IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DEE HENSLEY-MACLEAN, and JENNIFER ROSEN, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

SAFEWAY, INC.,

Defendant.

_____/

No. C 11-1230 RS

ORDER DENYING MOTION TO SHORTEN TIME AND DENYING MOTION TO COMPEL WITHOUT PREJUDICE

Plaintiffs seek an order shortening time to resolve the question of whether they were entitled to take additional discovery prior to and in connection with defendant's summary judgment motion. The record shows that as early as August of 2012 the assigned magistrate judge ruled that leave to take any further discovery must be sought from the undersigned. Additionally, this particular dispute had crystalized no later than October of 2012. While efforts to resolve discovery disputes without court intervention are always to be encouraged, and resort to motion practice should not be hasty, the timing issue presented here is solely the result of plaintiffs' lack of reasonable diligence.

The motion to shorten time is denied and the underlying motion to compel is denied without prejudice. Plaintiffs should file such opposition to the summary judgment motion as they may have based on the current record. If in good faith plaintiffs believe essential facts to support its

opposition remain to be discovered, they may, as part of their opposition, alternatively seek a continuance under Rule 56(d) of the Federal Rules of Civil Procedure to take such discovery. Any such request "must identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment." *Tatum v. City and Cnty. of San Francisco*, 441 F.3d 1090, 1100 (9th Cir.2006)

IT IS SO ORDERED.

Dated: 1/15/14

RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE