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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Brandy Brewer,	)	No. CV-1:16-1091-SMM
Plaintiff,	)	
v.	)	<b>ORDER</b>
Leprino Foods Company, Inc.,	)	
Defendant.	)	

Pending before the Court is Plaintiff Brandy Brewer’s (“Brewer”) Ex Parte Application to Extend the Non-Expert Discovery Cut-Off Date. (Doc. 20.) Defendant Leprino Foods Company, Inc. (“Leprino Foods”) opposes an extension of the non-expert discovery cut-off deadline. (Doc. 22.)

*Discussion*

Brewer states that she needs an extension of the non-expert discovery cut-off deadline in order to depose Supervisor Don Doyle, Manager Kes Anderson, and the following nonparty employees, Oscar Martinez, Edgar Vega, A.C. Chavez, Gabriel Cervantes, and Elmer Meade. (Doc. 20.) In support of good cause, Brewer states that Leprino Foods will not accept service of subpoenas on behalf of the nonparty employees and further that she is not allowed to serve subpoenas to the employees at their place of employment. Thus, she must now hire an investigator in order to locate and serve the subpoenas at the home addresses of the employees, which cannot be accomplished inside of the non-expert discovery cut-off deadline.

1           Leprino Foods initially submits that the parties have agreed to a deposition of  
2 Supervisor Don Doyle on May 19, 2017, in Roswell, New Mexico, where Mr. Doyle is now  
3 located. (Doc. 22 at 4.) However, Leprino Foods opposes any further extension of the non-  
4 expert discovery deadline. (Id.) According to Leprino Foods, good cause has not been  
5 established because Brewer waited until one month before expiration of the deadline to  
6 initiate the scheduling of depositions of the nonparty employee witnesses. (Id.) When Brewer  
7 asked defense counsel to accept service, counsel advised that it was not authorized to accept  
8 subpoenas for nonparty witnesses. (Id. at 8.) In addition, regardless of the nature of the  
9 subpoena, Leprino Foods states that it does not accept subpoenas at the production facility  
10 for any individual employee. (Id.) Regarding Manager Kes Anderson, Leprino Foods states  
11 that it opposes his deposition as it was noticed only 10 days prior to expiration of the non-  
12 expert discovery deadline. (Id.)

13           Alternatively, Leprino Foods requests that if the Court extends the non-expert  
14 discovery deadline, that it be done not for all purposes but to accommodate only (1) the  
15 nonparty employee witness depositions for which Brewer served subpoenas prior to the April  
16 14, 2017 non-expert discovery cut-off; and (2) the deposition of out-of-state defense witness  
17 Don Doyle. (Id. at 5.)

18           At issue is whether Brewer's noncompliance with a Rule 16 case management  
19 deadline occurred due to development of matters which she could not have reasonably  
20 foreseen and whether she was diligent in seeking amendment of the Rule 16 Order once it  
21 became apparent that she could not comply with the Order. See Jackson v. Laureate, Inc.,  
22 186 F.R.D. 605, 608 (E.D. Cal. 1999).

23           First, based on the parties' agreement, Supervisor Don Doyle may be deposed outside  
24 the non-expert discovery deadline. Next, based on all the facts and circumstances  
25 surrounding Brewer's attempts to subpoena the nonparty employee witnesses, the Court will  
26 exercise its discretion and find that Brewer is entitled to limited relief, and will be allowed  
27 additional time to subpoena and depose the listed nonparty witnesses. However, the Court  
28 does not find that Brewer is entitled to relief regarding her late notice regarding her proposed

1 deposition of Manager Kes Anderson.

2 Accordingly,

3 **IT IS HEREBY ORDERED** granting in part and denying in part Plaintiff's Ex Parte  
4 Application to Extend the Non-Expert Discovery Cut-Off Date. (Doc. 20.)

5 **IT IS FURTHER ORDERED** granting Plaintiff limited relief from the Non-Expert  
6 Discovery Cut-Off Date, as follows: (1) By **Friday, May 19, 2017**, Plaintiff shall depose  
7 Supervisor Don Doyle, in Roswell, New Mexico; (2) By **Friday, June 30, 2017**, Plaintiff  
8 shall locate, subpoena, and conduct a maximum 4-hour deposition of the following nonparty  
9 employee witnesses, Oscar Martinez, Edgar Vega, A.C. Chavez, Gabriel Cervantes, and  
10 Elmer Meade.

11 **IT IS FURTHER ORDERED** denying for all purposes extension of the Non-Expert  
12 Discovery Cut-Off Date; it remains closed as of April 14, 2017.

13 **IT IS FURTHER ORDERED** denying Plaintiff's Ex Parte Application to depose  
14 Manager Kes Anderson outside of the Non-Expert Discovery Cut-Off Date.

15 **IT IS FURTHER ORDERED** that due to the limited non-expert discovery relief  
16 granted to Plaintiff, initial expert witness disclosures shall now be served no later than  
17 **Friday, July 28, 2017**. Rebuttal expert witness disclosures shall be served no later than  
18 **Friday, August 11, 2017**. All expert discovery shall be completed no later than **Friday,**  
19 **September 22, 2017**. The Dispositive Pre-Trial Motion deadline is now **Friday, October**  
20 **27, 2017**.

21 DATED this 26th day of April, 2017.

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