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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CELLSPIN SOFT, INC.,
Plaintiff,
v.
FOSSIL GROUP, INC., et al.,
Defendants.

Case No. 17-cv-05933-YGR (KAW)

**ORDER GRANTING DEFENDANTS'
EX PARTE APPLICATION FOR A
DEBTOR'S EXAMINATION**

Re: Dkt. Nos. 110, 111, 117, 118

United States District Court
Northern District of California

On October 17, 2018, Defendants Fossil Group, Inc. and Misfit Inc. filed an ex parte application requesting an order that Plaintiff Cellspin Soft, Inc. appear for a debtor's examination. (Defs.' Mot. for Debtor's Exam, Dkt. No. 110; Dkt. No. 111). Defendants were previously awarded \$100,000 in attorney's fees, and have since obtained a writ of execution. (Dkt. Nos. 101, 108.) The case was then referred to the undersigned for post-judgment/collections actions. (Dkt. No. 114.) On October 31, 2018, Plaintiff filed an opposition. (Plf.'s Opp'n, Dkt. No. 115.) On November 7, 2018, Defendants filed their reply. (Defs.' Reply, Dkt. No. 116.) On November 20, 2018, Defendants filed the same ex parte application requesting a debtor's exam, but for February 21, 2019. (Dkt. Nos. 117, 118.)

Federal Rule of Civil Procedure 69(a)(2) provides that a judgment creditor "may obtain discovery from any person -- including the judgment debtor -- as provided in these rules or by the procedure of the state where the court is located." Under California law, a "judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court . . . at a time and place specified in the order, to furnish information to aid in enforcement of the money judgment." Cal. Code of Civ. P. § 708.110(a); see also Hooser v. Superior Ct. of San Diego Cty., 84 Cal. App. 4th 997, 1002 (2000) ("Pursuant to the statutory procedure, the judgment

1 creditor may obtain an order requiring the judgment debtor to appear before the court, or a court-
2 appointed referee, to furnish information that will aid in the enforcement of the money
3 judgment"), disapproved on other grounds by *Williams v. Superior Court*, 3 Cal. 5th 531, 557
4 (2017).

5 In opposing the request for a debtor's examination, Plaintiff does not dispute that there is a
6 valid judgment. Instead, Plaintiff first argues that Defendants served interrogatories that went
7 "beyond requests for information relating to the existence of transfer of Cellspin's assets or
8 relating to property Cellspin has, or may acquire in the future, that may be available to satisfy
9 Defendants' judgments." (Plf.'s Opp'n at 9.) Specifically, Plaintiff takes issue with the
10 interrogatories' definition of "You" and "Your," which was defined to include Plaintiff and
11 Plaintiff's agents, representatives, attorneys, or anyone authorized or purportedly authorized to act
12 on Plaintiff's behalf, as well as owners, managers, members, partners, limited partners, or parent
13 entities. (Id.; see also id., Exh. 1 at 2.) Defendants respond that information about Plaintiff's
14 managers or principals is necessary because there may be a basis to obtain judgments against the
15 individuals, arguing that "the corporate form cannot be used as a shield to insulate owners against
16 liability for their own tortious conduct or tortious conduct they control." (Defs.' Reply at 4.)

17 The Court agrees that questions about Plaintiff's managers or principles may be relevant to
18 determining what assets are available to pay a judgment. Likewise, information as to corporate
19 structure and formalities are relevant to determining if Plaintiff's managers or principles may be
20 held liable, such as under an alter ego theory. Otherwise, as Defendants point out, if Plaintiff was
21 "[t]o come to court . . . as an undercapitalized entity seeking monetary damages against defendant
22 companies," this would "improperly skew[] the playing field, as only one side of the case bears
23 nearly the entire risk of litigation."¹ (Defs.' Reply at 5.)

24 The Court does, however, find that questions regarding Plaintiff's attorneys would be
25 overbroad. Defendants provide no explanation for why Plaintiff's attorneys specifically could be
26 held liable for the judgment. Therefore, questions regarding the assets or other personal or

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28 ¹ Notably, Plaintiff asserts that it has no money to file a supersedeas bond, yet apparently has the
assets to afford multiple appeals. (See Plf.'s Opp'n at 2.)

1 financial information of Plaintiff's attorneys are not appropriate.

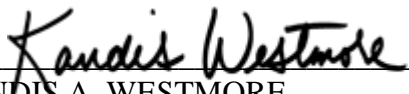
2 Second, Plaintiff argues that Defendants' request for an examination is premature because
3 there is an appeal. (Plf.'s Opp'n at 13.) Plaintiff theorizes that Defendants are trying to obtain
4 Plaintiff's patents in order to stop the appeals. (Id.) The Court disagrees. Again, Defendants have
5 a valid judgment, and are entitled to a judgment debtor exam to determine what assets are
6 available to pay the judgment. Further, Defendants have not yet sought Plaintiff's patents to
7 satisfy the judgment. Therefore, Plaintiff's concerns about Defendants' alleged motivations for
8 obtaining the patents is premature.

9 Third, Plaintiff suggests that the Court should stay post-judgment enforcement proceedings
10 during the pendency of the appeals. (Plf.'s Opp'n at 14.) Again, Plaintiff is primarily concerned
11 with the possibility that Defendant may obtain Plaintiff's patents. (Id.) As explained above, this is
12 premature, and not a reason to stay post-judgment proceedings. Plaintiff provides no authority
13 that would otherwise suggest a stay is necessary, particularly where Plaintiff has failed to file a
14 supersedeas bond.

15 Accordingly, the Court **GRANTS** Defendants' ex parte application and **ORDERS** Plaintiff
16 to appear for a debtor's exam before this Court, located at 1301 Clay Street, Oakland, California
17 94612, on **February 21, 2019 at 1:30 p.m.** During this debtor's examination, Defendants may not
18 ask questions about the personal assets or financial information of Plaintiff's counsel.

19 IT IS SO ORDERED.

20 Dated: November 21, 2018

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22 KANDIS A. WESTMORE
23 United States Magistrate Judge
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