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

NOEL COGBURN,
Plaintiff,
v.
SUNBEAM PRODUCTS, INC., et al.,
Defendants.

No. 2:18-CV-1223-TLN-DMC

ORDER

Plaintiff, who is proceeding with retained counsel, brings this civil action. Pending before the Court are plaintiff's motions to compel further responses to interrogatories, see ECF No. 34, and requests for production, see ECF Nos. 35. The parties have filed separate joint statements. See ECF Nos. 36 and 37. The parties appeared for a hearing before the undersigned in Redding, California, on August 5, 2020, at 10:00 a.m. Aghavni Kasparian, Esq., appeared telephonically for plaintiff. Lisa Gruen, Esq., appeared telephonically for defendant Sunbeam. After considering the parties' argument, the matters were submitted.

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1 **I. BACKGROUND**

2 **A. Plaintiff's Allegations**

3 This action proceeds on plaintiff's first amended complaint for negligence, strict
4 liability, and breach of implied warranty. See ECF No. 9. Plaintiff purchased a blender designed,
5 assembled, and manufactured by defendant Sunbeam. The blender was purchased at a store
6 operated by defendant Walmart. On April 13, 2017, plaintiff was using the blender to make
7 hummus when the pitcher detached from the threaded blade attachment and exposed the spinning
8 bade assembly. Plaintiff claims he sustained severe permanent disfiguring injuries to both hands
9 as a result. Plaintiff alleges his injury was caused by various design defects in the blender.

10 **B. Procedural History**

11 Defendant Sunbeam responded to the first amended complaint by way of a motion
12 to dismiss filed on June 13, 2018. See ECF No. 11. Defendant Walmart filed its answer to the
13 first amended complaint on July 12, 2018. See ECF No. 19. On February 15, 2019, the District
14 Judge granted Sunbeam's motion to dismiss and dismissed plaintiff's third claim for breach of
15 implied warranty against Sunbeam for lack of vertical privity. See ECF No. 23. Defendant
16 Sunbeam then filed its answer to the first amended complaint on February 28, 2019. See ECF
17 No. 25. On July 19, 2019, the Court approved the parties' stipulated protective order regarding
18 confidential discovery. See ECF No. 31.

19 Pursuant to the Court's initial scheduling order, discovery shall be completed
20 within 240 days (approximately eight months) from the date the last answer is filed. See ECF No.
21 6, pg. 2. The docket does not reflect any modification of the schedule. The last answer was filed
22 on February 28, 2019. The eight-month window for completion of discovery closed at the end of
23 October 2019. The currently pending discovery motions were not filed until June 2020.

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1 **II. SUMMARY OF DISCOVERY DISPUTE**

2 Plaintiff's motions concern defendant Sunbeam's responses to plaintiff's
3 interrogatories, set one, and requests for production, set one.

4 Plaintiff served defendant Sunbeam interrogatories, set one, on April 5, 2019, and
5 Sunbeam served responses on May 30, 2019. See ECF No. 36, pg. 15. Almost a year later,
6 counsel for plaintiff sent a meet-and-confer letter to Sunbeam's counsel on April 6, 2020. See id.
7 Plaintiff ultimately agreed to provide Sunbeam's counsel to June 5, 2020, to serve amended
8 responses. See id. According to plaintiff, as of June 22, 2020 – a week prior to the filing of the
9 joint statements – plaintiff has not received amended responses. See id. Plaintiff seeks an order
10 compelling Sunbeam to provide further responses to interrogatory nos. 1-8, 10, and 13-16.

