SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

CAITLIN FERRARI, on Behalf of Herself and All Others Similarly Situated,	:	
Plaintiff,	:	Index No. 804125/2014
v.	:	**ECF CASE**
STEPHANIE MATECZUN, CITADEL BROADCASTING COMPANY, CITADEL COMMUNICATIONS COMPANY, LTD., and BUFFALO BILLS, INC.,	:	
Defendants.	:	

NON-PARTY ROGER GOODELL'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH AND FOR A PROTECTIVE ORDER

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PRELIMINARY STATEMENT

Plaintiff Caitlin Ferrari ("Plaintiff"), a past member of the Buffalo Jills, the former cheerleading squad for the professional football Club the Buffalo Bills, issued a subpoena to Roger Goodell ("Commissioner Goodell"), Commissioner of the National Football League ("NFL"). The NFL is an unincorporated 501(c)(6) association made up of thirty-two separately owned professional football Clubs, one of which is the Buffalo Bills. Neither Commissioner Goodell nor the NFL is a party to Ferrari's lawsuit. Despite the fact that both Commissioner Goodell and the NFL are non-parties, Plaintiff insists on taking the deposition of Commissioner Goodell, the CEO and senior-most executive of the NFL.

The request for a deposition of Commissioner Goodell is unwarranted and is, at best, a fishing expedition or, at worst, an improper ploy for media coverage, with training camps having recently opened and the NFL regular season set to kickoff in less than one month from today. Neither Commissioner Goodell nor the NFL has any role or involvement in Plaintiff's dispute. As Commissioner Goodell sets forth in an affidavit accompanying this motion, he has no knowledge regarding the critical issues at the heart of Plaintiff's wage claims, *i.e.*, the terms and conditions under which the Buffalo Jills provided their services.

Significantly, Plaintiff's Subpoena to Commissioner Goodell, a non-party in this lawsuit, is devoid of any allegation that he possesses such information or a statement regarding why his deposition is necessary. Indeed, Plaintiff cannot credibly claim that Commissioner Goodell (or, for that matter, the NFL) have information related to her

lawsuit because she has not engaged in any other discovery yet, including any discovery from any of the parties to this lawsuit.

Because Plaintiff cannot show that Commissioner Goodell has unique or independent and necessary knowledge related to her claims, the requisite standard set forth by New York courts when a party seeks a deposition of a CEO, the Court should not allow Plaintiff to take his deposition and should quash the Subpoena. Moreover, the Court should quash Plaintiff's Subpoena that notices a deposition for Commissioner Goodell because Plaintiff cannot show that there is information related to her lawsuit that she cannot get from any other source.

Accordingly, we respectfully request that the Court: (a) enter an Order pursuant to CPLR § 2304, quashing the Subpoena *Ad Testificandum* that Plaintiff issued to Commissioner Goodell, a non-party in this lawsuit; and (b) issue a Protective Order pursuant to CPLR § 3103 vacating the deposition request in Plaintiff's subpoena.

STATEMENT OF FACTS

A. The Underlying Proceeding.

On or about April 22, 2014, Plaintiff filed a complaint on behalf of herself and purportedly "similarly situated" current and former members of the Buffalo Jills, the former cheerleaders for the professional football team the Buffalo Bills. Plaintiff filed her original complaint against defendants Stephanie Mateczun ("Mateczun") and Citadel Broadcasting Company, Ltd. On or about May 9, 2014, Plaintiff amended her complaint to add the Buffalo Bills, Inc. ("BBI") as a defendant and to purportedly correct the names of the Citadel corporate entities to defendants Citadel Broadcasting Company ("Citadel") and Citadel Communications Company, Ltd. (*See* First Amended and Supplemental

Class Action Complaint at Bloom Aff. Exhibit A).[1] The crux of Ferrari's allegations is that the Buffalo Jills were not paid in accordance with certain state wage laws. On or about June 26, 2014, BBI filed a motion to dismiss the Amended Complaint. That motion was denied by the Court pursuant to an Order dated July 29, 2014.

B. Plaintiff Serves A Subpoena For The Deposition Of The Commissioner Of The NFL And For All Documents That Mention The Jills.

