1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 No. 2:16-cv-02929 TLN AC CSAA INSURANCE EXCHANGE, 12 Plaintiff. 13 **ORDER** v. 14 BROAN-NuTONE LLC, 15 Defendant. 16 17 18 Before the court is plaintiff's motion to compel discovery, filed September 26, 2018. ECF 19 No. 42. On October 18, 2018 the court signed the parties' stipulation to continue the hearing, 20 originally set for October 31, 2018, to November 14, 2018. ECF No. 49. In signing the 21 stipulation, the court neither made nor implied any finding regarding the timeliness of the motion. 22 Discovery in this matter was to be completed by July 30, 2018. ECF No. 27. The court's 23 initial scheduling order specified that "completed' means that all discovery shall have been 24 conducted so that all depositions have been taken and any disputes relative to discovery shall 25 have been resolved by appropriate order if necessary and, where discovery has been ordered, the 26 order has been obeyed." ECF No. 6. The day before plaintiff filed its motion to compel, Judge 27 Nunley signed a stipulation and order extending many deadlines in this case, but not the 28 discovery deadline. ECF No. 41. 1

The untimeliness of the motion is not excused by the fact that a substantially similar motion had been filed and withdrawn before expiration of the deadline. See ECF Nos. 28 (motion filed June 21, 2018), 30 (withdrawal of motion, filed July 19, 2018). When plaintiff refiled its motion after the discovery deadline had passed, it did so without seeking leave of court or requesting further modification of the scheduling order. Plaintiff's statement in its September 26, 2018 notice of motion that it was "request[ing] the Court to place the motion back on its calendar," ECF No. 42 at 2, did not have the effect of restoring the timely-filed and previously withdrawn motion, nunc pro tunc to its original June 2018 filing date. There was no such request, and there has been no such court order.

Plaintiff's motion to compel is untimely and therefore will not be considered. The parties are free to voluntarily conduct additional discovery, but the right to seek enforcement by this court expired no later than July 30, 2018. ECF No. 27. Because plaintiff's motion is untimely it is DENIED, and the hearing set for November 14, 2018 is VACATED.

IT IS SO ORDERED.

DATED: November 8, 2018

ALLISON CLAIRE

UNITED STATES MAGISTRATE JUDGE