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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GEOFFREY PECOVER and ANDREW OWENS,

Plaintiffs,

v.

ELECTRONIC ARTS, INC.,

Defendant.

Case No. 12-mc-80064 CW (NC)  
Related to 08-cv-02820 CW (NC)

**ORDER DENYING MOTION FOR PROTECTIVE ORDER**

Re: Dkt. No. 1

Nonparty Michael S. Drucker moves for a protective order quashing a subpoena issued by plaintiffs in *Pecover v. Electronic Arts*, No. 08-cv-02820 CW, that compels his appearance and testimony in his capacity as an individual at a deposition. Drucker argues that the proposed deposition would be unduly burdensome and unreasonably duplicative because he already was deposed by plaintiffs in this action as nonparty Collegiate Licensing's witness under Rule 30(b)(6). The Court finds that this motion is appropriate for determination without oral argument; accordingly, the hearing currently scheduled for March 28, 2012, is VACATED. *See* Civil L.R. 7-1(b). Because Drucker has not been deposed yet in his individual capacity and the topics to be covered during the proposed deposition were not covered during Drucker's 30(b)(6) deposition, Drucker's motion for a protective order is DENIED.

1 **I. BACKGROUND**

2 **A. Summary of Plaintiffs' Claims in *Pecover v. Electronic Arts***

3 Plaintiffs Geoffrey Pecover and Andrew Owens bring this putative class action against  
4 defendant Electronic Arts for allegedly entering into anticompetitive licensing agreements with  
5 several nonparties in violation of the Sherman Act and related state laws. Case No. 08-cv-02820  
6 CW, Dkt. No. 252, Am. Compl. These agreements allegedly allowed Electronic Arts, which is a  
7 creator of interactive football software, (1) to become the exclusive producer of interactive  
8 football software for the NCAA, the NFL, and the Arena Football League, (2) to acquire a  
9 monopoly in the interactive football software industry, and (3) to raise the prices of its products.  
10 *Id.* ¶¶ 4, 8, 13-18, 29-39.

11 Nonparty Collegiate Licensing is not mentioned in plaintiffs' amended complaint.

12 **B. Drucker's Prior Testimony as Collegiate Licensing's 12(b)(6) Witness**

13 Plaintiffs allege that Collegiate Licensing is "the licensing representative for the NCAA  
14 and NCAA institutions utilized in Electronic Arts' games" and is therefore "a key fact witness" in  
15 this action. Pls.' Opp. at 4. Plaintiffs deposed Michael Drucker on October 22, 2009, as  
16 Collegiate Licensing's witness under Rule 30(b)(6). Drucker's Mot., Ex. 2, Boyle Decl., Ex. F,  
17 Dep. Tr. Drucker is Collegiate Licensing's in-house attorney. Drucker's Mot. at 1. The topics  
18 covered during Drucker's deposition included (1) the methods employed by Collegiate Licensing  
19 in identifying and producing documents and other topics relating to Collegiate Licensing's  
20 document production; (2) any contracts or licenses between Collegiate Licensing and Electronic  
21 Arts relating to Electronic Arts' "interactive football software," including negotiations between  
22 the parties with respect to such contracts and "the motivations for the parties in entering into the  
23 relevant contracts." *Id.*, Ex. E, Subpoena to Collegiate Licensing. This deposition lasted  
24 approximately one hour. Drucker's Mot. at 5. Counsel for plaintiffs did not request a  
25 continuance of the deposition.

26 **C. Motion at Issue**

27 On December 2, 2011, plaintiffs issued a subpoena to Michael Drucker commanding him  
28 to appear for a deposition in his capacity as an individual in Atlanta, Georgia, on January 26,

1 2012. Drucker’s Mot., Ex. 2, Boyle Decl., Ex. P, Subpoena to Drucker.

2 Drucker moves for a protective order to quash plaintiffs’ subpoena, arguing that the  
3 proposed deposition would be unduly burdensome and unreasonably duplicative, as he already  
4 was deposed by plaintiffs in this action and a second deposition would be of marginal value.  
5 Drucker claims that plaintiffs seek to depose him with respect to “the exact same topics” that  
6 were covered during his deposition in 2009, and that the time and expense required to prepare for  
7 a second deposition would impose an undue burden on him. Drucker’s Mot. at 11-13. Drucker  
8 also notes that plaintiffs failed to obtain leave of court before noticing the deposition at issue as  
9 Rule 30 requires when the parties do not stipulate to the deposition and the deponent already has  
10 been deposed in the case. *Id.* at 8.

11 Plaintiffs oppose the motion, arguing that they are entitled to depose Drucker on the  
12 “numerous misleading statements” he made in a declaration he voluntarily filed on behalf of  
13 Electronic Arts on February 17, 2010. Pls.’ Opp. at 1, 5. Plaintiffs claim that this declaration,  
14 which was filed after they deposed Drucker in 2009, touches on “numerous topics” that were not  
15 covered during Drucker’s first deposition, such as (1) Collegiate Licensing’s negotiations with  
16 videogame companies other than Electronic Arts, (2) the products Collegiate Licensing considers  
17 to be competitors to Electronic Arts’ football video games, (3) Electronic Arts’ development  
18 spending as a result of its exclusive licenses, (4) Collegiate Licensing’s decision to grant an  
19 exclusive license to Electronic Arts for basketball, and (5) the location of licensing-agreement  
20 negotiations. *Id.* at 5-6. Plaintiffs seek to depose Drucker with respect to Drucker’s declaration  
21 because its contents are relevant to the definition of the market in which Electronic Arts  
22 competes, and because plaintiffs believe Electronic Arts will use the declaration in its motion for  
23 summary judgment later this year. *Id.* at 10, 6. Plaintiffs contend that their second deposition of  
24 Drucker will be “limited to the seven hour period provided for by the federal rules of civil  
25 procedure.” *Id.* at 12.

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## II. STANDARD OF REVIEW

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2 A nonparty may be commanded by subpoena to appear and testify at a deposition. FED.  
3 R. CIV. P. 45(a). A party seeking to depose another person must obtain leave of court if the  
4 parties have not stipulated to the deposition and the deponent already has been deposed in the  
5 case. FED. R. CIV. P. 30(a)(2)(A)(ii). A court must grant leave to the extent consistent with Rule  
6 26(b)(2). *Id.* Rule 26(b)(2) provides that a court must limit the frequency or extent of discovery  
7 otherwise allowed if it determines that (1) the discovery sought is unreasonably duplicative or can  
8 be obtained from a source that is more convenient, (2) the party seeking discovery has had “ample  
9 opportunity” to obtain the information by discovery in the action, or (3) the burden or expense of  
10 the proposed discovery outweighs its likely benefit. FED. R. CIV. P. 26(b)(2)(C).

## III. DISCUSSION

11  
12 The Court finds that Drucker’s proposed deposition, if restricted to three hours and to  
13 topics not previously asked of Drucker, would not be unreasonably duplicative or unduly  
14 burdensome as Drucker claims. First, the topics that plaintiffs intend to cover during the  
15 deposition were not covered during Drucker’s deposition as Collegiate Licensing’s 12(b)(6)  
16 witness, so the information that plaintiffs seek to obtain is not duplicative.<sup>1</sup> Second, the time and  
17 expense that Drucker will require to prepare for the deposition is outweighed by the likely benefit  
18 of the information plaintiffs seek to obtain, as this information is directly relevant to the  
19 parameters of the market that Electronic Arts allegedly monopolized and the mechanisms through  
20 which Electronic Arts achieved the anticompetitive effects alleged in plaintiffs’ complaint. Third,  
21 plaintiffs did not need to obtain leave of court to notice the proposed deposition; Rule

22  
23 <sup>1</sup> *Compare* topics covered during Drucker’s 12(b)(6) deposition ((1) the methods employed by  
24 Collegiate Licensing in identifying and producing documents and other topics relating to  
25 Collegiate Licensing’s document production; (2) any contracts or licenses between Collegiate  
26 Licensing and Electronic Arts relating to Electronic Arts’ “interactive football software,”  
27 including negotiations between the parties with respect to such contracts and “the motivations for  
28 the parties in entering into the relevant contracts”) *with* topics to be covered during Drucker’s  
proposed deposition ((1) Collegiate Licensing’s negotiations with videogame companies other  
than Electronic Arts, (2) the products Collegiate Licensing considers to be competitors to  
Electronic Arts’ football video games, (3) Electronic Arts’ development spending as a result of its  
exclusive licenses, (4) Collegiate Licensing’s decision to grant an exclusive license to Electronic  
Arts for basketball, and (5) the location of licensing-agreement negotiations).

1 30(a)(2)(A)(ii) is inapplicable to it because Drucker has not been deposed yet in his individual  
2 capacity in this case. When Drucker was deposed as Collegiate Licensing's witness under Rule  
3 30(b)(6), his testimony was in fact the testimony of Collegiate Licensing. *See* Fed. R. Civ. P.  
4 30(b)(6) (noting that when a party notices a deposition under 30(b)(6), "the named organization  
5 must then designate one or more officers, directors, or managing agents, or designate other  
6 persons who consent to testify on its behalf") (emphasis added). The testimony Drucker will  
7 provide during the propose deposition will be his own, as plaintiffs seek to depose him in his  
8 individual capacity.

#### 9 IV. CONCLUSION

10 As Drucker's proposed deposition would not be unduly burdensome or unreasonably  
11 duplicative, Drucker's motion for a protective order quashing the subpoena that compels his  
12 appearance and testimony at the deposition is DENIED.

13 On or before April 25, 2012, plaintiffs may depose Drucker in his individual capacity on  
14 the following topics: (1) Collegiate Licensing's negotiations with videogame companies other  
15 than Electronic Arts, (2) the products Collegiate Licensing considers to be competitors to  
16 Electronic Arts' football video games, (3) Electronic Arts' development spending as a result of its  
17 exclusive licenses, (4) Collegiate Licensing's decision to grant an exclusive license to Electronic  
18 Arts for basketball, and (5) the location of the relevant licensing-agreement negotiations.  
19 Drucker's deposition may last no more than three hours.

20 IT IS SO ORDERED.

21  
22 Date: March 20, 2012



23 Nathanael M. Cousins  
24 United States Magistrate Judge