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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PENNY STAFFORD, DBA BELVI COFFEE
AND TEA EXCHANGE, INC., on behalf of
herself and all those similarly situated,

Plaintiffs,

v.

STARBUCKS CORPORATION,

Defendant.

CASE NO. C06-1382-JCC

ORDER

This matter comes before the Court on Defendant Starbucks Corporation (Starbucks)'s Motion for a Protective Order Precluding the Deposition of Howard Schultz (Dkt. No. 108), Plaintiff Penny Stafford's Response in opposition (Dkt. No. 114), and Defendant's Reply (Dkt. No. 116). Having fully considered these papers, their supporting declarations, and the balance of relevant materials in the file, the Court hereby GRANTS IN PART and DENIES IN PART Defendant's motion and rules as follows.

I. BACKGROUND

This motion for a protective order arises in the context of an antitrust case in which Plaintiff Penny Stafford, an independent coffee retailer, alleges that Defendant Starbucks violated Section 2 of the Sherman Antitrust Act by willfully acquiring or maintaining monopoly power in the relevant market.

1 (Pl.'s Mot. to Compel 3 (Dkt. No. 44 at 4).) The Court summarized the background facts of this case in
2 its Order of October 4, 2007, and will not recount them here except as necessary to explain its decision.
3 In the instant motion, Defendant seeks a protective order precluding Plaintiff from deposing Howard
4 Schultz, Starbucks' Chairman and founder, who was on January 7, 2008, reappointed as Chief Executive
5 Officer and President of the company. (Def.'s Mot. 1, 4 (Dkt. No. 108 at 3, 6).) Starbucks argues that,
6 given Mr. Schultz's extremely busy schedule and ostensible lack of knowledge, Plaintiff seeks Mr.
7 Schultz's deposition merely for the purpose of "creating burden and attempting to gain inappropriate
8 tactical advantage" rather than to obtain relevant evidence. (*Id.* at 1.) Starbucks supports this allegation
9 with Plaintiff's refusal to limit the subject of questions beyond that they "would relate to antitrust issues"
10 and Plaintiff's refusal to limit the deposition length beyond the seven hours allowed under the Rules. (*Id.*
11 at 1.) Starbucks also points to the fact that Plaintiff sought Mr. Schultz's deposition for the first time only
12 two days after he was reappointed as CEO as evidence of Plaintiff's intent to unduly burden Starbucks.
13 (*Id.* at 11.)

14 Starbucks asserts that Mr. Schultz has an "extremely heavy load of additional responsibilities at an
15 important time in the history of the company" and has "no flexibility in his schedule." (*Id.* at 1, 4.)
16 According to Starbucks, Mr. Schultz's "[l]osing even one day would be unduly burdensome and
17 disruptive to Starbucks . . . and would effectively incapacitate the company from moving forward." (*Id.* at
18 4.)

19 Additionally, Starbucks argues, Mr. Schultz has no "personal and direct involvement in growth or
20 marketing strategy for Washington, for locating retail stores or negotiating leases in the downtown cores
21 of Bellevue and Seattle that are the subject of this lawsuit." (*Id.*) Starbucks points out that Mr. Schultz
22 was the custodian of only three responsive documents produced during discovery, and that those
23 documents are "not at all relevant to the allegations at issue in this case[.]" (*Id.* at 5.) Accordingly,
24 Starbucks asks the Court to bar Plaintiff "from deposing Mr. Schultz unless or until she can establish
25 good cause for deposing the highest ranking executive of the company and show unsuccessful efforts to

1 obtain information from those witnesses¹ directly involved in business activities related to Plaintiff's
2 allegations[.]” (*Id.* at 2–3.)

3 Plaintiff counters that Mr. Schultz was “the person who developed Starbucks’ real-estate strategy
4 in the entire Pacific Northwest[.]” and that:

5 [t]here is simply no other person at Starbucks with the depth and breadth of Mr. Schultz’s
6 knowledge about Starbucks’ domination of the downtown Seattle and Bellevue markets,
7 and Starbucks’ intent to eradicate competitors from the market, and especially in the
8 Seattle/Bellevue area.

