

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
Northern District of California

JANICE KENNEDY,

Plaintiff(s),

No. C 07-0371 CW (MEJ)

v.

**ORDER RE: DISCOVERY DISPUTE
(DKT. ## 199, 214, 215)**

JACKSON NATIONAL LIFE INSURANCE
COMPANY,

Defendant(s).

I. INTRODUCTION

Before the Court is the joint discovery dispute letter (“Joint Letter”) filed by the parties on March 25, 2010. (Dkt. #199.) On April 8, 2010, the undersigned held a hearing on the matter, following which the parties submitted further briefing. (Dkt. ## 214, 215.) After consideration of the parties’ papers and oral arguments, relevant legal authority, and good cause appearing, the Court ORDERS as follows.

II. DISCUSSION

This dispute centers around Plaintiff having noticed the deposition of Defendant’s CEO, Clark P. Manning, Jr.¹ (Joint Letter at 2.) Defendant seeks a protective order to prevent Plaintiff from deposing Manning. *Id.* at 3-4. Defendant argues that Manning has no personal involvement in or knowledge of certain of Defendant’s business practices at issue in this lawsuit. *Id.* Defendant argues that this “apex deposition” should not be permitted to go forward because Plaintiff has not articulated good cause to disrupt the busy schedule of Manning, a high-ranking executive, and has not shown that Manning possesses unique information which cannot be obtained through a less burdensome discovery method. *Id.* at 4.

¹Other issues raised in the Joint Letter were resolved, at least temporarily, at the hearing. The only issue currently before the undersigned is the deposition of Defendant’s CEO.

1 **A. Legal Standard**

2 Rule 26(c) provides that a court may, upon a showing of good cause by the party seeking
3 protection, issue an order to protect a party from annoyance, embarrassment, oppression, undue
4 burden or expense. “Broad allegations of harm, unsubstantiated by specific examples or articulated
5 reasoning, do not satisfy the Rule 26(c) test.” *Beckman Industries, Inc. v. International Ins. Co.*, 966
6 F.2d 470, 476 (9th Cir. 1992) (internal citations removed).

7 **B. Application to the Case at Bar**

8 In her portion of the Joint Letter and at the hearing, Plaintiff argued that Manning’s name
9 was mentioned “no less than twenty times” by Lisa Drake during her Federal Rule of Civil
10 Procedure (“Rule”) 30(b)(6) deposition regarding Actuarial Policies. *Id.* at 6. Plaintiff argues that
11 because Drake testified that Manning determines interest crediting rates, renewal rates, and product
12 pricing spreads, receives reports and participates in regular meetings concerning the design, sale and
13 performance of deferred annuity products, Manning’s deposition is proper as he has direct
14 involvement and personal knowledge of facts and issues relevant to the litigation. *Id.* At the
15 hearing, Plaintiff submitted to the Court and to Defendant a copy of Drake’s deposition with
16 relevant portions highlighted.

17 Defendant argues that Drake’s testimony during her Rule 30(b)(6) deposition regarding
18 Defendant’s actuarial policies demonstrates nothing other than that Manning provided “the high-
19 level direction and oversight one would expect of a CEO.” (Def.’s Briefing at 1, Dkt. #214.)
20 Defendant argues that Drake’s testimony “makes two unremarkable and irrelevant points[,]” that
21 Manning determines the overall pricing of Defendant’s products from a “global” perspective and
22 that he receives a regular report and meets with management to monitor the sales and performance
23 of Defendant’s products. *Id.* Defendant argues that this high-level strategic responsibility does not
24 amount to unique personal knowledge. *Id.* Defendant further argues that Plaintiff does not
25 challenge Defendant’s global pricing, nor does she allege insufficient monitoring of sales and
26 performance of Defendant’s products by upper management. *Id.* at 1-2. What Plaintiff does
27 challenge in this case, Defendant argues, is payment of commissions to sales agents, details
28

1 regarding possible bias in her annuity’s “excess interest adjustment[,]” and the allegedly illusory
2 nature of Defendant’s first-year bonus interest rate. *Id.* at 2. Defendant argues that Plaintiff has
3 failed to demonstrate that Manning had any involvement in these practices even in a general sense.
4 *Id.* Finally, Defendant argues that it is entitled to a protective order because Plaintiff has not
5 demonstrated that Manning can provide any information regarding these matters that has not already
6 been provided by the head of Defendant’s actuarial department, who has already been deposed. *Id.*

