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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA

6 PHOENIX TECHNOLOGIES LTD.,

7 Plaintiff,

8 v.

9 VMWARE, INC.,

10 Defendant.

Case No. [15-cv-01414-HSG](#) (DMR)

**ORDER DENYING DEFENDANT'S  
MOTION TO COMPEL**

Re: Dkt. No. 102

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12 The fact discovery cut-off in this matter was April 29, 2016. Pursuant to Civil Local Rule  
13 37-3, "no motions to compel fact discovery may be filed more than 7 days after the fact discovery  
14 cut-off." At the parties' joint request, the court extended the motion to compel deadline to May  
15 20, 2016. [Docket No. 97.] On June 9, 2016, the parties filed a joint discovery letter in which  
16 Defendant VMware, Inc. moves to compel Plaintiff Phoenix Technologies Ltd. ("Phoenix") to  
17 supplement four interrogatory responses. [Docket No. 102.] VMWare's motion is thus three  
18 weeks late.

19 VMWare asserts that it agreed not to raise Phoenix's allegedly deficient interrogatory  
20 responses by the May 20, 2016 extended deadline based on Phoenix's representation that it would  
21 supplement its responses. Phoenix did supplement its responses, but VMWare believes they are  
22 still deficient. By deciding to postpone taking action, especially after receiving a two-week  
23 extension, VMWare assumed the risk that the court would deny any late-filed motion as untimely.

24 VMWare's motion is denied as untimely.

25 **IT IS SO ORDERED.**

26 Dated: June 16, 2016

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28 Donna M. Ryu  
United States Magistrate Judge