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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 YESENIA MELGAR,

No. 2:14-cv-0160 MCE AC

12 Plaintiff,

13 v.

ORDER

14 ZICAN LLC, et al.,

15 Defendants.  
16

17 Pending before the court is defendant's ex parte application for an order shortening the  
18 time to hear their Motion To Strike plaintiff's supplemental designation of expert witnesses. ECF  
19 Nos. 61 (motion to strike), 62 (ex parte application for order shortening time). Plaintiff has  
20 opposed the ex parte application. ECF No. 63. For the reasons set forth below, the application  
21 will be denied.

22 1. The pending application is governed by E.D. Cal. R. ("Local Rule") 144(e). That rule  
23 provides that such applications "will not be granted except upon affidavit [or sworn declaration]  
24 of counsel showing a satisfactory explanation for the need for the issuance of such an order."  
25 Local Rule 144(e) (emphasis added). Defendant's declarations do not provide a satisfactory  
26 explanation of the need for this ex parte application.<sup>1</sup>

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28 <sup>1</sup> In addition, the Local Rule provides that the application "will not be granted" absent a  
satisfactory explanation for "the failure of counsel to obtain a stipulation for the issuance of such

1 First, defendants waited nearly three weeks before moving to strike the supplemental  
2 expert designations. The supplemental designations were filed on July 8, 2015. ECF No. 50.  
3 Defendants then waited until July 14, 2015, nearly a week, before notifying plaintiff that they  
4 would move to strike these designations. ECF No. 61-1 ¶ 11. Then, defendants waited until July  
5 28, 2014, an additional two weeks, before filing the motion and seeking an order shortening the  
6 time to hear the motion.<sup>2</sup> Defendants have offered no explanation for the three week delay from  
7 the time the challenged designations were made, and the time they sought an order shortening  
8 time.<sup>3</sup> This delay strongly counsels against granting the motion.

9 Second, defendants have not convinced the undersigned that they will be harmed by  
10 hearing the motion on a regular briefing schedule. The reason defendants offer is that unless their  
11 motion is granted, they anticipate that plaintiff will include evidence from the challenged experts  
12 in her opposition to defendants' not-yet-filed motion for summary judgment. ECF No. 62  
13 ¶ 15-17. Defendants further argue that deposing the challenged experts will entail "substantial  
14 added expense and delay because Dr. Ernst is currently located in the United Kingdom." ECF  
15 No. 62 ¶ 16. However, defendants have not shown that they have attempted to take these  
16 depositions, and instead appear to be simply speculating about the possible delay.<sup>4</sup> If defendants

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17 an order from other counsel or parties in the action." Local Rule 144(e). Defendant's declaration  
18 in support of the ex parte application makes no mention of any effort to obtain a stipulation for an  
19 order shortening time. See ECF No. 62. Defendants have also submitted a declaration in support  
20 of the substantive motion. ECF No. 61-1. That declaration makes no mention of any attempt to  
21 seek a stipulation, either. Plaintiff, meanwhile, has filed an opposition declaration averring that  
22 defendants did not seek such a stipulation, even though they notified plaintiff of their intent to file  
the notice to strike on July 14, 2015, two weeks before filing the ex parte application. ECF  
No. 63 at 4 ¶ 2. Defendants' failure to comply with the Local Rules further weighs against  
granting the application.

<sup>2</sup> Defendants initially filed the motion before the district judge assigned to the case. The motion  
was expeditiously re-filed on July 29 2015 before the undersigned, after the district judge so  
directed.

<sup>3</sup> The court notes that discovery motions must be noticed at least three weeks before the hearing.  
Local Rule 251(a). A timely request to shorten time could reasonably have gotten the hearing  
moved to July 29, 2015 (shortening the time by just a day or two of an application filed on July 9  
or 10), and the matter would now already have been heard.

<sup>4</sup> It goes without saying that depositions of supplemental experts will involve "additional  
expense." This is so even if ultimately, the expert's opinion will not be offered at summary  
judgment or trial, or may be excluded. That is not a reason for denying the designation of

1 had noticed the depositions to occur during the four weeks between the time the experts were  
2 designated (July 8, 2015) and the deadline for filing the summary judgment motion (August 6,  
3 2015), they could have included evidence from those depositions in their anticipated summary  
4 judgment motion.

5 In short, it is a problem of defendants' own making because (1) they delayed three weeks  
6 before moving to strike the supplemental designations and requesting an order shortening time,  
7 and (2) they have made no showing that they have attempted to take the depositions of the  
8 supplemental experts, despite having four weeks to do so before their motion for summary  
9 judgment is due.

10 2. Defendants are asking the undersigned to make a judgment, on an abbreviated  
11 schedule, of whether the designated supplement experts will actually be giving "rebuttal"  
12 testimony, or will be giving new testimony to supplement deficient testimony of other experts.  
13 This is a possibly complex undertaking that the undersigned will not undertake on an artificially  
14 abbreviated schedule.

15 3. For the reasons stated above, defendants' ex parte application for an Order Shortening  
16 Time (ECF No. 62) is DENIED.

17 DATED: July 31, 2015.

18 /S/ Allison Claire  
19 ALLISON CLAIRE  
20 UNITED STATES MAGISTRATE JUDGE  
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27 supplemental experts that is specifically authorized by the Scheduling Order and the Federal  
28 Rules of Civil Procedure.