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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 FINJAN, INC.,

12 Plaintiff,

13 v.

14 ESET, LLC and ESET SPOL. S.R.O.,

15 Defendants.

Case No.: 17CV183 CAB (BGS)

**ORDER ON RULE 30(b)(6)
DEPOSITIONS**

[ECF No. 201]

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17 On November 15, 2017, the Court ordered the parties to present their arguments in
18 a joint statement regarding the location of the depositions of Defendants' Rule 30(b)(6)
19 witnesses.

20 **BACKGROUND**

21 Plaintiff served a Rule 30(b)(6) notice on Defendants ESET LLC and ESET SPOL.
22 S.R.O. ("ESET" unless otherwise distinguished) for San Diego.¹ ESET identified 10
23 witnesses, 9 of whom are located in Slovakia, where Defendant ESET LLC's parent,
24 Defendant ESET SPOL, has its principal place of business. Finjan moves this Court to
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27 ¹ The deposition notice the parties submitted identifies Finjan's counsel's offices in
28 Menlo Park, California as the location for the depositions, however, the Joint Statement
indicates Finjan seeks to conduct the depositions in San Diego. (ECF No. 201 at 3, 6.)

1 order the depositions to take place in San Diego, whereas ESET moves for an order
2 requiring the depositions to take place in Slovakia.

3 **DISCUSSION**

4 Both Parties in their joint statement concur that there is a presumption that Rule
5 30(b)(6) depositions of corporate witnesses are held at a company's headquarters. (ECF
6 No. 201 at 4-5.) However, since ESET in effect is seeking a court order setting the
7 location of the place of deposing these witnesses to Slovakia, a location other than the
8 noticed location of San Diego, the Court views ESET as requesting a protective order
9 under Federal Rule of Civil Procedure 26(c).

10 The general rule for setting the location of a corporate party's deposition is that it
11 should ordinarily take place at its principal place of business. *Cadent Ltd. v. 3M Unitek*
12 *Corp.*, 232 F.R.D. 625, 628 (C.D. Cal. 2005)(citation omitted). However, the deposition
13 of a party may be noticed wherever the deposing party designates, subject to the Court's
14 power to grant a protective order designating a different place. *Id.* (citations omitted).
15 The Court may for good cause issue an order to protect a party from undue burden or
16 expense including specifying time and place for discovery. *See* Rule 26(c)(1)(B).

17 In determining whether to impose a protective order, the Court considers the initial
18 presumption that a corporate defendant should be deposed in the district of the
19 corporation's principal place of business. However, a number of factors serve to
20 dissipate the presumption, which include location of counsel for the parties in the forum
21 district, the number of corporate representatives a party is seeking to depose, the
22 likelihood of significant discovery disputes arising which would necessitate resolution by
23 the forum court, whether the persons sought to be deposed often engage in travel for
24 business purposes, and the equities with regard to the nature of the claim and the parties'
25 relationship. *Cadent Ltd.*, 232 F.R.D. at 628-629 (citations omitted). Whether the
26 defendant will suffer financial hardship is a main consideration. *See id.* at 629 (citations
27 omitted). The Court addresses each.

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1 1. Location of Counsel in the Forum District

2 Although all counsel are in California, only ESET’s counsel are in the forum
3 district. However, since ESET’s counsel are located in the forum district, they would not
4 suffer any financial hardship were the Court to order the depositions in San Diego. This
5 factor weighs in favor of the depositions being conducted in San Diego.

6 2. Number of Corporate Representatives to be Deposed

7 ESET has identified 10 witnesses with knowledge of the thirty-nine 30(b)(6) topics
8 noticed by Finjan. Seven of these witnesses are in Bratislava, Slovakia, and two are in
9 Krakow, Poland. According to ESET, and not objected to by Finjan, five of these
10 witnesses lack passports or visas to travel to the United States. (ECF 201 at 6.)

11 According to ESET, were these witnesses ordered to be deposed here, the cost would be
12 nearly nine lost man-weeks of work. (*Id.*) Further, some of these witnesses have
13 knowledge as to only a single topic, and their deposition may take only a few hours. (*Id.*)

14 Judicial economy and the convenience of the parties, unnecessary trouble and
15 expense due to being required to travel a great distance are proper considerations in
16 deciding where the depositions should take place. *Cadent Ltd.*, 232 F.R.D. at 629
17 (citations omitted). The Court finds this factor weighs heavily in favor of ordering the
18 depositions to take place in Slovakia.

19 3. Likelihood of Discovery Disputes

20 To date there have been no discovery disputes regarding objections during
21 depositions. Neither party in their Joint Statement mention this factor. The Court finds
22 this factor is neutral.²

23 4. Whether the Witnesses Often Engage in Travel for Business Purposes

24 Neither party has proffered information on this issue. However, ESET asserts that
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27 ² Although due to time zone differences the Court would not be able to address issues that
28 might arise during a deposition while it is taking place, counsel can arrange to contact the
Court for resolution telephonically shortly after any dispute might arise.

1 five of the 10 witnesses do not have passports or visas to travel to the U.S. This factor
2 appears to favor ESET, at least as to these five witnesses.

3 5. Equities Regarding the Nature of Claim and Parties Relationship

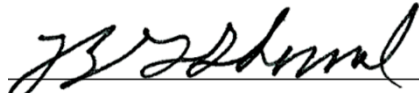
4 Neither party has proffered any information on this factor.

5 Considering all the factors, the Court finds that the *Cadent* factors weigh in favor
6 of ESET, and therefore finds that the presumption that Rule 30(b)(6) depositions of
7 corporate witnesses are held at a company's headquarters has not been rebutted. It
8 appears from the Joint Statement that holding Finjan's depositions of ESET's 30(b)(6)
9 witnesses in Slovakia is more convenient, less time consuming, and less expensive.
10 Therefore, the Court orders these depositions be taken in Bratislava, Slovakia.³

11 **CONCLUSION**

12 The Court orders the Rule 30(b)(6) depositions be taken in Bratislava, Slovakia.

13 Dated: November 29, 2017

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15 Hon. Bernard G. Skomal
16 United States Magistrate Judge
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25 ³ Finjan requests that if the depositions are ordered to take place in Slovakia, ESET be
26 barred from bringing those witnesses at trial, represent its productions and other
27 discovery responses are complete prior to the scheduling of the depositions, and bring
28 those witnesses to the United States for deposition if ESET provides new discovery
relevant to their testimony after they have been deposed in Slovakia. (ECF 200 at 4-5.)
The Court does not find these conditions are justified or necessary at this time.