Soon after BBI filed its motion to dismiss, Plaintiff issued a Subpoena *Ad Testificandum* and *Duces Tecum* to Roger Goodell (the "Subpoena"). (Bloom Aff. Exhibit B). Mr. Goodell is the Commissioner of the NFL and, in his role as Commissioner, Mr. Goodell is the CEO of the NFL. (Goodell Aff. ¶ 2).[2] Neither the NFL nor Commissioner Goodell is a party in this action. The Subpoena, dated July 3, 2014, requested Commissioner Goodell's appearance at a deposition on July 23, 2014. (Bloom Aff. Exhibit B).

The Subpoena also contained document requests. Although Plaintiff issued the Subpoena to Roger Goodell, personally, it is clear from the document requests that Plaintiff intended to seek documents from the entire NFL, not only Commissioner Goodell. (Bloom Aff. Exhibit B). These document requests were overly broad, burdensome and sought information irrelevant to Plaintiff's lawsuit. For instance, the Subpoena originally sought *all* documents that mention the Jills from *all* employees of the NFL. *Id.*

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[1] References to the Affirmation of Elise M. Bloom submitted herewith in support of non-party NFL's motion are cited as "Bloom Aff. __."

[2] References to the Affidavit of Commissioner Roger Goodell submitted herewith in support of non-party NFL's motion are cited as "Goodell Aff. __".

It is our understanding that this Subpoena was served before any other discovery was taken in this case, including prior to any other depositions or any discovery from any of the parties to the lawsuit. Specifically, as the Court states in its July 29, 2014 decision denying BBI's motion to dismiss: "[t]here has been no discovery as yet." (*See* Decision and Order on Motion, Docket Entry No. 50, at p. 4).

C. Commissioner Goodell Has No Knowledge Related To The Claims In This Lawsuit.

The NFL and Commissioner Goodell have no involvement with this dispute between Plaintiff and Defendants. The Amended Complaint only mentions the NFL to the extent that the Buffalo Bills are described as an NFL team. (Bloom Aff. Exhibit A). It does not mention Commissioner Goodell even once. *Id.*

In Commissioner Goodell's affidavit submitted in support of this motion, he confirms that he has no knowledge about the facts underlying Plaintiff's claims in this lawsuit. Specifically, in his affidavit, Commissioner Goodell unequivocally states that he:

- Has no knowledge regarding the selection, training, compensation and/or pay practices of the Buffalo Jills;
- Has no knowledge regarding the terms and conditions under which the Buffalo Jills provide their services, or the setting of those terms and conditions;
- Has no knowledge regarding the management of the Buffalo Jills;
- Has no knowledge regarding how the Buffalo Jills acquire any uniforms or equipment;
- Has no knowledge regarding the travel and lodging expenses of the Buffalo Jills; and
- Does not know the Plaintiff.

(Goodell Aff. ¶¶ 3-4).

D. Plaintiff Refuses To Withdraw The Deposition Request For Commissioner Goodell, But Agrees To Amend The Document Requests.

In accordance with CPLR § 2304 and the Individual Rules of Hon. Timothy J. Drury, Supreme Court Justice, on July 17, 18 and 21, 2014, we, as counsel for non-party Commissioner Goodell, had discussions and correspondence with Plaintiff's counsel about withdrawing and/or modifying the Subpoena. (Bloom Aff. ¶¶ 6-14).

With respect to the notice for the deposition of Commissioner Goodell contained in the Subpoena, we requested that Plaintiff withdraw the Subpoena because Commissioner Goodell does not possess any knowledge, let alone unique knowledge, about the facts and/or allegations in this lawsuit. *Id.* at ¶ 6. Plaintiff's counsel refused to withdraw the Subpoena and insisted on a deposition of Commissioner Goodell. *Id.* at ¶ 7.

Moreover, because the Subpoena violates CPLR § 3101(a)(4) in that it does not explain the "circumstance or reasons" that Plaintiff is seeking a deposition of Commissioner Goodell, we asked Plaintiff's counsel why Plaintiff believes she is entitled to a deposition of Commissioner Goodell. *Id.* at ¶ 8. Plaintiff's attorneys indicated that the basis for the Subpoena to Commissioner Goodell is that he purportedly signed two radio broadcast rights agreements between defendants BBI and Citadel: the Second Amended and Restated Radio Broadcast Rights Agreement between BBI and Citadel, dated May 1, 2007 (the "Second Amended Agreement") and the Third Amended and Restated Radio Broadcast Rights Agreement between BBI and Citadel, dated July 1, 2009, (the "Third Amended Agreement"). *Id.* Plaintiff's counsel further stated that BBI attached redacted versions of these agreements to its motion to dismiss. *Id.*