9 (Pl.’s Resp. 1 (Dkt. No. 114 at 3).) Plaintiff points to excerpts from Mr. Schultz’s 1997 book, *Pour Your*
10 *Heart Into It*, showing that he was personally involved in the store siting decisions in Washington during
11 1987–1992, and that he was directly involved in strategic planning regarding real estate. (*Id.* at 3–4.) For
12 example, Mr. Schultz writes:

13 For the first five years after 1987, I approved every site personally—for more than 100
14 stores. We aimed for highly visible locations, either in downtown office buildings or in
15 densely populated urban or suburban neighborhoods, near supermarkets. We worked with
16 outside brokers in each region, and in 1989, we hired one of our best brokers, Yves
17 Mizrahi, to be our vice president for real estate. Working closely with me, he pre-screened
18 each site and closed each deal. Our process of site selection was enormously time-
19 consuming, but we couldn’t afford a single mistake. . . . In 1992 and 1993, we refined our
20 real estate strategy, creating a three-year expansion plan based on a matrix of regional
21 demographic profiles and an analysis of how best to leverage our operations
22 infrastructure.

23 (*Pour Your Heart Into It* 144, 194 (Dkt. No. 115-2 at 16–17).) Additionally, Plaintiff cites an excerpt
24 from a book by Howard Behar, former Starbucks President and current board member, wherein Mr.
25 Behar states that Mr. Schultz “drove our market-growth strategy[.]” (*It’s Not About the Coffee* 74 (Dkt.
26 No. 115-2 at 21).) Further, in Plaintiff’s deposition of Arthur Rubinfeld, the person Mr. Behar indicated
was most knowledgeable about Starbucks’ store-siting strategy, Mr. Rubinfeld apparently testified that

¹As of the date Defendant filed this motion, Plaintiff had noted the depositions of James Lambert, Ryan Records, and Haywood McGuffee, but those depositions had not yet been taken. (Boeder Decl. ¶ 2 (Dkt. No. 109 at 1–2).) Additionally, Plaintiff already deposed Howard Behar and, in the time since this motion was filed, Arthur Rubinfeld. (Dkt. Nos. 115-2 at 23, 117-2 at 1.)

1 “he did not know what strategy was used to site stores in Seattle and Bellevue because when he started
2 with Starbucks in 1992, Starbucks had already occupied those markets.” (Pl.’s Resp. 6 (Dkt. No. 114 at
3 8).) Plaintiff argues that it is only Mr. Schultz who can provide information about Starbucks’ actions
4 undertaken to dominate the Seattle high-rise market, which was supposedly underway by 1992. (*Id.*)

5 Furthermore, Plaintiff argues, a leaked Feb. 14, 2007, email from Mr. Schultz to Starbucks’
6 strategic planners² shows that Mr. Schultz has knowledge of Starbucks’ anticompetitive behavior:

7 While the current state of affairs for the most part is self-induced, that has [led] to
8 competitors of all kinds, small and large coffee companies, fast food operators, and mom
9 and pops, to position themselves in a way that creates awareness, trial and loyalty of
10 people who previously have been Starbucks customers. This must be eradicated.

11 (Dkt. No. 115-2 at 37.) Plaintiff posits that the only reason Mr. Schultz was the custodian of a mere three
12 responsive documents is that he routinely shreds all documents he receives. (Pl.’s Resp. 5 (Dkt. No. 114
13 at 7).) Plaintiff also characterizes Starbucks’ argument about the suspect timing of Plaintiff’s request for
14 the deposition as baseless, because Plaintiff had made her interest in Mr. Schultz known for months prior
15 to the request. (*Id.* at 6–7.)

16 **II. APPLICABLE STANDARD**

17 Under the Federal Rules, the Court has discretion to issue a protective order “for good cause” to
18 protect a person “from annoyance, embarrassment, oppression, or undue burden or expense[.]” FED. R.
19 CIV. P. 26(c). Federal “courts are sometimes willing to protect high-level corporate officers from
20 depositions when the officer has no *first hand* knowledge of the facts of the case or where the officer’s
21 testimony would be *repetitive*.” *First Nat’l Mortgage Co. v. Fed. Realty Inv. Trust*, 2007 WL 4170548,
22 at *2 (N.D. Cal. Nov. 19, 2007) (emphasis in original). “Nevertheless, a protective order barring the
23 taking of a deposition is difficult to justify and, under ordinary circumstances, the fact that the proposed
24 deponent is a busy person or professes lack of knowledge of matters at issue does not support a

25 ²The email was posted on a website with no apparent connection to Starbucks, and claims to have
26 been leaked to “the StarbucksGossip website” on Feb. 23, 2007, and authenticated by the Wall Street
Journal. (Dkt. No. 115-2.)

1 protective order.” 6 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 26.105(2)(a) (3d ed.
2 2007). The Ninth Circuit has held that “a strong showing is required before a party will be denied entirely
3 the right to take a deposition.” *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975) (quoting
4 4 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 26.69 (2d ed. 1974)); *see also Celerity, Inc.*
5 *v. Ultra Clean Holding, Inc.*, 2007 WL 205067, at * 3 (N.D. Cal. Jan. 25, 2007) (“It is very unusual for a
6 court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an
7 order would likely be in error.”) (quoting *Salter v. Upjohn*, 593 F.2d 649, 651 (5th Cir. 1979)).

