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**\*E-FILED 02-03-2010\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re ATMEL CORPORATION DERIVATIVE  
LITIGATION

No. C06-04592 JF (HRL)

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION FOR PROTECTIVE ORDER**

**[Re: Docket No. 271]**

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This is a shareholder derivative action for alleged improper backdating of stock options. Defendant J. Michael Ross wishes to depose 47 individuals and entities. Plaintiffs move for a protective order precluding him from doing so. Nominal defendant Atmel Corporation and other individual defendants join in plaintiffs' motion.<sup>1</sup> Ross opposes the motion. This matter is deemed suitable for determination without oral argument, and the February 9, 2010 hearing is vacated. Civ. L.R. 7-1(b). Upon consideration of the moving and responding papers, this court grants the motion in part and denies it in part.

Absent leave of court or stipulation of the parties, a party may not take more than ten depositions. 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. See Archer Daniels Midland Co. v. Aon Risk Services, Inc. of Minnesota, 187 F.R.D. 578, 586 (D. Minn. 1999);

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<sup>1</sup> Ross' request to strike the joinder is denied. Even if the joinder had not been filed, this court's decision would be the same.

1 see also Authentic, Inc. v. Atrua Technologies, Inc., No. C08-1423PJH, 2008 WL 5120767 \* 1  
2 (N.D. Cal., Dec. 4, 2008) (“A party seeking to exceed the presumptive number of depositions  
3 must make a particularized showing of the need for the additional discovery.”). Although the  
4 scope of discovery under the Federal Rules is broad, it is not unfettered. A court must limit the  
5 extent or frequency of discovery if it finds that (a) the discovery sought is unreasonably  
6 cumulative or duplicative or can be obtained from a source that is more convenient, less  
7 burdensome or less expensive, (b) the party seeking discovery has had ample opportunity to  
8 obtain the information through discovery; or (c) the burden or expense of the discovery sought  
9 outweighs its likely benefit, considering the needs of the case, the amount in controversy, the  
10 parties’ resources, the importance of the issues at stake, and the importance of the discovery in  
11 resolving those issues. FED. R. CIV. P. 26(b)(2)(C)(i)-(iii).

12 In this case, Ross has not yet taken any depositions. While he has identified 47  
13 individuals and entities he would like to depose, and made broad statements as to the purported  
14 relevance of their testimony, Ross has not made a particularized showing as to why he needs to  
15 depose them all, or why the discovery sought from each deponent would not be unreasonably  
16 cumulative or duplicative. Moreover, the parties advise that everyone (except Ross) has agreed  
17 to a settlement, and this court finds Ross’ assertions as to the complexity of this litigation to be  
18 somewhat overstated. Nevertheless, although plaintiffs believe that Ross should be required to  
19 first exhaust the 10-deposition limit, they agree that it would be reasonable to permit him to  
20 take up to 20 depositions. After weighing competing legitimate interests and possible  
21 prejudice, this court will permit Ross to take up to 22 depositions, without prejudice to seek  
22 leave to conduct more upon a showing of particularized need. However, Ross is advised that in  
23 any such future application, he must present more than an invitation for this court to rule upon  
24 generalities rather than a solid, detailed showing.

25 SO ORDERED.

26 Dated: February 3, 2010

  
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28 HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

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