However, as described in the accompanying affidavit of Rachel L. Margolies ("Margolies"), Senior Counsel of the NFL, Margolies is responsible for reviewing and approving radio broadcast rights agreements between NFL Clubs and radio broadcasting companies. (Margolies Aff. ¶ 2).[3] Margolies has had the responsibility of reviewing and approving radio broadcast rights agreements since September 2006. *Id.* Commissioner Goodell has no involvement in the process or procedure of reviewing and approving radio broadcast agreements. (Margolies Aff. ¶ 11). In fact, Commissioner Goodell does not sign radio broadcast agreements by hand. Instead, his signature is affixed to these agreements by stamp. (Margolies Aff. ¶ 3). We informed Plaintiff's counsel that because Plaintiff would not withdraw the Subpoena for a deposition of Commissioner Goodell, we would move to quash the Subpoena on the day before the Subpoena's return date. (Bloom Aff. ¶ 9).

With respect to the document requests contained in the Subpoena, in response to our request to revise the document requests, Plaintiff's counsel proposed revised discovery requests as well as revisions to the Definitions and Instructions sections of the Subpoena on July 21, 2014. (Bloom Aff. ¶ 10). Because the original return date for the Subpoena was July 23, 2014, Plaintiff agreed to extend the return date of the Subpoena – both with respect to the deposition request for Commissioner Goodell and the document requests – for two weeks, until August 6, 2014, so that we could consider Plaintiff's revised document requests. *Id.* at ¶ 13.

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[3] References to the Affidavit of Rachel L. Margolies submitted herewith in support of non-party Commissioner Goodell's motion are cited as "Margolies Aff. __".

On August 5, 2014, the same day that we filed this motion, we served on Plaintiff's counsel responses and objections to Plaintiff's revised document requests, pursuant to CPLR § 3122(a) (the "Responses and Objections"). (Bloom Aff. ¶ 14). In the Responses and Objections, we agreed to produce responsive documents that the NFL has in its possession related to the Buffalo Jills, as cheerleaders for the Buffalo Bills. *Id.* Specifically, we agreed to produce the following radio broadcast agreements, with confidential financial information redacted, which Plaintiff claimed were the basis for the Subpoena. In addition, in the Responses and Objections, we agreed to produce cover letters related to these agreements:[4]

- The Second Amended Agreement, with confidential financial information redacted;
- A cover letter dated June 5, 2007 from the NFL to BBI, enclosing the Second Amended Agreement;
- The Third Amended Agreement, with confidential financial information redacted; and,
- A cover letter dated September 23, 2009 from the NFL to BBI, enclosing the Third Amended Agreement.

Id. As per the agreement between us and Plaintiff's counsel, these documents will be produced on or before August 13, 2014. *Id.* at ¶ 13.

[4] As discussed above, it is our understanding that BBI produced redacted versions of the Second Amended Agreement and the Third Amended Agreement as exhibits to its Motion to Dismiss. In response to the revised document requests, we agreed to produce versions of these documents with only confidential financial information redacted.

ARGUMENT

THERE IS NO BASIS TO ORDER THE DEPOSITION OF NON-PARTY ROGER GOODELL, COMMISSIONER OF NON-PARTY NFL.

Non-party Roger Goodell[5] brings this motion to quash the Subpoena under CPLR § 2304 and for a protective order under CPLR § 3103.[6] The Court should quash the Subpoena and enter a protective order as to the deposition of Commissioner Goodell because Plaintiff has not – and cannot – establish that: (1) the CEO of the NFL has unique knowledge relevant to this case; and (2) the information she seeks is unavailable from other sources.

I. The Court Should Quash The Subpoena *Ad Testificandum* Because Commissioner Goodell Possesses No Unique Knowledge Or Necessary And Relevant Knowledge About Plaintiff's Claim.

A. Senior Executives Should Not Be Deposed Unless They Possesses Unique Or Necessary And Relevant Knowledge.

State and federal courts in New York (and across the country) have commonly and consistently recognized "an additional layer of protection for senior corporate executives subject to depositions." *Guzman v. News Corp.,* No. 09 Civ. 09323, 2012 U.S. Dist. LEXIS 91031, at *3 (S.D.N.Y. June 29, 2012); *see also Colicchio v. New York*,

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[5] Plaintiff issued the Subpoena to Roger Goodell, personally, at the NFL offices. However, this motion recognizes that the Subpoena is intended to seek information from Commissioner Goodell in his capacity as Commissioner of the NFL, as opposed to from him personally.

