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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

<p>COPART, INC.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>SPARTA CONSULTING, INC., KPIT INFOSYSTEMS, INC., and KPIT TECHNOLOGIES LTD,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 2:14-cv-00046-KJM-CKD</p> <p><u>ORDER</u></p>
<p>SPARTA CONSULTING, INC.,</p> <p style="text-align: center;">Counterplaintiff,</p> <p style="text-align: center;">v.</p> <p>COPART, INC.,</p> <p style="text-align: center;">Counterdefendant.</p>	

The court resolves three disputes below, with written orders to follow providing a more complete explanation with respect to the first two matters.

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1 I. MOTION TO BIFURCATE (ECF NO. 290)

2 Having reviewed the parties' filings and heard oral argument on the question of
3 bifurcation (ECF Nos. 290, 341, 347, 359), the court DENIES defendants' motion to bifurcate.
4 As noted, a further order explaining the court's reasoning in full will follow.

5 II. DEFENDANTS' MOTION IN LIMINE ONE (ECF NO. 266)

6 Having reviewed the parties' filings and heard oral argument on this motion (ECF
7 Nos. 266, 310, 321, 359), the court DENIES the motion and will not exclude evidence of lost
8 profits.

9 The court also DENIES WITHOUT PREJUDICE defendants' motion to exclude
10 an expert report on lost profits drafted by Dr. Mohan Rao, Ph.D, subject to renewal at trial as a
11 challenge under *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

12 A further order explaining the court's reasoning in full will follow.

13 III. COPART'S EX PARTE APPLICATION (ECF NO. 361)

14 Having reviewed the parties' filings on this application (ECF Nos. 361, 362), the
15 court GRANTS plaintiff's request to modify the court's final pretrial order, ECF No. 349, to
16 allow inclusion of Chief Technology Officer Vincent Phillips on plaintiff's witness list. The
17 court ORDERS plaintiff to promptly submit an amended witness list including Mr. Phillips and
18 "a more detailed description of Phillips'[s] planned testimony" ECF No. 361 at 6. The court
19 orders this modification "to prevent manifest injustice." Fed. R. Civ. P. 16(e).

20 Under the "manifest injustice" test of Rule 16, the Ninth Circuit has listed four
21 factors for courts to consider: prejudice to the opposing party, that party's ability to cure the
22 prejudice, the impact on the orderly and efficient conduct of the trial and any willfulness or bad
23 faith on the part of the party seeking the modification. *Hunt v. Cty. of Orange*, 672 F.3d 606, 616
24 (9th Cir. 2012) (internal quotations omitted). The court also considers the moving party's delay
25 in seeking amendment. *Galdamez v. Potter*, 415 F.3d 1015, 1020 (9th Cir.2005).

26 Plaintiff has met its burden to show manifest injustice would result if the pretrial
27 order was not modified. *See Byrd v. Guess*, 137 F.3d 1126, 1132 (9th Cir. 1998), *superseded by*
28 *statute on other grounds as stated in January v. Dr. Pepper Snapple Group*, 594 Fed. App'x 907

1 (9th Cir. 2014). Here, there is little, if any, prejudice to defendants. All parties listed Phillips on
2 their Rule 16 initial disclosures, and defendants themselves disclosed Phillips as someone who
3 could testify about “[t]he contracts and agreements between Sparta and Copart; the work
4 performed and completed by Sparta pursuant to the contracts and agreements; Copart’s failure to
5 perform pursuant to the contract and agreements; Copart’s alleged damages; the alleged
6 misappropriation of trade secrets and Copart proprietary information; the allegedly unauthorized
7 access of Copart’s computer systems.” *See* Takenouchi Decl. ¶ 8, ECF No. 361-1 (quoting
8 Sparta’s Sep’t 6, 2016 Am. Initial Disclosures). Defendants obtained a full seven hours of
9 Phillips’s testimony across two separate days. *Id.* ¶ 7. Phillips also submitted multiple
10 declarations supporting plaintiff’s motion for summary judgment and opposing defendants’
11 motions for summary judgment. *See* ECF Nos. 199, 219, 227. Moreover, defendants have
12 designated more than 80 pages of deposition testimony for trial purposes. *See* Joint Pretrial
13 Statement (JPTS), Ex. H at 20-27, ECF No. 282-8. Defendants reference Phillips in the
14 descriptions incorporated in their exhibit list more than 170 times. *See* JPTS, Ex. F, ECF
15 No. 282-6.

16 Defendants will face no unfair surprise when Phillips testifies at trial. Defendants’
17 prior deposition of Phillips eliminates or cures any potential prejudice. Any further conceivable
18 prejudice to defendants can be cured by simply ordering plaintiff promptly to submit an amended
19 witness list identifying Vincent Phillips as a witness and providing “a more detailed description
20 of Phillips’[s] planned testimony” ECF No. 361 at 6. Such a detailed description will
21 ensure defendants may properly prepare their cross-examination of Phillips at trial.

22 Moreover, identifying Phillips formally as a witness will not affect the orderly and
23 efficient conduct of this case. Trial is set for several weeks down the road, to begin April 23,
24 2018, Phillips has already been deposed, and both parties are aware of the significance of
25 Phillips’ testimony with respect to their dispute.

26 Finally, the court observes no willfulness or bad faith on the part of plaintiffs’
27 counsel. Plaintiff has explained its oversight based on attorney error, by describing special
28 counsel’s having “inadvertently omitted the name of Vincent Phillips” when transferring

1 “information from an internal spreadsheet” to “the witness list document” filed with the court.
2 Ziemianek Decl. ¶ 3, ECF No. 361-2.

3 Plaintiff has met its burden to show the modification requested of the court’s final
4 pretrial order, ECF No. 349, is necessary “to prevent manifest injustice.” Fed. R. Civ. P. 16(e).

5 **IV. CONCLUSION**

6 The court ORDERS the following:

- 7 - Defendants’ motion to bifurcate, ECF No. 290, is DENIED with a further
8 written order to follow.
- 9 - Defendants’ motion in limine one, ECF No. 266, is DENIED as to the motion
10 to exclude evidence of lost profits. The motion is DENIED WITHOUT
11 PREJUDICE as to the motion to exclude an expert report on lost profits drafted
12 by Dr. Mohan Rao, Ph.D, subject to renewal at trial as a challenge under
13 *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). A further
14 written order explaining the court’s reasoning also will follow.
- 15 - Plaintiff’s ex parte request to modify the court’s final pretrial order, ECF
16 No. 349, to include Vincent Phillips on plaintiff’s witness list is GRANTED.
17 The court hereby ORDERS plaintiff to file an amended witness list by noon on
18 **March 30, 2018**, adding Vincent Phillips and including “a more detailed
19 description of Phillips’[s] planned testimony” ECF No. 361 at 6. Once
20 filed the amended witness list will supersede plaintiff’s witness list attached to
21 the court’s final pretrial order, with the superseding list incorporated into and
22 considered a part of that order.

23 IT IS SO ORDERED.

24 DATED: March 26, 2018.

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27 UNITED STATES DISTRICT JUDGE
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