

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES--GENERAL

Case No. SACV 09-399-DOC (RNBx)

Date: March 23, 2010

Title: Securities and Exchange Commission v. Sun Empire, LLC, et al.

**DOCKET ENTRY**

PRESENT:

**HON. ROBERT N. BLOCK, UNITED STATES MAGISTRATE JUDGE**

Kerri Glover  
Deputy Clerk

n/a  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None present

ATTORNEYS PRESENT FOR DEFENDANTS:

None present

**PROCEEDINGS: (IN CHAMBERS)**

**Plaintiff's Application for Order Compelling Defendants Nguyen and Johnson to Appear for Depositions, filed March 22, 2010**

Based on its review of the Joint Stipulation, the Court has concluded that neither further briefing nor oral argument will be of material assistance to the Court's determination of this Motion. Accordingly, the Court now rules as follows.

Defendants Nguyen and Johnson do not dispute that they failed to appear for their duly noticed depositions on February 23, 2010, the date on which their counsel confirmed they would appear. Nor do defendants Nguyen and Johnson dispute that this district is a proper situs for their depositions. Rather, they merely are asserting that plaintiff should be required to conduct their depositions by videoconference from Ho Chi Minh City, so they can avoid "the rigors and expense of international jet travel" and because they intend to assert the Fifth Amendment privilege "over and over again." As to the first point, the Court notes that any inconvenience now faced by defendants Nguyen and Johnson is of their own creation. The Court presumes that their counsel would not have agreed to the February 23, 2010 deposition date if defendants Nguyen and Johnson had not previously represented to him that they would be in Los Angeles on that date. As to the second point, contrary to what counsel for defendants Nguyen and Johnson has characterized as "custom and practice," the law has long been established that the Fifth Amendment privilege may not be asserted by a deponent on a blanket basis, but rather must be asserted on a question-by-question basis. See, e.g., In re Morganroth, 718 F.2d 161, 167 (6th Cir. 1983) ("A blanket assertion of the privilege by a witness is not sufficient to meet the reasonable cause requirement and the privilege

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cannot be claimed in advance of the questions. The privilege must be asserted by a witness with respect to particular questions,....”); Securities and Exchange Comm. v. First Financial Group of Texas, Inc., 659 F.2d 660, 668 (5th Cir. 1981) (“Therefore, a blanket invocation of the fifth amendment privilege is insufficient to relieve a civil litigant of the responsibility to answer questions put to him during the civil discovery process and to claim the privilege with respect to each inquiry.”); Nat. Life Ins. Co. v. Hartford Acc. & Indem. Co., 615 F.2d 595, 598-600 (3d Cir. 1980); United States v. Carroll, 567 F.2d 955, 957 (10th Cir. 1977); United States v. Averkamp, 497 F.2d 832, 836 (7th Cir. 1976); Capitol Products Co. v. Herson, 457 F.2d 541, 542-43 (8th Cir. 1972); In re Turner, 309 F.2d 69, 71 (2d Cir. 1962).

Plaintiff’s Application therefore is granted, and defendants Nguyen and Johnson are ordered to appear in person for their depositions at the offices of plaintiff on such dates before April 9, 2010 as are hereafter noticed by plaintiff’s counsel, provided at least five calendar days’ notice is given.

cc: Judge Carter