[6] In accordance with CPLR § 3103(b), "[s]ervice of notice of motion for a protective order shall suspend disclosure of the particular matter in dispute." (citation omitted); *see also Sciara v. Surgical Associates of Western N.Y.*, 927 N.Y.S.2d 770, 778 (N.Y. Sup. Ct. 2011) ("CPLR § 3103(a) authorizes any 'party' or 'person from whom discovery is sought' to apply for a protective order. Either a 'party' or 'person from whom discovery is sought' is therefore entitled to suspend the deposition to serve such a motion. The deposition is stayed while the motion is pending.").

581 N.Y.S.2d 36, 37 (1st Dep't 1992) (reversing an order of the New York Supreme Court that permitted plaintiff to take the deposition of the Commissioner of the New York City Department of Transportation); *Weiser v. New York City Health & Hosps. Corp.*, No. 800230/11, 2013 N.Y. Misc. LEXIS 4453, at *6-7 (N.Y. Sup. Ct. Sept. 30, 2013) (vacating the deposition notice for the dean and CEO of NYU Langone Medical Center); *Abarca v. Merck & Co.*, No. 1:07cv0388, 2009 U.S. Dist. LEXIS 71300, at *22-35 (E.D. Cal. July 31, 2009) (granting defendant's motion for a protective order and preventing plaintiff from deposing the CEO of Merck). The reasoning behind this rule is sound – "permitting unfettered discovery of corporate executives would threaten disruption of their business and could serve as a potent tool for harassment." *See Consolidated Rail Corp. v. Primary Indus. Corp.*, Nos. 92 Civ. 4927, 92 Civ. 6313, 1993 U.S. Dist. LEXIS 12600, at *2 (S.D.N.Y. Sept. 10, 1993).

In a recent decision that is on all fours with the issue here, a New York State court quashed a subpoena seeking the deposition of the CEO of a non-party because the party issuing the subpoena failed to show that the CEO had "unique knowledge that warrants his being deposed." *See Daou v. Huffington*, No. 651997/10, 2013 N.Y. Misc. LEXIS 705, at *17 (N.Y. Sup. Ct. Feb. 14, 2013). Although the "unique knowledge" standard generally is used by New York federal courts, there is no difference substantively between this standard and the standard applied by other New York State courts. *See Lin v. Benihana Nat'l Corp.*, No. 10 Civ. 1335, 2010 U.S. Dist. LEXIS 107839, at *6 (S.D.N.Y. Oct. 5, 2010) (ruling that a party seeking a deposition of a high-ranking corporate official has the burden of showing that the official has "knowledge that is both unique and relevant to the issues in the case").

Indeed, the holding in *Daou v. Huffington* is instructive of these principles and supports quashing the Subpoena in this case. In *Daou*, the plaintiffs served a subpoena on Timothy Armstrong, the CEO of AOL, which was not a party to the underlying case. 2013 N.Y. Misc. LEXIS 705 at *14. Armstrong, in a motion to quash the subpoena, represented to the court that he did not have any "unique knowledge" regarding the issues in the case. *Id.* at 15. In particular, Armstrong represented to the Court that he did not have any unique knowledge regarding the valuation of the Huffington Post, which was at the heart of the underlying matter, as plaintiffs' claim was for damages because they allegedly developed the idea for the Huffington Post but received no money for their contributions. *Id.* at *2-3. In quashing the plaintiffs' subpoena, the court determined that the plaintiffs failed to prove that Armstrong had any "unique knowledge." Specifically, the court stated that the "plaintiffs have not demonstrated that Armstrong had any information other than that of his company, AOL." *Id.* at *18. Accordingly, the court ruled that the "plaintiffs have failed to demonstrate their need for an apex deposition." *Id.* at *18.

Other New York State courts have ruled that a party is not entitled to take the deposition of a senior executive of a company unless the opposing party can show that the senior executive possesses necessary and relevant information. *See Weiser*, 2013 N.Y. Misc. LEXIS 4453 at *6 (ruling that plaintiff cannot take the deposition of the dean and CEO of NYU Langone Medical Center because plaintiff could not show that he had "relevant information to offer" and "plaintiff's proffered line of questioning fails to establish any relevance to this case"); *Thomas v. Good Samaritan Hosp.*, 237 A.D.2d 429, 429 (2d Dep't 1997) ("Given that an officer of the corporate defendant…submitted

an affidavit asserting that he had no personal knowledge of any of the facts of this case, the plaintiffs are not entitled to demand his deposition….").