11 Plaintiff served defendant Sunbeam requests for production of documents, set one,
12 on April 5, 2019, and Sunbeam served responses on May 30, 2019. See ECF No. 37, pgs. 15-16.
13 Almost a year later, counsel for plaintiff sent a meet-and-confer letter to Sunbeam's counsel on
14 April 6, 2020. See id. at 16. Plaintiff ultimately agreed to provide Sunbeam's counsel to June 5,
15 2020, to serve amended responses. See id. According to plaintiff, as of June 22, 2020 – a week
16 prior to the filing of the joint statements – plaintiff has not received amended responses. See id.
17 According to Sunbeam, it produced responsive documents on May 30, 2019, June 5, 2020, and
18 June 22, 2020. See id. at 17. Plaintiff seeks an order compelling Sunbeam to provide further
19 responses to requests for production nos. 1-4, 6-13, 23, 25-26, 32, 41, 45, 48, 50, 70-78, 80-83,
20 88, 105-107, 109-111, and 118 (relating to the model blenders), nos. 14-17, 19-22, 24, 31, 33-40,
21 46-47, 49, 51-58, 60-63, 66-69, 79, 84-87, and 90-92 (relating to the same model as the subject
22 blender), nos. 18, 59, 64-65, 89, and 120-121 (relating to the subject blender), no. 12 (relating to
23 advertisements for the model blenders), nos. 42-44 (relating to patent documents for the model
24 blenders), nos. 28-30, and 112-113 (relating to Underwriters Laboratories), no. 98 (relating to
25 Sunbeam's document retention policy), nos. 94 and 99 (relating to Sunbeam's affirmative
26 defenses), nos. 100-103, 108, 114-116, and 119 (relating to prior claims and lawsuits), no. 117
27 (relating to contractual documents between Sunbeam and Walmart).

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1 **III. DISCUSSION**

2 Plaintiff's motions are untimely. Pursuant to the Court's initial scheduling order,
3 discovery was due to be completed within eight months after filing of the last answer in this case.
4 The last answer was filed in February 2019. The Eighth-month discovery period ended in
5 October 2019. Plaintiff's motions were filed eight months later in June 2020. A review of the
6 docket reflects that the scheduling order has not been modified since it was originally issued in
7 May 2018.

8 With respect to a number of the items of disputed discovery, defendant Sunbeam
9 indicates the need to supplement its responses, as follows:

10 1. With respect to its responses to both interrogatories and
11 requests for production, defendant Sunbeam states it will withdraw all its
general boilerplate objections. See ECF Nos. 36, pg. 18 and 37, pg. 22.

12 2. Sunbeam agrees to withdraw its objections to plaintiff's
13 interrogatory no. 5. See ECF No. 36, pg. 51.

14 3. In response to plaintiff's interrogatory no. 15, Sunbeam states
that its investigation continues. See ECF No. 36, pg. 96.

15 4. With respect to the absence of a privilege log accompanying
16 documents produced in response to plaintiff's requests for production,
Sunbeam states it will withdraw all objections based on privilege, thereby
17 obviating the requirement of producing a privilege log. See ECF No. 37, pg.
19.

18 5. With respect to responses to plaintiff's requests for production
19 in which Sunbeam indicated that documents were produced, Sunbeam
neglected to indicate in its initial responses that all documents within its
20 possession, custody, and control were being produced. See e.g. ECF No. 37,
pg. 69.

21 6. With respect to plaintiff's request for production no. 94
22 seeking documents upon which defendant Sunbeam based the denials and
affirmative defenses outlined in its answer, Sunbeam responded that its
23 "investigation continues" and that responsive documents would be produced
within 30 days of entry of a protective order. See ECF No. 36, pgs. 164-65.
24 A review of the document reflects that a stipulated protective order was
entered on the docket on July 19, 2019, and, as discussed above, discovery
25 has closed.

26 7. With respect to plaintiff's request for production no. 99
27 seeking documents Sunbeam contends refute plaintiff's claims, Sunbeam
responded that its "investigation continues." See ECF No. 27, pg. 165.

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1 Sunbeam is obligated under Federal Rule of Civil Procedure 26(e)(1) to supplement its initial
2 responses.

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4 **IV. CONCLUSION**

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. Plaintiff's motions to compel, ECF Nos. 34 and 25, are denied without
7 prejudice as untimely;

8 2. Plaintiff may renew his motions upon extension of the discovery
9 completion deadline and upon the filing of new joint statements; and

10 3. Defendant Sunbeam shall serve supplemental discovery responses pursuant
11 to Rule 26(e)(1) within 30 days of the date of this order.

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14 Dated: August 7, 2020



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16 DENNIS M. COTA
17 UNITED STATES MAGISTRATE JUDGE
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