

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

AF HOLDINGS, LLC	:	
	:	
Plaintiff,	:	
	:	Civil Action No.
v.	:	2:12-cv-00262-WCO
	:	
RAJESH PATEL,	:	
	:	
Defendant.	:	

NOTICE OF DEPOSITION OF MARK LUTZ

TO: Jacques Nazaire
125 Town Park Drive
Kennesaw, GA 30144

Pursuant to Fed R. Civ. P. Rule 30, please take notice that Defendant, by and through counsel, will take the deposition by oral examination of **Mark Lutz** on **August 21, 2013 at 09:00 AM at the State Bar of Georgia, Room 6, located at 104 Marietta St. NW, Atlanta, GA 30303. The deposition will be recorded via audio and audiovisual.** This deposition is taken for all purposes allowed under the Federal Rules of Civil Procedure and the Court’s order permitting discovery. This is **not** a deposition notice wherein, pursuant to Rule 30(b)(6), Plaintiff may “designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify.” *See generally E.I. DuPon de Nemours and Co. v. Kolon Industries, Inc.*, 268 F.R.D. 45, 48-49 (E.D. Va. 2010) (extensive discussion of factors relevant to determining whether a witness is a managing agent); *Calixto v. Watson Bowman Acme Corp.*, 2008 WL 4487679, * 2-3 (S.D. Fla. 2008) (engaging in a fact-specific analysis to determine if witness was a managing agent); *Vision Center Northwest Inc. v. Vision Value LLC*, 2008 WL 4276240, *2-3 (N.D. Ind. 2008, aff’d 2008 WL 4724722 (N.D. Ind. 2008) (discussing and applying factors relevant to determining whether a witness is a managing agent); *Phillips v. American Honda Motor Co., Inc.* 2005 WL 1527685, *1 (S.D. Ala. 2005); *Cadent Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 628 (C.D. Cal. 2005) (notice sufficient to compel production of officer, director, or managing agent); *Stone v. Morton Intl., Inc.*, 170 F.R.D. 498, 503-04 (D. Utah 1997)).

Compare O'Connor v. Trans Union Corp., No. 97-cv-4633, 1998 WL 372667, at *2 (E.D. Pa. May 11, 1998) (lower level employees must be subpoenaed).

Signed this 22 day of July, 2013:

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Attorney for Defendant