For example, in *Arendt v. GE*, 270 A.D.2d 622, 622-23 (3d Dep't 2000), the plaintiffs sought to depose the CEO of General Electric, the defendant in the action. General Electric, however, refused to produce the CEO and the plaintiffs moved to compel his deposition. In denying the motion to compel, the New York Supreme Court "found that plaintiffs failed to make the requisite detailed showing of the necessity for such deposition testimony." *Id.* The Appellate Division affirmed the ruling of the New York Supreme Court, stating that the plaintiffs failed to establish that "the chief executive officer actually possessed necessary and relevant information germane to their lawsuit." *Id.* at 623. The same conclusion should be reached in this case.

B. Commissioner Goodell Does Not Possess Unique Or Necessary And Relevant Knowledge Regarding Plaintiff's Claims.

Regardless of whether the Court applies a "unique knowledge" standard or the virtually identical "necessary and relevant" knowledge standard, Plaintiff cannot establish that she should be entitled to a deposition of Commissioner Goodell. Significantly, Plaintiff cannot demonstrate that Commissioner Goodell, the senior most executive of non-party NFL, possesses unique or necessary and relevant knowledge related to Plaintiff's claims in this case.

Here, Plaintiff has brought a Complaint against Defendants alleging that she was not paid the wages she was entitled to under the New York Labor law. Moreover, based on a review of her Complaint, she is purportedly arguing that she was improperly classified as an independent contractor instead of an employee. It is these very

fundamental issues – including how the Jills were paid and how the Jills were classified – at the root of Plaintiff's claims about which Commissioner Goodell lacks knowledge. Specifically, as he unequivocally states in his affidavit, Commissioner Goodell has no knowledge regarding the selection, training, compensation and/or pay practices of the Buffalo Jills. (Goodell Aff. ¶ 3). Similarly, he has no knowledge regarding the terms and conditions under which the Buffalo Jills provide their services, or the setting of those terms and conditions. *Id.* Just as the court in *Daou* quashed a Subpoena for the CEO of non-party AOL because the CEO did not have knowledge of the critical issue in the case, namely, the valuation of the Huffington Post, so too should the Court quash the Subpoena here under the same reasoning. *See Daou*, 2013 N.Y. Misc. LEXIS 705 at *14-18.

Accordingly, because Commissioner Goodell has no unique or relevant and necessary knowledge to this case, the Court should grant the motion to quash and issue a protective order.

C. Radio Broadcast Rights Agreements Between Citadel And BBI Are Insufficient Grounds For A Deposition Of Commissioner Goodell.

The radio broadcast agreements between BBI and Citadel do not provide a basis for deposing Commissioner Goodell.[7]

The fact that a senior corporate executive's signature is on a document is by itself insufficient to show that the corporate executive has unique knowledge that is necessary

[7] Notably, Plaintiff does not even mention the radio broadcast agreements in the Subpoena. *See* CPLR § 3101(a)(4); *see also*, *Hildene Capital Mgmt., LLC v. Bank of N.Y. Mellon*, No. 650980/2010, 2013 N.Y. Misc. LEXIS 5954, at *8 (noting that under CPLR § 3101(a)(4) the plaintiff's subpoena is "facially defective as it does not state in any detail the circumstances or reasons the disclosure is sought").

and relevant to the case sufficient to compel a deposition. For instance, in *Daou v. Huffington*, in which the plaintiff subpoenaed the deposition of the CEO of non-party AOL because he allegedly had knowledge regarding the valuation of the Huffington Post, AOL and its CEO argued that although Armstrong signed a memorandum regarding the valuation of the Huffington Post, he was not the author of the memorandum and he was not the individual with the most knowledge of the memorandum. Despite the fact that Armstrong signed this memorandum, the Court granted the motion to quash, noting that the memorandum "was compiled by people other than Armstrong." *Id.* at 18.

