

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SONOMA PHARMACEUTICALS, INC.,
Plaintiff,
v.
COLLIDION INC., et al.,
Defendants.

Case No.17-cv-01459-EDL

**ORDER ON DISCOVERY DISPUTES IN
MARCH 27, 2017 JOINT STATUS
REPORT**

Re: Dkt. No. 80

On March 20, 2018, the Court held a hearing on Plaintiff’s Rule 56(d) motion and several discovery disputes in this trade secrets case. On March 22, 2018, the Court granted Plaintiff’s Rule 56(d) motion and deferred further briefing on Defendants’ motion for partial summary judgment until the parties complete further discovery. Dkt. No. 78. The Court’s order required the parties to meet and confer on the amount of time it would take to complete discovery and a proposed briefing schedule for the deferred motion. Id. It also granted in part and denied in part the relief Defendants sought with respect to certain of Plaintiff’s discovery requests. Id. The Court ordered the parties to meet and confer to resolve the remaining disputes on those discovery requests, in light of the Court’s rulings and guidance, and to file a status report with the Court by March 27, 2018 about their meet and confer efforts. Id.

On March 27, the parties filed a stipulated device inspection protocol, and submitted some remaining, but narrowed, discovery disputes for the Court’s resolution. Dkt. Nos. 80, 81. They also provided a proposed briefing schedule for the motion for partial summary judgment. Dkt. No. 80. This order addresses the remaining discovery disputes that the parties raised in the March 27, 2018 status report, and sets a schedule to complete briefing on Defendants’ pending motion. The Court has separately approved the stipulated device inspection protocol. Dkt. No. 82.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Interrogatories about Defendant Collision’s Plans to Enter the HOCl Market.

In the February 23, 2018 joint discovery letter, Defendants objected to the discovery sought mainly on the ground that Plaintiff had not adequately identified its trade secrets. The Court overruled that objection, subject to the caveat that Defendants may be entitled to additional discovery of certain research memoranda that Plaintiff had provided earlier but only recently designated as containing trade secrets. Dkt. No. 78. In their status report, the parties represent that no further discovery about the research memoranda is required.

As to the discovery requests themselves, the Court ruled that the requests as propounded were overbroad and must be narrowed to focus on the HOCl products market into which Plaintiff sells its products that are related to the allegedly misappropriated trade secrets. *Id.* After meeting and conferring on the narrowed requests, Defendants only continue to object to Amended Interrogatory No. 16:

Plaintiff’s Amended Interrogatory No. 16: State whether Collision claims the method(s) of manufacture identified in response to Interrogatory No. 13 as its own trade secret, and, if so, state the facts on which Collision bases its claim.

Defendants object on the ground that this amended interrogatory seeks irrelevant information because whether Defendant Collision deems a process to be one of its trade secrets does not bear on whether the law supports Plaintiff’s claim of trade secrets misappropriation. This objection is **OVERRULED**. The question of whether Defendant Collision claims that a manufacturing process for one of its HOCl products is its own trade secret could be relevant to a defense that Defendant Collision developed the manufacturing process and HOCl products independently of Plaintiff’s allegedly misappropriated trade secrets. Defendants are **ORDERED** to respond to Plaintiff’s Amended Interrogatory No. 16 by April 6, 2018.

Plaintiff also seeks a further deposition of Defendant Collision’s Rule 30(b)(6) witness, because according to the February 23, 2018 joint discovery letter, the witness did not respond to questions on the topic of the company’s plans to enter the HOCl market during his original deposition. Accordingly, the Court **ORDERS** Defendant Collision to submit its Rule 30(b)(6) witness to a further deposition to testify to Defendant Collision’s response to Plaintiff’s Amended

1 Interrogatory Nos. 11-16 and 21, if Defendant Collision responds that it has developed the type of
2 HOCl products at issue. The parties shall meet and confer to schedule the deposition to take place
3 no later than April 27, 2018, if needed, after a response is served.

4 **2. Requests about Defendant Collision’s Customers**

5 Plaintiff issued several discovery requests seeking information on Defendant Collision’s
6 potential customers. The requests did not adequately define the vague term “potential customers,”
7 so the Court ordered Plaintiff to clarify its definition before Defendant Collision was obligated to
8 respond.

9 In the status report, Plaintiff proposes the following amended interrogatory request:

10 Plaintiff’s Amended Interrogatory No. 17: State whether Collision, through its current or former employees, has ever contacted anyone
11 that you know to be a customer of Sonoma Pharmaceuticals, Inc. (f/k/a Oculus Innovative Sciences, Inc.), and, if so, for each person,
12 state: (a) the customer’s name and address; (b) the name and address of the person who contacted the customer; (c) the date and place
13 when the customer was contacted; (d) the means by which the customer was contacted; (e) the reason that customer was contacted;
14 (f) whether the customer had notice that Defendants Alimi, Harish, or Shaffer were no longer employed by the plaintiff, and, if so, how
15 the customer received that notice; and (g) whether any business was conducted with the customer, and, if so, describe the business.

16 The amended interrogatory no longer seeks information about potential customers, but
17 asks only about Defendant Collision’s contacts with anyone it knows to be one of Plaintiff’s
18 customers. Defendants object to Amended Interrogatory No. 17 because it does not sufficiently
19 define the scope of the term “customer.”

20 Plaintiff has narrowed the interrogatory to seek information from Defendant Collision
21 about known customers, which goes a long way to cure the original overbreadth. However, the
22 interrogatory is still overbroad as to the definition of “customer” insofar as it does not clarify
23 whether it includes within its scope individuals who purchased from direct retailers. The Court
24 ORDERS Plaintiff to further refine Amended Interrogatory No. 17 to address whether the
25 definition of “customer” includes direct retail sales to known individual customers. Barring any
26 further meritorious objection from Defendants to the further revised request which the parties
27 cannot resolve after meeting and conferring despite the Court’s guidance on this narrow issue,
28

1 which seems unlikely, Defendant Collision shall respond to the request within seven days of its
2 receipt. Once a response is served, Defendant Collision is further ORDERED to make its Rule
3 30(b)(6) witness available for a further deposition about its response. The parties shall meet and
4 confer, after a response is served, to schedule the deposition to take place no later than April 27,
5 2018.

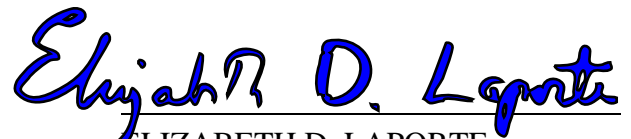
6 **3. Briefing Schedule for Defendants' Pending Motion for Partial**
7 **Summary Judgment**

8 In light of the parties' expectation that they can complete the remaining discovery
9 (including the device inspection and the additional discovery ordered above) by April 27, 2018,
10 the Court adopts their proposed schedule to complete briefing on Defendants' motion for partial
11 summary judgment, with a slight modification to the hearing date:

- 12 • Plaintiff to file an opposition by May 1, 2018
- 13 • Defendants to file a reply by May 8, 2018
- 14 • Hearing to be held on May 22, 2018 at 9:00 a.m.

15 **IT IS SO ORDERED.**

16 Dated: March 30, 2018

17 

18 ELIZABETH D. LAPORTE
19 United States Magistrate Judge