

E-FILED: February 25, 2013

NOT FOR CITATION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

VIASPHERE INTERNATIONAL, INC., No. C12-01536 HRL [Dkt. No. 53]

Plaintiff,

v.

ARAM VARDANYAN,

Defendant.

**ORDER RE AMENDED DISCOVERY
DISPUTE JOINT REPORT #1**

ARAM VARDANYAN,

No. C12-05645 HRL [Dkt. No. 25]

Plaintiff,

v.

ANTHONY MOROYAN; ALPHA
VENTURES, LLC,

Defendants.

The parties disagree whether Aram Vardanyan should be deposed in Armenia (where he resides) or here in the Northern District of California where both sides have lawsuits pending. Viasphere International, Inc. (Viasphere) initially brought the matter to the court's attention via Discovery Dispute Joint Report (DDJR) #1. That DDJR was not filed in compliance with the undersigned's Standing Order re Civil Discovery Disputes. The parties were directed to meet-and-confer in good faith on the issue and, if necessary, to bring the matter before the court in a jointly filed DDJR #1.

1 The parties have filed an amended DDJR #1, advising that they have complied with this
2 court's standing order, but that they have not been able to resolve their disagreement over the
3 location of Vardanyan's deposition. The matter is deemed suitable for determination without
4 oral argument. Civ. L.R. 7-1(b). Having considered the parties' respective positions, the court
5 rules as follows:

6 A party generally is free to notice a deposition wherever it chooses. If the deponent
7 timely objects, however, the court may issue a protective order changing the place of the
8 deposition. Grey v. Continental Mktg. Assocs., Inc., 315 F. Supp. 826, 832 (N.D. Ga. 1970).
9 Vardanyan is correct that a defendant ordinarily must be deposed where he lives or works,
10 "absent some unusual circumstance to justify putting the defendant to such inconvenience." Id.
11 But, Vardanyan is also a plaintiff here. And, "[c]ourts ordinarily presume that a plaintiff may
12 be deposed in the judicial district where the action was brought, inasmuch as the plaintiff, in
13 selecting the forum, has effectively consented to participation in legal proceedings there." In re
14 Outsidewall Tire Litig., 267 F.R.D. 466, 471 (E.D Va. 2010). To overcome this presumption,
15 "a foreign plaintiff must persuasively demonstrate that requiring him to travel to the forum
16 district for his deposition would for physical or financial reasons, be practically impossible, or
17 that it would be otherwise fundamentally unfair." Id.

18 Here, Vardanyan says that it will be expensive for him to travel here to be deposed. His
19 counsel and opposing counsel, however, are all located in California. The court finds that
20 having counsel travel to Armenia would likely be more expensive than if Vardanyan came here.
21 And, while Vardanyan now says that he is physically restricted from traveling, he has submitted
22 nothing to corroborate that assertion. Absent such evidence, Vardanyan is ordered to travel to
23 the Northern District of California to be deposed. If practicable, his deposition shall proceed on
24 March 1, 2013, as noticed by opposing counsel. If not, then Vardanyan's deposition shall
25 proceed as soon as practicable thereafter, on a date and time available to both sides.

26 Viasphere's, Moroyan's, and Alpha Ventures' request to withdraw their agreement to
27 participate in private mediation, and instead proceed with court-sponsored mediation, is denied.
28 It appears to this court that the parties have already invested significant time and resources

1 arranging for the mediation that is set to take place on March 4, 2013 with Judge Brazil.
2 Further, this court will defer to Judge Brazil's decisions as to how that mediation should be
3 conducted.

4 SO ORDERED.

5 Dated: February 25, 2013



HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

1 5:12-cv-01536-HRL Notice has been electronically mailed to:

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