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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOSHUA MARISCAL,  
Plaintiff,  
v.  
GRACO, INC.,  
Defendant.

Case No. 13-cv-02548-TEH

**ORDER DENYING DEFENDANT'S  
RENEWED MOTION FOR  
SUMMARY JUDGMENT**

On June 26, 2014, the Court GRANTED IN PART and DENIED IN PART Defendant's motion for summary judgment. *See* Docket No. 49. In denying Defendant's motion for summary judgment on Plaintiff's strict liability design defect claim under the risk-benefit test, the Court noted that Defendant's failure to present risk-benefit evidence was due, in part, to Plaintiff's late disclosure of expert testimony. Accordingly, the Court permitted Defendant to conduct additional discovery and "disclose supplemental expert testimony" on this issue. *Id.* at 15-17. The Court intended this language to extend the time for Defendant to disclose expert testimony to Plaintiff under Federal Rule of Civil Procedure 26; it did not intend to invite supplemental briefing in support of a motion the Court already decided. Nonetheless, Defendant submitted a brief that "requests that the Court Grant Graco's Motion for Summary Judgment under the Risk-Benefit test." Docket No. 58 at 8. The Court DENIES this request as an untimely renewed motion for summary judgment or, alternatively, as an improper motion for reconsideration. Plaintiff's strict liability design defect claim under the risk-benefit test will go to trial.

**IT IS SO ORDERED.**

Dated: 07/22/14



THELTON E. HENDERSON  
United States District Judge