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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROBERT STEVENS and STEVEN
VANDEL, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

CORELOGIC, INC.,

Defendant.

Case No.: 14cv1158 BAS (JLB)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
CORELOGIC, INC.’S MOTION FOR
PROTECTIVE ORDER**

[ECF No. 93]

Presently before the Court is Defendant’s Motion for Protective Order. (ECF No. 93.) Plaintiffs have filed a Response in Opposition. (ECF No. 96.) Having considered all of the briefing and supporting documents presented, and for the reasons set forth below, Defendant’s Motion is **GRANTED in part** and **DENIED in part**.

I. INTRODUCTION

Plaintiffs seek to depose Defendant’s senior in-house litigation counsel, Mr. Rouz Tabaddor, in his personal capacity under Federal Rule of Civil Procedure 30(b)(1). (ECF No. 93 at 2.) In its Motion, Defendant asserts the deposition should not go forward for two reasons: (A) as senior in-house litigation counsel, Mr. Tabaddor’s knowledge about the facts of this case comes exclusively through privileged communications and his deposition

1 is not reasonably calculated to lead to the discovery of admissible evidence; and (B)
2 Plaintiffs have already exceeded their allowed number of depositions by deposing fifteen
3 people from CoreLogic. (*Id.*)

4 **II. DISCUSSION**

5 Upon a showing of good cause, a district court may issue a protective order “which
6 justice requires ‘to protect a party or person from annoyance, embarrassment, oppression,
7 or undue burden or expense,’ including any order prohibiting the requested discovery
8 altogether, limiting the scope of the discovery, or fixing the terms of disclosure.” *Rivera*
9 *v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004) (quoting Fed. R. Civ. P. 26(c)). “The
10 burden is upon the party seeking the [protective] order to ‘show good cause’ by
11 demonstrating harm or prejudice that will result from the discovery.” *Id.*

12 **A. Deposition of Defendant’s In-House Litigation Counsel**

13 Both parties argue extensively in their moving papers about whether Mr. Tabaddor
14 may be deposed in light of his position as Defendant’s in-house litigation counsel.
15 Defendant asserts Mr. Tabaddor’s deposition should be prohibited because Mr. Tabaddor’s
16 knowledge about the case comes exclusively through privileged communications and his
17 deposition is not reasonably calculated to lead to the discovery of admissible evidence.
18 (ECF No. 93 at 2.) On the other hand, Plaintiffs argue Mr. Tabaddor’s deposition should
19 go forward because Mr. Tabaddor is not only Defendant’s in-house litigation counsel but
20 also its Vice President, and therefore at least some of Mr. Tabaddor’s knowledge about the
21 case is nonprivileged and relevant. (ECF No. 96 at 3–5.)

22 Neither the Federal Rules of Civil Procedure nor the Federal Rules of Evidence
23 prohibit the taking of attorney depositions. However, courts have recognized the
24 deposition of an opposing party’s counsel can have a negative impact on the litigation
25 process and these depositions are therefore discouraged. *See Am. Cas. Co. of Reading, Pa.*
26 *v. Krieger*, 160 F.R.D. 582, 587 (S.D. Cal. 1995) (citing *Shelton v. Am. Motors Corp.*, 805
27 F.2d 1323, 1327 (8th Cir. 1986)). This is true even where it is clear the attorney is a witness
28 to relevant nonprivileged events or conversations. *Id.* at 588. Yet, there are circumstances

1 “under which the deposition of a party’s attorney will be both necessary and appropriate,
2 for example, where the attorney is a fact witness, such as an ‘actor or a viewer.’” *Id.*
3 Therefore, courts allow for the deposition of an opposing party’s attorney where the party
4 seeking to take the deposition can show “(1) No other means exist to obtain the information
5 than to depose opposing counsel; (2) The information sought is relevant and nonprivileged;
6 and (3) The information is crucial to the preparation of the case.” *Id.* at 589 (citing *Shelton*,
7 805 F.2d at 1327).

8 Having considered the parties’ positions, the Court finds that *Shelton* provides the
9 proper standard to determine whether Plaintiffs should be allowed to depose Defendant’s
10 in-house counsel. While the Ninth Circuit has not issued a published decision governing
11 depositions of opposing counsel in the context of soliciting testimony about a pending case,
12 courts in this district and elsewhere in the Ninth Circuit recognize *Shelton* as the leading
13 case on attorney depositions and follow the three-factor test laid out in the case. *See, e.g.,*
14 *Am. Cas. Co. of Reading, Pa. v. Krieger*, 160 F.R.D. 582 (S.D. Cal. 1995); *Townsend v.*
15 *Imperial Cty.*, No. 12-cv-2739-WQH (PCL), 2014 WL 2090689 (S.D. Cal. May 19, 2014),
16 *reconsideration denied*, 2014 WL 3734685 (S.D. Cal. July 28, 2014); *Chao v. Aurora Loan*
17 *Servs., LLC*, No. C 10-3118 SBA (LB), 2012 WL 5988617 (N.D. Cal. Nov. 26, 2012).

18 Defendant identifies in its Motion the following seven topics about which Plaintiffs
19 seek to depose Mr. Tabaddor: (1) the Partner InfoNet contracts approved by Defendant’s
20 legal department; (2) the DMCA takedown notices received by Defendant; (3) the structure
21 and duties of Defendant’s in-house attorneys; (4) Defendant’s use of outside intellectual
22 property attorneys; (5) the verification of Defendant’s interrogatory responses; (6)
23 Defendant’s knowledge of sections 1202 and 1203 prior to receipt of the complaint; and
24 (7) section 1202 knowledge issues. (ECF No. 93 at 3.) Plaintiffs’ application of the *Shelton*
25 factors to the deposition topics is addressed below.

26 **1. No Other Means Exist To Obtain the Information**

27 To depose Mr. Tabaddor, Plaintiffs must first show that no other means exist to
28 obtain the information they seek than to depose Defendant’s in-house litigation counsel.

1 The Court finds Plaintiffs met this burden only with respect to: (A) Mr. Tabaddor's
2 personal verification and lack of verification of Defendant's responses to Plaintiffs'
3 interrogatories; and (B) the DMCA takedown notices received by Defendant.

4 With respect to Defendant's interrogatory responses, at the time of Defendant's
5 Motion one set of Defendant's responses to Plaintiffs' interrogatories were verified by Mr.
6 Tabaddor and three sets remained unverified. (ECF No. 96 at 7.) To the extent Plaintiffs
7 seek information specific to Mr. Tabaddor's personal verification and lack of verification
8 of Defendant's interrogatory responses, such as whether Mr. Tabaddor refuses to sign the
9 three sets of unverified responses and what were Mr. Tabaddor's grounds for verifying the
10 single set of discovery responses as truthful and accurate, the Court finds Plaintiffs have
11 no other means to obtain this information than to depose Mr. Tabaddor. However, as
12 Defendant correctly points out in its Motion, Plaintiffs may not depose Mr. Tabaddor about
13 the facts contained in Defendant's interrogatory responses because the facts are available
14 to Plaintiffs by other means—the discovery responses themselves. *See Bybee Farms LLC*
15 *v. Snake River Sugar Co.*, No. CV-06-5007-FVS, 2008 WL 820186, at *2 (E.D. Wash.
16 Mar. 26, 2008).

17 With respect to the DMCA takedown notices Defendant received, the Court is not
18 convinced that the notices and other documents Defendant produced in response to
19 Plaintiffs' requests for production of documents supply Plaintiffs with all of the relevant
20 and nonprivileged information regarding the DMCA notices in Defendant's possession.
21 Mr. Tabaddor has firsthand knowledge of the DMCA takedown notices and how they were
22 handled because he either responded directly to the notices or was included in the response
23 process, (*see* ECF No. 96-4), and all of this information may not have come to light in the
24 documents Defendant produced. In addition, based on the moving papers, it appears
25 Defendant did not designate an alternative witness with knowledge of the DMCA
26 takedown notices Plaintiffs could have deposed in Mr. Tabaddor's place. Accordingly, the
27 Court finds Plaintiffs have no other means to obtain all relevant and nonprivileged
28 information about the DMCA takedown notices Defendant received than to depose Mr.

1 Tabaddor.

2 With respect to Plaintiffs' five remaining deposition topics, the moving papers
3 indicate Plaintiffs have other means to obtain the information they seek than to depose Mr.
4 Tabaddor. (*See* ECF Nos. 93 at 3 and 93-8 at 3 (Plaintiffs deposed Defendant's two Federal
5 Rule of Civil Procedure 30(b)(6) witnesses designated as having knowledge of the Partner
6 InfoNet contracts); ECF No. 96-1 at 13 (Plaintiffs served on Defendant interrogatories
7 regarding the structure and duties of Defendant's in-house attorneys); ECF Nos. 96 at 6
8 and 96-1 at 14 (Plaintiffs served on Defendant interrogatories about Defendant's use of
9 outside intellectual property attorneys); ECF Nos. 96 at 6 and 96-1 at 11–17 (Plaintiffs
10 served on Defendant interrogatories about Defendant's knowledge of 17 U.S.C. sections
11 1202 and 1203); and ECF Nos. 93 at 4 and 93-10 at 3–5 (Plaintiffs deposed Defendant's
12 designated Federal Rule of Civil Procedure 30(b)(6) witness about Defendant's knowledge
13 of 17 U.S.C. sections 1202 and 1203)). The fact that Defendant may have been evasive in
14 answering Plaintiffs' discovery requests is not grounds to depose Defendant's litigation
15 counsel. *See Johnson v. Couturier*, 261 F.R.D. 188, 193 (E.D. Cal. Aug. 21, 2009). If
16 Plaintiffs are unsatisfied with the responses, the solution is to propound additional
17 interrogatories or other written discovery requests or move to compel supplemental
18 responses from Defendant.

19 Accordingly, the Court finds Plaintiffs satisfied the first prong of *Shelton* with
20 respect to Mr. Tabaddor's personal verification and lack of verification of Defendant's
21 responses to Plaintiffs' interrogatories and the DMCA takedown notices Defendant
22 received and failed to satisfy the first *Shelton* prong with respect to the remaining five
23 deposition topics.

24 **2. The Information Sought is Relevant and Nonprivileged**

25 To move forward with Mr. Tabaddor's deposition, Plaintiffs must next demonstrate
26 that Mr. Tabaddor's knowledge of his personal verification and lack of verification of
27 Defendant's responses to Plaintiffs' interrogatories and of the DMCA takedown notices
28

1 that Defendant received is relevant and nonprivileged.¹ The Court finds Plaintiffs met this
2 burden.

3 First, Plaintiffs have demonstrated the information they seek is relevant as Plaintiffs
4 point out in their moving papers that they have a direct interest in the accuracy and
5 truthfulness of Defendant's interrogatory responses and that Defendant's receipt of
6 copyright infringement takedown notices help form the basis of their case. (*See* ECF No.
7 96-1 at 19–20.)

8 Second, Plaintiffs have demonstrated the information they seek is nonprivileged.
9 The Court agrees with Plaintiffs that "Rule 33's requirement that answers be verified would
10 be meaningless if corporations were permitted to have in-house counsel swear to their
11 accuracy and then invoke the attorney-client privilege to avoid backing up their signature."
12 *Langer v. Presbyterian Med. Ctr.*, Civ. A. Nos. 87-4000, 91-1814, and 88-1064, 1995 WL
13 79520, at *10 (E.D. Pa. Feb. 17, 1995), *vacated on other grounds*, 1995 WL 395937 (E.D.
14 Pa. July 3, 1995). In addition, the Court finds Defendant's reliance on *Bybee Farms*
15 somewhat misplaced. Unlike Mr. McCreedy in *Bybee Farms*, Mr. Tabaddor serves not
16 only as Defendant's counsel but also as its Vice President. Therefore, it cannot be said that
17 the basis of *all* of Mr. Tabaddor's verifications of written discovery responses and his
18 communications regarding the DMCA takedown notices Defendant received must be
19 subject to the attorney-client privilege. *See Bybee Farms*, 2008 WL 820186, at *3.

20 Accordingly, the Court finds Plaintiffs satisfied the second *Shelton* prong with
21 respect to the deposition topics of Mr. Tabaddor's personal verification and lack of
22 verification of Defendant's responses to Plaintiffs' interrogatories and the DMCA
23 takedown notices Defendant received.

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27 ¹ As the three *Shelton* factors are conjunctive in nature, the Court need not consider the remaining
28 *Shelton* factors with respect to the five other deposition topics about which Plaintiffs may obtain
information by other means than to depose Mr. Tabaddor.

1 **3. The Information is Crucial to the Preparation of the Case**

2 Finally, to move forward with Mr. Tabaddor’s deposition, Plaintiffs must
3 demonstrate that the information they seek is crucial to the preparation of their case. The
4 Court finds Plaintiffs met this burden, as the accuracy and truthfulness of Defendant’s
5 responses to Plaintiffs’ interrogatories and Defendant’s receiving notice of its own
6 copyright infringements are crucial to Plaintiffs’ case. (*See* ECF No. 96-1 at 19–21.)

7 In sum, with respect to: (A) Mr. Tabaddor’s personal verification and lack of
8 verification of Defendant’s responses to Plaintiffs’ interrogatories; and (B) Mr. Tabaddor’s
9 knowledge of the DMCA takedown notices Defendant received, Plaintiffs have shown (1)
10 no other means exist to obtain the information than to depose Mr. Tabaddor; (2) the
11 information they seek is relevant and nonprivileged; and (3) the information they seek is
12 crucial to the preparation of the case. *See Shelton*, 805 F.2d at 1327. Accordingly, the
13 Court **DENIES** Defendant’s Motion with respect to these deposition topics. However, if
14 the deposition of Mr. Tabaddor does go forward, to the extent Defendant believes
15 Plaintiffs’ questions during the deposition impinge upon the attorney-client privilege,
16 Defendant may make a proper objection to such questions. *See Younger Mfg. Co. v.*
17 *Kaenon, Inc.*, 247 F.R.D. 586, 589 (C.D. Cal. 2007). With respect to Plaintiffs’ five other
18 deposition topics, the Court **GRANTS** Defendant’s Motion on the basis that Plaintiffs
19 failed to satisfy all three *Shelton* factors.