Just as the plaintiff in *Daou* could not depose the CEO of non-party AOL even though he signed an arguably relevant memorandum, the Plaintiff here should not be permitted to depose Commissioner Goodell solely because his signature appears on the radio broadcast agreements between BBI and Citadel. As Margolies explains in her affidavit, Commissioner Goodell is not involved in the process or procedure of approving radio broadcast rights agreements. (Margolies Aff. ¶ 11). Moreover, Commissioner Goodell does not sign radio broadcast agreements by hand. (Margolies Aff. ¶ 3). Instead, his signature is affixed to the agreements by stamp. *Id.*

Accordingly, the radio broadcast rights agreements do not provide any basis for Plaintiff to take Commissioner Goodell's deposition.

II. Plaintiff Also Is Not Entitled To A Deposition Of Commissioner Goodell Because She Has Failed To Demonstrate That The Information She Seeks Is Unavailable From Other Sources.

A. A Party Seeking The Deposition Of A Senior Executive Must Show That The Information Sought Is Not Obtainable From Other Sources.

Courts routinely quash deposition notices for senior executives when the information is "obtainable from other deponents" or other sources. *Nakua v. Plenum Publishing Corp.*, 266 A.D.2d 157, 157 (1st Dep't 1999). Therefore, when a party seeks a deposition of a senior executive, courts require that the party show that it failed to get "material and necessary" evidence through the other witnesses it has deposed and/or through other discovery it has served. *See Arendt*, 270 A.D.2d at 622-23 (affirming lower court's denial of plaintiff's request for a deposition of defendant's CEO because "Plaintiffs wholly failed to establish that the numerous managers already deposed…lacked sufficient knowledge of the facts to produce "material and necessary" evidence."); *Daou*, 2013 N.Y. Misc. LEXIS 705 at *18 (stating that plaintiff's "fail[ed] to explain why interrogatories would not be an appropriate first step, at the very least, for obtaining the sought information"); *Saieh by Saieh v. Demetro*, 607 N.Y.S.2d 405, 406 (2d Dep't 1994) (denying motion to compel a deposition because plaintiffs failed to prove that the knowledge of the individual sought "extended beyond the information already provided to them in documentary form"); *Colicchio*, 581 N.Y.S.2d at 37 ("The plaintiffs failed to establish that the individuals already deposed possessed insufficient knowledge or that the testimony was otherwise inadequate."); *see also, Otsuka Pharmaceutical Co., Ltd v. Apotex Corp.*, No. 07-1000, 2008 WL 4424812, *5 (D.N.J. Sept. 25, 2008) (precluding deposition unless senior corporate executive possesses "unique knowledge relating to the formulation of [the] claims and defenses in this

litigation" *and* other witnesses who have been produced for deposition "have been unable to provide" that information).

The court in *Christie's Inc. v. Sherlock*, explains how a party noticing a deposition of a senior executive must show that other witnesses had insufficient knowledge. No. 602515/06, 2009 N.Y. Misc. LEXIS 6117, at *15-22 (N.Y. Sup. Ct. July 17, 2009). In *Christie's Inc.*, the plaintiff in the action, Christie's Inc., refused to produce its CEO for a deposition and the defendant filed a motion to compel. *Id.* In denying the defendant's motion to compel, the New York Supreme Court ruled that not only had the defendant failed to show that the CEO had "firsthand knowledge" of the issues in the case, it also failed to show that the witnesses it had already deposed had "insufficient knowledge." *Id.* at 22-23. This is of particular concern in a situation such as the one here, where the party is not only attempting to depose a senior executive, but is attempting to depose a senior executive of a *nonparty*. *See, e.g., Daou*, 2013 N.Y. Misc. LEXIS 705 at *18.

B. Plaintiff Cannot Show That The Information She Seeks From Commissioner Goodell's Deposition Is Unavailable From Other Sources.

Plaintiff obviously cannot make her required showing that the information is unavailable from other sources because no other discovery has taken place in the case yet. Specifically, Plaintiff has not deposed any witnesses and, other than this Subpoena, she has not served or received any responses to discovery requests. Indeed, as the Court stated in its July 29, 2014 decision denying BBI's motion to dismiss, "[t]here has been no discovery as yet." (*See* Decision and Order on Motion, Docket Entry No. 50, at p. 4). Accordingly, for this additional reason, the Court should quash the Subpoena seeking a deposition of Commissioner Goodell.

CONCLUSION

For the reasons set forth above, the Motion to Quash the Subpoena *Ad Testificandum* to non-party Commissioner Goodell and for a Protective Order vacating the deposition request should be granted.

Dated: August 5, 2014
New York, New York

Respectfully submitted,

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