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

KWAN SOFTWARE ENGINEERING, INC., a
California corporation d/b/a VERIPIC, INC.,

No. C 12-03762 SI

ORDER RE: DISCOVERY LETTER

Plaintiff,

v.

FORAY TECHNOLOGIES, LLC, a Delaware
Limited Liability Company,

Defendant.

On December 19, 2013, defendant Foray Technologies, LLC individually filed a discovery letter, requesting leave to take five additional depositions of certain third party witnesses. Docket No. 103. “[A]bsent leave of court or stipulation of the parties, a party may not take more than ten depositions.” *C&C Jewelry Mfg. v. West*, 2011 U.S. Dist. LEXIS 24706, at *2 (N.D. Cal. Feb. 28, 2011) (citing Fed. R. Civ. P. 30(a)(2)(A)(i)). “A party seeking leave to take more depositions must make a ‘particularized showing’ why the discovery is necessary.” *Id.*

Foray explains that these additional depositions are relevant to rebut the presumption that Foray’s allegedly false statements were material and influenced the decisions of Foray’s customers. *See Pom Wonderful LLC v. Purely Juice, Inc.*, 2008 U.S. Dist. LEXIS 55426, at *29 (C.D. Cal. Jul. 17, 2008) (holding that upon proof of literal falsity, a presumption arises that the false statements actually misled consumers) (citing *U-Haul Intl, Inc. v. Jartran, Inc.*, 793 F.2d 1034, 1041 (9th Cir.1986); *Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 209 (9th Cir. 1989)). Foray further explains that these five

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additional depositions would allow it to depose more than half of the customers who were allegedly deceived. The Court concludes that Foray has made a sufficient showing of the need to take the additional depositions. Accordingly, for good cause shown, the Court GRANTS Foray's request to take five additional depositions of third party witnesses.

IT IS SO ORDERED.

Dated: December 20, 2013



SUSAN ILLSTON
United States District Judge