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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. [4:17-cv-05933-YGR](#) (KAW)

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

Re: Dkt. Nos. 122, 123, 127, 128, 129

**I. BACKGROUND**

On November 21, 2018, the Court granted Defendants Fossil Group, Inc. and Misfit Inc.'s ex parte application for a debtor's examination, and set the judgment-debtor examination of Plaintiff Cellspin Soft, Inc. for February 21, 2019. (11/21/18 Order, Dkt. No. 119.) On February 21, 2019, the parties appeared, but they did not hire a court reporter, so the examination did not go forward. (Minute Entry, Dkt. No. 121.)

On March 4, 2019, Defendants filed a renewed ex parte application. (Dkt. Nos. 122 & 123.) On March 15, 2019, Plaintiff filed an opposition, in which it raised essentially the same unsuccessful arguments that it had raised previously. (Pl.'s Opp'n, Dkt. No. 124.) On March 21, 2019, Defendants filed their reply. (Defs.' Reply, Dkt. No. 126.)

On April 1, 2019, Defendants filed a motion to change the time of the examination to May 16, 2019. (Dkt. No. 127.) On April 2, 2019, Defendants filed a second renewed ex parte application to notice the examination for May 16, 2019. (Defs.' Mot., Dkt. No. 128 & 129.) On April 15, 2019, Plaintiff filed a response that is virtually identical to the March 15 opposition. (Dkt. No. 131.) On April 22, 2019, Defendants filed a reply that incorporated the March 21 reply brief. (Dkt. No. 132.)

1 **II. DISCUSSION**

2 In its opposition, Cellspin again raises the arguments that the request is unduly  
3 burdensome, duplicative, harassing, and premature because the case is on appeal. (Pl.’s Opp’n at  
4 10-14.) The Court disagrees for the reasons set forth in the November 21, 2018 order, and  
5 incorporates that order herein. (*See* 11/21/18 Order at 2-3.)

6 Additionally, Plaintiff argues that it already appeared at the February 21, 2019  
7 examination, so it should not have to appear again. (Pl.’s Opp’n at 16.) Plaintiff argues that its  
8 designee took an entire day off from work to be examined, but Defendants’ failure to procure a  
9 court reporter prevented the examination from going forward. *Id.* Plaintiff argues that the  
10 examination could have been recorded using a smartphone, which would have been less  
11 burdensome than rescheduling the examination and requiring its corporate designee to appear  
12 again at a later date. *Id.* at 17. This argument is unavailing. While Defendants should have  
13 arranged for a court reporter to memorialize the original examination, Plaintiff brought a number  
14 of unmeritorious lawsuits against multiple defendants, who have since obtained judgments against  
15 it. Now, four defendant corporations in three related cases are coordinating to hold a single  
16 judgment-debtor examination instead of having Plaintiff undergo examination four times. Thus,  
17 while Defendants should have been prepared to go forward on February 21, Plaintiff’s designee  
18 will only have to appear twice rather than four times, which is to his benefit.

19 That the parties could have used a smartphone to record the proceedings, while perhaps  
20 novel, is not persuasive, because a court reporter can certify that the transcript is true and correct.

21 Moreover, since the judgment-debtor examination was not held, California Code of Civil  
22 Procedure § 708.110(c) is inapplicable, and the Court may re-order the examination to occur at  
23 any time. *See* Cal. Civ. Proc. Code § 708.110(b).

24 Accordingly, Defendants’ renewed ex parte application is GRANTED.

25 **III. CONCLUSION**

26 In light of the foregoing, Defendants’ renewed ex parte application for an order requiring  
27 Cellspin Soft Inc. to appear for a judgment-debtor examination is GRANTED. Defendants’  
28 motion to change time is also GRANTED, and the examination is set for May 16, 2019 at 1:30

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p.m. The parties are advised that they are responsible for hiring a court reporter for the proceeding,  
and that the district court will not assist them in procuring same.

IT IS SO ORDERED.

Dated: April 25, 2019

  
KANDIS A. WESTMORE  
United States Magistrate Judge