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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

G.P.P., INC. d/b/a GUARDIAN
INNOVATIVE SOLUTIONS,

Plaintiff,

v.

GUARDIAN PROTECTION PRODUCTS,
INC., RPM WOOD FINISHES GROUP,
INC.,

Defendants.

Case No. 1:15-cv-00321-SKO

**ORDER PERMITTING LIMITED
SUCCESSIVE SUMMARY JUDGMENT
MOTIONS**

GUARDIAN PROTECTION PRODUCTS,
INC.,

Counterclaimant,

v.

G.P.P., INC. d/b/a GUARDIAN
INNOVATIVE SOLUTIONS,

Counter-defendant.

1 On March 24, 2017, Defendants sent a letter to the Court (the “Letter”), in which they
2 request, in relevant part, a second round of “dispositive motion[s]” in this case. Plaintiff G.P.P.,
3 Inc., d/b/a Guardian Innovative Solutions (“GIS”) sent its response to the Letter to the Court on
4 March 27, 2017. The Court then held an informal conference regarding the Letter on March 28,
5 2017. For the reasons that follow, the Court GRANTS GIS’s request in the Letter for a second
6 round of summary judgment motions, subject to the limitations provided herein.

7 “District courts have discretion in determining whether to permit successive motions for
8 summary judgment.” *Brazill v. Cal. Northstate Coll. of Pharmacy, LLC*, No. CIV. 2:12–1218
9 WBS GGH, 2013 WL 4500667, at *1 (E.D. Cal. Aug. 22, 2013) (citing *Hoffman v. Tonnemacher*,
10 593 F.3d 908, 911 (9th Cir. 2010)). “A successive motion for summary judgment is particularly
11 appropriate on an expanded factual record and to foster the ‘just, speedy, and inexpensive
12 resolution’ of lawsuits.” *Rodriguez v. Ryan*, No. CV-11-1373-PHX-NVW (JFM), 2013 WL
13 11311297, at *1 (D. Ariz. Nov. 12, 2013) (quoting *Hoffman*, 593 F.3d at 911–12).

14 Nonetheless, the Ninth Circuit cautioned that second or successive motions for summary
15 judgment present “the potential for abuse of the procedure.” *Hoffman*, 593 F.3d at 911. As such,
16 courts “retain discretion to weed out frivolous or simply repetitive motions.” *Id.* (citation
17 omitted). Further, courts have declined to permit second or successive motions for summary
18 judgment where the motion was based on “evidence that could . . . have been obtained and
19 included in [the] first motion for summary judgment.” *Armentero v. Willis*, No. CIV S–08–2790
20 GGH P, 2013 WL 144253, at *2 (E.D. Cal. Jan. 11, 2013).

21 In this case, the Court permitted limited “Additional Discovery,” as defined and delineated
22 in the Court’s March 14, 2017 order.¹ (See Doc. 177 at 3.) As such, there is an expanded factual

23 _____
24 ¹ The Court provided the following pertinent description of the Additional Discovery in its March 14, 2017 order:

25 [T]he Court FINDS that, due to the denial of Defendants’ [motion in limine] #9, additional discovery
26 is necessary on only one issue—evidence relating to the dispositive language in the agreements
27 defining “Guardian Labeled Distributor Products.” As discussed by the Court in its summary
28 judgment order—with the exception of the Pennsylvania Agreement—that language defines the term
“Guardian Labeled Distributor Products” as including only those items “indicated on” a specified
exhibit to the agreements, “unless specifically noted by a mutually agreed upon Addendum hereto”
(the “Product Language”). (See Doc. 133 at 32–36, 71–73.)

Accordingly, the Court ORDERS that the parties may conduct additional discovery
regarding the Product Language under the Ohio, Indiana, Midwest, Alabama, and Tennessee

1 record in this case and, consequently, a limited additional opportunity for summary judgment
2 motions may foster the just, speedy, and comparatively inexpensive resolution of this matter. The
3 Court therefore finds that an opportunity for a second round of summary judgment motions is
4 appropriate. See, e.g., Hoffman, 593 F.3d at 911 (“[A] successive motion for summary judgment
5 is particularly appropriate on an expanded factual record.” (citations omitted)). Accordingly, the
6 Court GRANTS Defendants’ request in the Letter for a second round of summary judgment
7 motions, subject to the limitations provided herein.