20 **B. Number of Depositions**

21 In addition to its assertions above, Defendant contends Plaintiffs should not be
22 allowed to depose Mr. Tabaddor because Plaintiffs have already exhausted the ten-
23 deposition limit allowed by Federal Rule of Civil Procedure 30. (ECF No. 93 at 4.)
24 Specifically, Defendant asserts:

25 Plaintiffs claim that certain of these depositions should not count
26 towards the ten-deposition limit because they were 30(b)(6) depositions, not
27 individual depositions. . . . The record shows that the Plaintiffs had noticed
28 the 30(b)(6) deponents in their individual capacity, withdrew those notices
after CoreLogic designated them as corporate representatives, and then

1 proceeded to ask them questions *in an individual capacity* (i.e., outside the
2 scope of the topics on which the witnesses were designated) during their
3 depositions.

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5 By choosing to ask questions well outside of the scope of the
6 designated topics (over the objections of CoreLogic’s counsel), the Plaintiffs
effectively took fifteen individual depositions.

7 (ECF No. 93 at 5–6.)

8 On the other hand, Plaintiffs argue the depositions of all Federal Rule of Civil
9 Procedure 30(b)(6) witnesses count as a single deposition, and therefore the deposition
10 count at the time of Defendant’s Motion was seven, and Defendant “has no basis in fact or
11 law to claim that Plaintiffs exceeded the deposition limit of ten.” (ECF No. 96 at 7.)

12 Plaintiffs are correct that there is no legal basis for Defendant’s assertion that the
13 asking of questions that exceed the scope of a Federal Rule of Civil Procedure 30(b)(6)
14 notice constitutes a second deposition of a witness. The scope of a deposition as described
15 in a Federal Rule of Civil Procedure 30(b)(6) notice is intended to provide the minimum
16 information about which a witness must be prepared to testify at the deposition, not the
17 maximum. *See Detoy v. City & Cty. of S.F.*, 196 F.R.D. 362, 366 (N.D. Cal. 2000) (citing
18 *King v. Pratt & Whitney*, 161 F.R.D. 475, 476 (S.D. Fla. 1995)). “Once the witness satisfies
19 the minimum standard, the scope of the deposition is determined solely by relevance under
20 Rule 26, that is, that the evidence sought may lead to the discovery of admissible evidence.”
21 *Id.* at 376 (citing *Overseas Private Inv. Corp. v. Mandelbaum*, 185 F.R.D. 67, 68 (D.D.C.
22 1999)). As such, the number of depositions taken are counted not by whether the
23 questioning exceeds the scope of the deposition notice but by the number of depositions
24 completed or commenced. *See Lexington Ins. Co. v. Sentry Select Ins. Co.*, No. 1:08-cv-
25 1539 LJO GSA, 2009 WL 4885173, at *8–10 (E.D. Cal. Dec. 17, 2009).

26 Accordingly, the Court finds Defendant has not shown good cause to prohibit the
27 deposition of Mr. Tabaddor on the basis that Plaintiffs have exceeded their allowed number
28 of depositions under Federal Rule of Civil Procedure 30. The Court **DENIES** Defendant’s

1 Motion with respect to this claim.

2 **III. CONCLUSION**

3 In conclusion, Defendant's Motion for Protective Order to prohibit the deposition
4 of Mr. Tabaddor is:


5 1. **DENIED** with respect to: (A) Mr. Tabaddor's knowledge of his personal
6 verification and lack of verification of Defendant's responses to Plaintiffs'
7 interrogatories; and (B) Mr. Tabaddor's knowledge of the DMCA notices Defendant
8 received;

9 2. **GRANTED** with respect to Mr. Tabaddor's knowledge of: (A) the Partner
10 InfoNet contracts approved by Defendant's legal department; (B) the structure and duties
11 of Defendant's in-house attorneys; (C) Defendant's use of outside intellectual property
12 attorneys; (D) Defendant's knowledge of 17 U.S.C. sections 1202 and 1203 prior to the
13 receipt of the complaint; and (E) section 1202 issues; and

14 3. **DENIED** with respect to Defendant's assertion that Plaintiffs have
15 exhausted their allowed number of depositions.

16 **IT IS SO ORDERED.**

17 Dated: December 10, 2015

18 
19 Hon. Jill L. Burkhardt
20 United States Magistrate Judge