7 In response, Plaintiff argues that Defendant has not met its burden of proving that a one-day
8 deposition of Manning would cause “annoyance, embarrassment, oppression, or undue burden or
9 expense.” (Pl.’s Briefing at 1, Dkt. #215.) Plaintiff argues that Defendant attempts to mis-
10 characterize the testimony of Drake so it appears that Manning has “global” rather than direct
11 knowledge of facts at issue. *Id.* Plaintiff argues, per Drake’s testimony, that Manning has unique
12 personal knowledge of renewal rates, product pricing and spreads, interest crediting rates within
13 individual annuity plans, and that he is the main decision-maker regarding these issues. (*Id.* at 1-2;
14 RT 81:19-25, 100:1-16; 103:4-10, 139:7-10, 140:21-24.) Plaintiff argues that Drake’s testimony
15 “imputing direct and sole responsibility of interest crediting rate practices to Mr. Manning”
16 mandates that this Court deny Defendant’s motion seeking a protective order. (Pl.’s Briefing at 1,
17 Dkt. #215.)

18 “While a party seeking to prevent a deposition carries a heavy burden to show why discovery
19 should be denied, courts are sometimes willing to protect high-level corporate officers from
20 depositions when the officer has no first hand knowledge of the facts of the case or where the
21 officer's testimony would be repetitive.” *Mehmet v. PayPal, Inc.*, C 08-1961 RMW, 2009 WL
22 921637, at *2 (N.D. Cal. 2009) (internal citations removed). However, just because another witness
23 has testified regarding the same facts does not mean such testimony would be repetitive. *First Nat’l*
24 *Mortgage Co. v. Federal Realty Inv. Trust*, C 03-02013 RMW, 2007 WL 4170548, at *2 (N.D. Cal.
25 November 19, 2007). Courts will usually not permit an apex deposition to go forward where lower
26 level employees with more intimate knowledge of the case have not yet been deposed. *Id.* (citing
27 *Salter v. Upjohn*, 593 F.2d 649, 651 (5th Cir. 1979)). But, where the testimony of lower level
28

1 employees indicates that the apex deponent may have some relevant personal knowledge, the party
2 seeking protection will not likely meet the high burden necessary to warrant a protective order. *See*
3 *First Nat'l Mortgage Co.*, 2007 WL 4170548, at *2; *Google v. American Blind & Wallpaper*
4 *Factory, Inc.*, No. C 03-5340 JF; 2006 WL 2578277, at *3 (N.D. Cal. September 6, 2006).
5 However, the deposition may be limited in scope to the actual involvement of the high-level
6 executive in the policies or practices at issue, and may also be limited in length. *Google*, 2007 WL
7 2578277, at *3 (limiting the scope of the deposition of Google's founder to his knowledge and
8 involvement of the policy change at issue, and limiting the length to three hours).

9 Here, the Court finds that Defendant's CEO may have relevant personal knowledge
10 regarding the facts of this case. Specifically, the Court notes that Lisa Drake mentioned him several
11 times in her Rule 30(b)(6) deposition as being the main decision-maker regarding interest crediting
12 rates, product pricing and spreads for purposes of recovering undisclosed product costs, and
13 expenses and maintaining profit margins. (Pl.'s Briefing at 2, Dkt. #215.) Furthermore, the Court
14 finds that Defendant has not shown good cause as to why a protective order is warranted regarding
15 Manning's deposition. Defendant only argues that the deposition would result in lost productivity
16 and a disrupted schedule, that Plaintiff has not articulated good cause to disrupt Manning's busy
17 schedule, and that Plaintiff seeks only to harass Manning. (Joint Letter at 2, 4; Def.'s Briefing at 1,
18 Dkt. #215.) The Court disagrees and finds that Plaintiff has articulated good cause warranting
19 Manning's deposition, and that a one-day deposition would not be burdensome. Plaintiff seeks to
20 depose Manning for one day, and the Court is amenable to Plaintiff's request.

21 **III. CONCLUSION**

22 Based upon the foregoing, the Court hereby DENIES Defendant's motion for a protective
23 order. Mr. Manning, Jr.'s deposition shall be limited to one day of seven hours in length, and shall
24 take place at Defendant's office in Lansing, Michigan, per Plaintiff's statement at the hearing.

25 **IT IS SO ORDERED.**

26 Dated: April 22, 2010

27 
28 _____
Maria-Elina [unclear]
Chief United States Magistrate Judge