting a second deposition: the discovery sought is not
26 cumulative or duplicative; it cannot be obtained from another source; Defendants have not had the
27 opportunity to otherwise depose Plaintiff regarding its new claims; and the benefits of the proposed
28 discovery outweighs the burden or expense to Plaintiff. In addition, Plaintiff does not oppose

1 re-deposing its corporate designee regarding Plaintiff's alter ego and successor liability claims.
2 While Defendants are correct that Plaintiff has added four new defendants since its deposition, this
3 does not translate into justifying four (4) additional days of deposition time, especially given that
4 defense counsel represents all remaining Defendants.

5 **CONCLUSION**

6 Having carefully considered the papers submitted, and for good cause shown, the Court
7 **grants in part and denies in part** Defendants' motion. Defendants may re-depose Plaintiff for two
8 (2) days. Defendants may examine Plaintiff regarding its new claims, but are prohibited from
9 revisiting topics already examined during the first deposition as to Defendant Toyama. Defendants
10 are permitted to examine these topics as the topics relate to the other Defendants.

11
12 **IT IS SO ORDERED.**

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15 Dated: June 30, 2011



NANDOR J. VADAS
United States Magistrate Judge