8 The Court ORDERS the following regarding the schedule for this potential second round
9 of summary judgment motions, as well as other relevant dates in this matter:

- 10 (1) the deadline for any additional motion for summary judgment is **April 20, 2017**;
- 11 (2) the deadline for an opposition to any additional motion for summary judgment is
12 **April 27, 2017**;
- 13 (3) the deadline for a reply in support of any additional motion for summary judgment
14 is **May 2, 2017**;
- 15 (4) if a party files an additional motion for summary judgment, the Court shall hold a
16 hearing regarding these additional motions—if such will aid the Court in the
17 decisional process—on **May 4, 2017, at 9:00 a.m.**;
- 18 (5) the deadline for the parties to submit their joint pretrial statement is continued to
19 **May 12, 2017**; and
- 20 (6) to afford an opportunity for potential additional motions for summary judgment,
21 the trial date in this matter is continued to **June 20, 2017**.

22 The Court CAUTIONS the parties that it will not entertain requests to continue or extend
23 any deadlines associated with potential additional motions for summary judgment.

24 This additional opportunity for summary judgment motions shall be limited—it is not an
25 opportunity for summary judgment motions on any topic. Instead, this opportunity for additional
26

27 Agreements, as well as the meaning of “Guardian Labeled Distributor Products” under the
28 Pennsylvania Agreement (cumulatively, the “Additional Discovery”).

(Doc. 177 at 3.)

1 summary judgment motions shall be specifically tailored to the expanded factual record in this
2 case relating to the Additional Discovery.

3 The Court therefore ORDERS that this additional round of potential summary judgment
4 motions is subject to the following limitations. First, if any party moves for summary judgment
5 on any claim or issue, that party must explicitly and clearly demonstrate in its summary judgment
6 briefing how the new grounds to move on that claim or issue arose out of and directly relate to the
7 Additional Discovery, as delineated in the Court’s March 14, 2017 order. (See Doc. 177 at 3.) In
8 other words, if a party could have raised a motion for summary judgment during the initial
9 summary judgment round in this case before the Additional Discovery, they may not raise that
10 motion during this second round of summary judgment. See, e.g., Fujifilm Corp. v. Motorola
11 Mobility LLC, Case No. 12–cv–03587–WHO, 2015 WL 1265009, at *6 (N.D. Cal. Mar. 19, 2015)
12 (denying a motion as an impermissible second motion for summary judgment because “the motion
13 [was] based on previously available evidence”); Purchase Partners, LLC v. Carver Fed. Sav.
14 Bank, No. 09 Civ. 9687(JMF), 2013 WL 1499417, at *6 (S.D.N.Y. Apr. 10, 2013) (“The law is
15 clear that it is improper for a party to file a successive motion for summary judgment which is not
16 based upon new facts and which seeks to raise arguments it could have raised in its original
17 motion.” (citation omitted)).

18 For example, the parties previously raised numerous motions in limine that the Court
19 denied because they were, in effect, motions for summary judgment in disguise. (See, e.g., Doc.
20 179 at 40, 65–67.) The parties are not permitted to again raise these motions at the posture of the
21 second round of summary judgment motions unless the moving party explicitly and clearly
22 demonstrates in their summary judgment briefing how the new grounds to move on each claim or
23 issue arose out of and directly relate to the Additional Discovery. Cf. Larsgard v. Corizon Health,
24 Inc., No. CV 13–01747–PHX–SPL (JFM), 2014 WL 5340581, at *12 (D. Ariz. Oct. 21, 2014)
25 (excluding arguments regarding a particular claim from the scope of a second round of summary
26 judgment motions because the party “did not move for summary judgment on [that] claim before
27 the original dispositive-motions deadline”).

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1 Additionally, the Additional Discovery pertained solely to “the Product Language under
2 the Ohio, Indiana, Midwest, Alabama, and Tennessee Agreements, as well as the meaning of
3 ‘Guardian Labeled Distributor Products’ under the Pennsylvania Agreement.” (Doc. 177 at 3.)
4 The Additional Discovery thus did not include discovery related to the Product Language under
5 the Florida, Mid-Atlantic, and Cook County Agreements. (See *id.*) As the Product Language
6 under these three agreements was excluded from the Additional Discovery, GIS may not use this
7 second round of summary judgment motions to request that the Court alter its prior summary
8 judgment rulings regarding the Product Language under the Florida, Mid-Atlantic, and Cook
9 County Agreements. Those rulings are now the law of this case and the Court will not disturb
10 them through this second round of summary judgment motions. See, e.g., *Rebel Oil Co. v. Atl.*
11 *Richfield Co.*, 146 F.3d 1088, 1093 (9th Cir. 1998) (“Under the doctrine of law of the case, a court
12 is generally precluded from reconsidering an issue that has already been decided by the same
13 court, or a higher court in the identical case.” (citation omitted)).

14 The Court also notes that any attempt by GIS to use this additional round of summary
15 judgment motions to revisit the Court’s prior summary judgment rulings regarding the Product
16 Language under the Florida, Mid-Atlantic, and Cook County Agreements would constitute an
17 abuse of this procedure. As stated by the Court at the hearing regarding the parties’ motions in
18 limine, GIS created the need for the Additional Discovery—which resulted in additional costs to
19 Defendants and the continuance of the trial date—by failing to adequately produce evidence
20 during the initial discovery period that GIS eventually intended to rely on at trial. (See Doc. 179
21 at 68–69.) While the Court found that the sanction of exclusion of this evidence was not
22 appropriate under the pertinent standard, (see *id.* at 69–70), this finding does not provide an
23 opening for GIS to abuse the opportunity for a second round of summary judgment motions—and
24 waste Defendants’ resources—by using its prior failure to disclose this evidence as a means to
25 reopen the Court’s rulings regarding the Product Language under the Florida, Mid-Atlantic, and
26 Cook County Agreements. Cf. *L-3 Commc’ns Corp. v. Jaxon Eng’g & Maint., Inc.*, 125 F. Supp.
27 3d 1155, 1162–63 (D. Colo. 2015) (assuming that a party “filed their initial summary judgment
28 motion . . . as a matter of litigation strategy” and denying the party’s request to file a successive

1 summary judgment motion because, “[h]aving gambled and lost on that strategy, [the court] sees
2 no reason why the [party] should now be relieved of the consequences of that decision”).

3 The Court CAUTIONS the parties that if a party fails to explicitly and clearly demonstrate
4 in its potential summary judgment briefing how the new grounds to move on each claim or issue
5 arose out of and directly relate to the Additional Discovery, then the Court shall deny the motion
6 as to that claim or issue for failing to adhere to the limitations provided in this Order without
7 reaching the merits of the motion.

8 Second, given that the parties were already accorded a full opportunity to file summary
9 judgment motions and the extremely limited scope of any permissible additional motions for
10 summary judgment, the Court finds that the length of briefs associated with any additional
11 motions for summary judgment shall be properly limited. In particular, if a party elects to file an
12 additional motion for summary judgment, any brief in support of that motion may not exceed
13 fifteen pages. Additionally, any opposition to an additional motion for summary judgment may
14 not exceed fifteen pages and any reply in support of an additional motion for summary judgment
15 may not exceed eight pages. Further, the parties may not use formatting techniques to evade these
16 page limits, such as using less than twelve-point font or single-line spacing. See, e.g., E.D. Cal.
17 Local Rule 130 (providing the local rule regarding the “general format of documents”).

18 The Court CAUTIONS the parties that these limitations on the length of permissible briefs
19 associated with additional motions for summary judgment shall be strictly enforced. If any party
20 files a brief that exceeds these limits, the Court shall strike the infringing portion of the
21 brief—e.g., the last three pages of an eighteen-page brief in support of an additional motion for
22 summary judgment—without consideration as to the arguments provided therein.

23 Third, given the narrow scope of permissible additional motions for summary judgment,
24 Defendants may only file a single, joint additional motion for summary judgment. GIS may
25 similarly file only a single additional motion, if it so chooses.
26 IT IS SO ORDERED.

27 Dated: March 30, 2017

1s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE