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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.)
)
MARK LESLIE, et al.,)
)
Defendants.)

Case No. C 07-03444 JF (PVT)
**ORDER GRANTING DEFENDANT
LESLIE’S MOTION TO INCREASE
THE LENGTH OF DEPOSITION OF
LEE J. SEIDLER**
[Docket No. 147]

INTRODUCTION

Defendant Mark Leslie moves to increase the length of deposition of expert witness Lee J. Seidler. Defendants Kenneth E. Lonchar and Paul A. Sallaberry have joined in the motion. (collectively “defendants”). The U.S. Securities & Exchange Commission opposes the motion. (“SEC”). Pursuant to Rule 7-1(b), the motion is taken under submission and the hearing scheduled to be held on October 2, 2009 is vacated. Having reviewed the papers and considered the arguments of counsel, defendant Leslie’s motion is granted.¹

¹ The holding of this court is limited to the facts and particular circumstances underlying the present motion.

1 **BACKGROUND AND DISCUSSION**

2 The SEC has designated Mr. Siedler as an expert witness on accounting issues and he has
3 provided an expert witness report related to those specific issues. In addition, he is a rebuttal
4 witness to defendant Lonchar’s expert witness, Duross O’Bryan, defendant Leslie’s expert
5 witness, Jonathan Macy, and defendant Sallaberry’s expert witness, Jay Howell. He has
6 provided his own report and three additional reports to rebut each of the defendants’ expert
7 witnesses.

8 Presently, Mr. Seidler is scheduled to appear on October 7 and 8 (for two days) for
9 deposition. In light of Mr. Seidler’s extensive involvement first, as an expert witness, and
10 second, as a rebuttal witness to defendants’ own three expert witnesses, defendant Leslie moves
11 to increase the length of Mr. Seidler’s deposition from two days to three days.

12 Pursuant to the scheduling order in the above-captioned action, plaintiff SEC disclosed
13 Mr. Seidler. Defendant Lonchar disclosed his expert witness named Duross O’Bryan.
14 Defendant Leslie disclosed his expert witness named Jonathan R. Macy and defendant Sallaberry
15 disclosed his expert witness named Jay Howell. Each of the experts provided expert witness
16 reports on certain topics.

17 The chart below illustrates each of the experts and their various topics of expertise and
18 includes the topics for which Mr. Seidler also acts as a rebuttal witness.

19

Expert Witness	Topic	Rebuttal Witness
Lee J. Seidler (disclosed by the SEC)	accounting issues	Duross O’Bryan
Duross O’Bryan (disclosed by defendant Lonchar)	accounting issues	Lee J. Seidler
Jonathan Macy (disclosed by defendant Leslie)	corporate governance issues, corporate best practices and public policy in connection with alleged financial reporting fraud and intentional public misrepresentation by Veritas	Lee J. Seidler
Jay Howell (disclosed by defendant Sallaberry)	several other discrete topics	Lee J. Seidler

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1 October

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3 7 and 8 only. The SEC has rebuffed defendants' request to extend the deposition to three days.

4 Defendant Leslie notes that when the SEC requested that defendant Lonchar's expert
5 witness, Mr. O'Bryan, be made available for two days because he had provided two expert
6 witness reports, the defendants accommodated the request. Defendants assure the court that they
7 will endeavor to complete Mr. Siedler's deposition efficiently. The expert witness discovery
8 cut-off is October 9, 2009.

9 Plaintiff SEC argues that the defendants lack justification for seeking three days (or 21
10 hours) of deposition. First, it objects to defendants' logic that four expert witness reports
11 necessarily justifies the need to depose Mr. Seidler for three days. Instead of three separate
12 rebuttal reports, Mr. Seidler could have made one longer report. In addition, opinions rendered
13 in some of the rebuttal reports are covered in his initial report. Therefore, examination of Mr.
14 Seidler may be streamlined to avoid an overly redundant deposition examination. Second, the
15 SEC contends that it will endeavor to complete Mr. O'Bryan's deposition in one day.

16 Rule 30(d)(1) allows the court to order additional time for deposition for a party to
17 conduct a fair examination of the deponent. Fed. R. Civ. P. 30(d)(1).

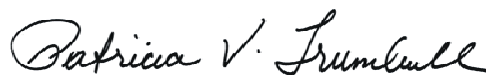
18 In light of Mr. Seidler's expansive role as an expert witness and as a rebuttal witness in
19 the above-captioned action, three days are warranted for defendants to conduct a fair
20 examination.

21 **CONCLUSION**

22 Based on the foregoing, defendant Leslie's motion is granted. Defendants may depose
23 Mr. Seidler for a total of 21 hours.

24 IT IS SO ORDERED.

25 Dated: October 1, 2009

26 

27 PATRICIA V. TRUMBULL
United States Magistrate Judge