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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SPEEDTRACK INC., )  
 )  
Plaintiff(s), )  
 )  
v. )  
 )  
WAL-MART.COM USA,LLC, et )  
al., )  
 )  
Defendant(s). )  
 )  
----- )  
ENDECA TECHNOLOGIES INC., )  
 )  
Intervenor, )  
 )  
v. )  
 )  
SPEEDTRACK INC., et al. )  
 )  
Defendant in )  
Intervention. )  
 )  
----- )

No. C 06-7336 PJH (BZ)

**ORDER DENYING MOTION TO  
COMPEL INTERROGATORY ANSWERS**

On July 11, 2008, Endeca Technologies, Inc. served four contention interrogatories on SpeedTrack, Inc. asking for the factual bases of certain of SpeedTrack's affirmative defenses. On August 11, 2008, SpeedTrack filed objections to the four interrogatories, on the principal grounds that they were untimely under the Local Rules and Judge Hamilton's scheduling

1 order. SpeedTrack argued that fact discovery was cut off  
2 August 8, 2008, and since Endeca had served its  
3 interrogatories so that the responses were not due until  
4 August 11, 2008, the interrogatories were untimely.

5 Endeca has now moved to compel SpeedTrack to answer these  
6 interrogatories. Endeca does not dispute that they were filed  
7 at least one day late. Endeca offers no adequate explanation  
8 for why it waited so long to file these contention  
9 interrogatories. The only explanation proffered is that the  
10 parties agreed that other discovery would be provided by  
11 August 11, 2008. Endeca never explains why it did not reach a  
12 similar agreement as to this discovery or why it waited to  
13 file what appear to be routine contention interrogatories  
14 until after it reached that agreement. Is Endeca suggesting  
15 that if the other agreement had not been reached, these  
16 interrogatories would not have been filed?

17 Nor does Endeca offer any explanation for why it did not  
18 move for an order shortening time to require SpeedTrack to  
19 answer the interrogatories before the discovery cut off or why  
20 it did not move to extend the discovery cutoff by at least one  
21 day.<sup>1</sup> Instead, Endeca argues that SpeedTrack has not shown  
22 any prejudice if it answers the late discovery. However,  
23 since Endeca has not shown good cause for getting late  
24 discovery, the absence of prejudice to SpeedTrack does not  
25 help Endeca. Lory v. General Elec. Co., 179 F.R.D. 86, 89

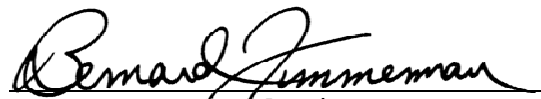
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26  
27 <sup>1</sup> See Schwarzer, et al. California Practice Guide,  
28 Federal Civil Procedure Before Trial, ¶¶ 11:578.5, 579,  
explaining the alternatives a party has for obtaining relief  
from a discovery cut off.

1 (N.D.N.Y. 1998). Endeca also argues that the court should use  
2 its discretion to bail it out, relying on mostly bankruptcy  
3 cases that recognize the discretion of a bankruptcy court to  
4 excuse a party's failure to comply with Local Rules or  
5 scheduling requirements.<sup>2</sup> See nVidia Corp. V. U.S. Bankruptcy  
6 Court for Northern District of California, 2006 WL 3734297  
7 (N.D. Cal.) and cases cited at \*5.

8 SpeedTrack's opposition highlights the fact that Endeca  
9 took none of the available routes to get relief from its late  
10 filing and has provided no good cause for its conduct. I  
11 agree. The issue is not whether the court has the discretion  
12 to alter the scheduling requirements but rather whether  
13 Endeca has followed the proper procedures in asking the court  
14 to exercise its discretion and has shown good cause for doing  
15 so. Because it has done neither, Endeca's motion to compel  
16 is **DENIED**.<sup>3</sup>

17 Dated: October 15, 2008

  
Bernard Zimmerman  
United States Magistrate Judge

19 bzall\Refs\Speedtrack v. Wal-Mart\Order Denying Motion To Compel Interrogatory  
20 Answers.Tentative.Rule.Final.wpd

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21 <sup>2</sup> Nor is this a case in which a party failed to  
22 participate in a Rule 16 conference in good faith, as in the  
23 other case on which Endeca relies, Kingsley Group, Inc. v.  
Kellogg USA, Inc., 2002 WL 32100264 (N.Dist. Ill.)

24 <sup>3</sup> In its reply, Endeca argues that because Judge  
25 Hamilton has continued the trial and certain discovery  
26 deadlines, this deadline should be overlooked. Unfortunately  
27 for Endeca, it appears that Judge Hamilton has bifurcated  
28 issues of liability from damages and has only extended  
discovery on the damages phase of the case. Nothing in Judge  
Hamilton's order or the stipulation the parties reached  
following her order suggests that liability discovery has been  
reopened. Obviously Endeca had an opportunity to extend  
liability discovery and did not.