

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES WALTERS, on behalf of himself and those similarly situated, Plaintiff, v. TARGET CORP., Defendant.
--

Case No.: 16-cv-1678-L-MDD

**ORDER ON JOINT MOTION FOR
DETERMINATION OF
DISCOVERY DISPUTE**

[ECF NO. 85]

Before the Court is the joint motion of the parties for determination of a discovery dispute filed on August 29, 2018. (ECF No. 85). The dispute presents a motion for protective order by Defendant regarding Plaintiff's request to depose Defendant's in-house counsel, Kristin Watnemo. This dispute arises out of an earlier dispute regarding, in part, the adequacy of the witnesses designated by Defendant for deposition under Fed. R. Civ. P. 30(b)(6). (See ECF No. 79). During one of the depositions, the witness acknowledged that everything she knew about Defendant changing the name of the "Target Check Card" to "Target Debit Card" came from Ms. Watnemo, one of the few employees remaining from that period of time involved in that

1 matter.

2 Deposing opposing counsel, although not unlawful, is discouraged. *See*
3 *Stevens v. Corelogic, Inc.*, No. 14-cv-1158-BAS-JLB, 2015 WL 8492501 *1
4 (S.D. Ca. Dec. 10, 2015). Most courts, including ours, refer to the three-part
5 test articulated in *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1327
6 (8th Cir. 1986), to determine the appropriateness of such a deposition.

7 *Shelton*, and its progeny, involve depositions of in-house litigation
8 counsel. It is not clear whether Ms. Watnemo has that role at Defendant.
9 Regardless, the Court finds the guidance provided by *Shelton* persuasive and
10 will apply it generally here. A party seeking the deposition of opposing
11 counsel must show: (1) There are no other means to obtain the information;
12 (2) The information is relevant and non-privileged; and, (3) The information
13 is crucial to the preparation of the case. *See Shelton*, 805 F.2d at 1327.

14 Defendant argues that Plaintiff has failed his burden. There are other
15 means to obtain the information – Plaintiff obtained it from Defendant’s
16 designee; that the relevance of the information is questionable because
17 Plaintiff’s case challenges the marketing of the debit card, not its predecessor
18 card; and, the information is not crucial.

19 Defendant makes a good point but it is clear from the deposition of the
20 designee that Ms. Watnemo is uniquely suited to provide this information.
21 Accordingly, the Court will allow Plaintiff to depose Ms. Watnemo for no
22 more than three hours limited exclusively to questions regarding the
23 renaming of the Target Check Card to the Target Debit Card. Ms.
24 Watnemo’s testimony also is limited to factual, non-privileged information.
25 Ms. Watnemo may be instructed not to answer any questions outside of this
26 scope.

1 CONCLUSION

2 As presented in this Joint Motion, Defendant's motion for a protective
3 order regarding the deposition of Ms. Watnemo is **GRANTED IN PART**
4 **AND DENIED IN PART.**

5 **IT IS SO ORDERED.**

6 Dated: October 2, 2018

7 

8 Hon. Mitchell D. Dembin
9 United States Magistrate Judge
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27