8 Rather than bar an apex deposition entirely, courts sometimes “refuse to allow the immediate
9 deposition of high-level ‘apex deponent’ executives, *before* the testimony of lower level employees with
10 more intimate knowledge of the case had been secured.” *First Nat’l Mortgage Co.*, 2007 WL 4170548,
11 at *2 (emphasis in original) (citing *Salter*, 593 F.2d at 651); *see also Celerity*, 2007 WL 205067, at
12 *4–*5 (finding that the party seeking to conduct an apex deposition must first “make a good faith effort
13 to extract the information it seeks from interrogatories and depositions of lower level [] employees”).

14 However, where a party seeking a protective order shows no “specific facts” from which the
15 court could conclude that it will be unduly burdensome for the deponent to appear for a deposition,
16 “there is no legal authority for requiring [the party seeking the deposition] to use purportedly less
17 burdensome means of obtaining the discovery before allowing ‘apex’ depositions.” *GratefulDead Prods.*
18 *v. Sagan*, 2007 WL 2155693, at *1 (N.D. Cal. July 26, 2007) (noting that “where a corporate officer may
19 have *any* first hand knowledge of relevant facts, the deposition should be allowed”). “Further, a claimed
20 lack of knowledge or recollection does not provide sufficient grounds for a protective order, since the
21 opposing party is entitled to test that lack of knowledge or recollection.” *Id.* n.5.

22 **III. ANALYSIS**

23 The Court is not persuaded that a protective order barring entirely the deposition of Mr. Schultz
24 is appropriate in this case. As summarized in Section I. above, Plaintiff has shown at least some evidence
25 that Mr. Schultz is a person with unique personal knowledge about Starbucks’ store siting decisions and

1 strategic planning regarding competition. In any event, Plaintiff is entitled to test Mr. Schultz's purported
2 lack of knowledge about those topics. It is also apparent that Plaintiff has already undertaken to depose
3 lower-level employees who may have relevant knowledge—including Mr. Rubinfeld—and determined
4 that Mr. Schultz may have relevant knowledge not obtainable from other sources. Starbucks has pointed
5 to no authority for barring the deposition of a high-ranking official who may have relevant and unique
6 knowledge.

7 The Court is also not persuaded that Plaintiff had any nefarious intentions in requesting to depose
8 Mr. Schultz only two days after Mr. Schultz's reappointment as CEO. As Plaintiff explains in its
9 Response, it had always planned to depose Mr. Schultz and there were logical reasons for the timing of
10 its request, including the fact that it received a communication from Starbucks on January 2, 2008,
11 regarding whether and to what extent Mr. Schultz had relevant documents, and the fact that this Court
12 ruled on January 7, 2008, the same day Mr. Schultz was reappointed, on Starbucks' prior motion to
13 preclude the deposition of Harold Behar. (Pl.'s Resp. 6–7 (Dkt. No. 114).) The Court does not consider
14 Plaintiff's actions in seeking to depose Mr. Schultz to constitute harassment.

15 The Court, however, recognizes that Mr. Schultz is an extremely busy executive at the helm of
16 Starbucks, with important daily responsibilities. Given the representations of Starbucks' Senior Vice
17 President of Store Development and Mr. Schultz's executive assistant regarding Mr. Schultz's demanding
18 schedule and the necessity of his attendance to the company's operations (Malanga Decl. ¶ 6 (Dkt. No.
19 111); Kent Decl. ¶¶ 6–8 (Dkt. No. 110)), the Court deems it appropriate to LIMIT the length of Mr.
20 Schultz's deposition to FOUR HOURS rather than the seven hours permitted by the Federal Rules,
21 unless Plaintiff shows good cause for a continuation deposition.

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Court GRANTS IN PART and DENIES IN PART Defendant's
24 motion for a protective order precluding the deposition of Howard Schultz, as follows:

25 (1) the Court DENIES Defendant's motion for a protective order to the extent that it requests

1 Plaintiff to show further good cause and unsuccessful efforts to obtain information from lower-
2 level employees before Plaintiff may depose Mr. Schultz;

3 (2) the Court LIMITS the deposition of Mr. Schultz to FOUR HOURS; and

4 (3) the Court GRANTS the motion to the extent that Plaintiff must show good cause before it
5 may depose Mr. Schultz in a continuation deposition for the remaining three hours permitted by
6 the Federal Rules.

7 SO ORDERED this 20th day of March, 2008.

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9 John C. Coughenour
10 United States District Judge
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