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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RYAN MUCCULAR,

Plaintiff,

v.

WALKUP, MELODIA, KELLY &  
SCHOENBERGER,

Defendant.

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No. C 12-05073 WHA

**ORDER DENYING MOTION  
FOR SUMMARY JUDGMENT  
WITHOUT PREJUDICE AND  
VACATING HEARING**

In this employment discrimination action, defendant moves for summary judgment. Plaintiff responds that the motion should be denied as premature because discovery is incomplete. This order agrees.

Defendant contends that plaintiff is unable to produce “the admissible evidence that her burden [on summary judgment] requires” (Reply 2). Plaintiff points out, however, that she has not yet taken the deposition of three witnesses who provided declarations in support of defendant’s motion — including plaintiff’s former supervisor — and that both parties have unresolved disputes regarding document production. Indeed, defendant recently filed a motion to compel production of allegedly withheld documents (which has since been referred to Magistrate Judge Cousins, along with the parties’ other discovery disputes (Dkt. Nos. 61, 64, 67)).

Defendant’s objection that plaintiff “has had plenty of time to conduct whatever discovery she deems appropriate” is unpersuasive. By filing the motion to compel after the


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motion for summary judgment, defendant concedes that significant discovery work remains to be done. There is also plenty of time remaining to take any necessary depositions and to resolve the parties' discovery disputes. The fact discovery cutoff in this action is September 27, nearly two months from now (Dkt. No. 12 at 1).

Defendant's motion for summary judgment is **DENIED WITHOUT PREJUDICE**. The September 5 hearing is **VACATED**.

**IT IS SO ORDERED.**

Dated: August 5, 2013.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE