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**\*\*E-filed 12/1/11 \*\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GREGORY A. GREER  
Plaintiff,

No. C 10-3601 RS

v.

**ORDER DENYING EXTENSION OF  
DISCOVERY CUT-OFF AND  
REFERRING MOTION TO COMPEL  
TO MAGISTRATE JUDGE**

ELECTRONIC ARTS, INC.,  
Defendant.

On November 30, 2011, plaintiff filed an “administrative motion” (Dkt. No. 75) seeking to extend the cut-off for fact discovery (presently set for December 1, 2011) and his deadline for making expert disclosures (which expired on November 1, 2011).<sup>1</sup> The motion is denied for the following reasons.

1. Plaintiff has offered no reason to extend the close of fact discovery other than that he has a pending motion to compel, also filed on November 30, 2011. In the event the motion to compel is granted, in whole or in part, however, defendant’s obligation to produce such additional information as may be ordered will not be excused by the fact that the discovery cut-off has passed.

<sup>1</sup> Plaintiff’s motion should have been brought as a motion to change time under Civil Local Rule 6-3, rather than as a motion for administrative relief under Rule 7-11. As the timing requirements of the two rules are identical, however, plaintiff’s error in labeling will be disregarded.

1           2. To the extent that plaintiff may be contending that his ability to propound additional  
2 discovery beyond that at issue in the motion to compel has been frustrated by those unresolved  
3 disputes, he has failed to show that he acted diligently to bring his motion to compel in a more  
4 timely fashion. Plaintiff implies that he was stymied in an earlier attempt to bring the motion to  
5 compel by the failure of the Clerk's office to forward to chambers the hard copies of a sealing  
6 motion, together with a copy of the motion to compel that he was proposing be filed under seal. As  
7 explained in an order filed September 30, 2011 (Dkt. No. 59), the sealing request was denied  
8 without prejudice on grounds that it was grossly overbroad. While the order mentioned that  
9 chambers copies of the underlying materials proposed to be sealed had not been received, that was  
10 neither the basis of the denial, nor did it preclude plaintiff from filing his motion to compel with an  
11 appropriately-tailored sealing request. Indeed, the September 30th order, which also continued the  
12 briefing schedule and hearing date for the pending summary judgment motion, expressly directed  
13 plaintiff to "act expeditiously to obtain resolution of any discovery disputes he contends remain  
14 outstanding." Notwithstanding that order, plaintiff failed to take any action to file his motion to  
15 compel for another full two months.

16           3. Plaintiff asserts that the continuance of the summary judgment proceedings provided by  
17 the September 30, 2011 order, and a subsequent continuance obtained by stipulation, both left him  
18 insufficient time to have a motion to compel heard and decided prior to the hearing on the summary  
19 judgment motion. The continuance provided by the September 30, 2011 order was intended to  
20 allow time for plaintiff to resolve any discovery issues material to the summary judgment  
21 proceeding without a motion to compel, if possible. If a motion to compel became necessary, it was  
22 incumbent on plaintiff either to seek a further continuance of the summary judgment proceedings, or  
23 to have his motion to compel heard on shortened time, or both. Plaintiff did neither. Instead, he  
24 filed a timely opposition to the summary judgment motion, unaccompanied by any further request  
25 under Rule 56(d) of the Federal Rules of Civil Procedure to be permitted further discovery. A prior  
26 order filed July 12, 2011 (Dkt. 51) had specifically explained to plaintiff that he should, if  
27 necessary, file a request for a Rule 56(d) continuance together with his substantive opposition, to be  
28 reached only in the event the Court found the substantive opposition insufficient to create a material

1 issue of disputed fact. Accordingly, to the extent plaintiff believes that further discovery may be  
2 relevant to the issues to be decided in the pending motion for summary judgment, he has failed to  
3 preserve that argument.

4 4. As to plaintiff's request to extend the already-expired time to make his expert disclosures,  
5 he has failed to explain why he did not seek such relief prior to the date the deadline passed.  
6 Additionally, plaintiff's cursory explanation that his intended expert "unexpectedly" demanded a  
7 large down-payment of fees shortly before his expert disclosures were due does not establish good  
8 cause for extending the deadline at this juncture. While plaintiff's current request will therefore be  
9 denied, the denial is without prejudice to a separate motion seeking relief from plaintiffs' failure to  
10 comply with his deadline for making expert disclosures, to be filed only in the event the pending  
11 motion for summary judgment is denied, but which must be filed promptly after the issuance of any  
12 such order.

13  
14 Pursuant to Northern District Local Rule 72-1, the Court hereby refers plaintiff's motion to  
15 compel (Dkt. No. 74), the associated sealing motion (Dkt. No. 73), and any further discovery  
16 disputes herein to a randomly assigned Magistrate Judge for resolution. The hearing on the motion  
17 to compel set for January 5, 2012 is vacated. Plaintiff shall renote the motion for hearing before  
18 the Magistrate Judge pursuant to the local rules and any standing orders or procedures of the  
19 Magistrate Judge upon assignment.

20  
21 IT IS SO ORDERED.

22  
23  
24 Dated: 12/1/11

  
RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE