

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

3
4 CENTRIFY CORPORATION,

No. C 10-3873 CW

5 Plaintiff,

ORDER GRANTING
PLAINTIFF'S MOTION
FOR RELIEF FROM
CASE MANAGEMENT
SCHEDULE

6 v.

(Docket No. 108)

7 QUEST SOFTWARE, INC.,

8 Defendant.

9 _____/

10
11 Plaintiff Centrify Corporation seeks relief from the case
12 management order's deadline for fact discovery for the limited
13 purpose of deposing a representative of third-party company Bank
14 of America, a customer of Defendant Quest Software, Inc.
15 Defendant opposes the motion. The Court has taken the matter
16 under consideration on the papers. For the reasons set forth
17 below, the Court GRANTS Plaintiff's motion.

18 BACKGROUND

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20 At the December 14, 2010 case management conference in this
21 case, the fact discovery deadline was set as September 1, 2011.
22 Docket No. 33.

23 On July 1, 2011, Plaintiff served its first interrogatories
24 on Defendant. Sandrock Decl., Ex. 1. In Interrogatory Seven,
25 Plaintiff asked Defendant, inter alia, to identify the names of
26 customers who were sold the accused product and all documents
27 relating to such sales. Id. at 7-8. In Interrogatory Eight,
28

1 Plaintiff asked Defendant to identify and describe all non-
2 privileged documents and communications between Defendant and any
3 third party, including customers and potential customers, relating
4 to the accused feature. Id. at 8.

5 On August 3, 2011, Defendant responded to Plaintiff's
6 interrogatories. Armon Decl., Ex. G. In response to
7 Interrogatory Seven, Defendant did not identify any customers by
8 name and instead only identified several documents that it stated
9 were relevant to the interrogatory. Id. at 14. In response to
10 Interrogatory Eight, Defendant stated, among other things, "Quest
11 has produced a large number of communications with Bank of America
12 relating to the subject matter of this Interrogatory." Id. at 16.
13 In other interrogatory responses, Defendant referred to "Quest
14 customers" who use the accused features. Id. at 20.

15 On August 12, 2011, after Plaintiff requested that Defendant
16 supplement its responses, Defendant informed Plaintiff "that the
17 only 'customer' referred to in its interrogatory was Bank of
18 America." Sandrock Decl. ¶ 4. Plaintiff served a subpoena on
19 Bank of America in North Carolina on August 18, 2011. Sandrock
20 Decl., Ex. 3. On August 22, 2011, Defendant amended its response
21 to Plaintiff's first set of interrogatories to state, "Based on
22 the information presently available to Quest, Bank of America is
23 the only domestic customer that uses the form of Mapped User
24 functionality that Centrify accuses of infringement." Sandrock
25 Reply Decl. ¶ 2.

1 On August 31, 2011, Bank of America moved to quash
2 Plaintiff's subpoena. It is not clear whether Defendant knew that
3 Bank of America had so moved, because Defendant stated that
4 "Centrify indicated that it was unable to confirm a deposition
5 date for Bank of America, but that it expected the deposition to
6 proceed within days or, at most, a week or two." Armon Decl. 10.
7 After discussion on September 1, 2011, Defendant told Plaintiff in
8 an email that it "is premature for Centrify to file a motion
9 seeking to extend the discovery period for the purpose of deposing
10 Bank of America," because at that point, "Centrify is unable to
11 identify the length of its proposed extension." Armon Decl.,
12 Ex. H. Defendant also said that it would not argue a motion for
13 extension should have been filed prior to the close of fact
14 discovery, if a motion became necessary, and that it would not
15 oppose a "short extension" of the fact discovery period "solely to
16 depose Bank of America and if the extension does not unfairly
17 prejudice Quest or affect other case deadlines." Id. In late
18 October, while the motion to quash was pending, Defendant proposed
19 potential dates for the Bank of America deposition, asking that it
20 be scheduled at a time convenient for the parties and suggesting
21 that the deadlines for expert reports be pushed back to
22 accommodate the deposition. Sandrock Decl. ¶ 8.

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26 On October 28, 2011, the United States District Court for the
27 Western District of North Carolina granted the motion to quash,
28 finding the subpoena overbroad. Sandrock Decl., Ex. 5. Centrify

1 re-issued the subpoena on November 7, 2011. Sandrock Decl.,
2 Ex. 6. On November 18, 2011, Defendant filed a motion for a
3 protective order in the Western District of North Carolina,
4 seeking to prevent the deposition from going forward on the basis
5 of the schedule in the instant action. Sandrock Decl., Ex. 7. On
6 November 21, 2011, Bank of America also filed a motion to quash
7 Plaintiff's subpoena and for a protective order, also based in
8 part on the schedule in the instant action. Sandrock Decl.,
9 Ex. 8. These motions are pending. See Centrifly Corp. v. Quest
10 Software, Inc, Docket No. 3:11-mc-00177 (W.D. N.C.).

12 Plaintiff filed this motion on November 23, 2011, seeking
13 relief from the case management order's deadline for fact
14 discovery for the limited purpose of deposing a Bank of America
15 representative. Plaintiff also filed a motion to shorten time on
16 the briefing and hearing schedules for the instant motion, which
17 this Court granted in part and denied in part on November 23,
18 2011. Docket No. 110.

20 LEGAL STANDARD

21 Federal Rule of Civil Procedure 16(b) provides that a case
22 management schedule can be modified upon a showing of good cause
23 and by leave of the district judge. The Ninth Circuit has stated
24 that the "'good cause' standard primarily considers the diligence
25 of the party seeking the amendment. The district court may modify
26 the pretrial schedule 'if it cannot reasonably be met despite the
27 diligence of the party seeking the extension.'" Johnson v.
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1 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)
2 (quoting Fed. R. Civ. P. 16 advisory committee's notes (1983
3 amendment)). "Although the existence or degree of prejudice to
4 the party opposing the modification might supply additional
5 reasons to deny a motion, the focus of the inquiry is upon the
6 moving party's reasons for seeking modification." Id. (citing
7 Gestetner Corp. v. Case Equip. Co., 108 F.R.D. 138, 141 (D. Me.
8 1985)).
9

10 DISCUSSION

11 Plaintiff argues that it could not reasonably complete the
12 deposition prior to the fact discovery deadline, because of Bank
13 of America's opposition to the subpoena and because of Defendant's
14 delay in identifying Bank of America as the only customer who
15 Defendant believes uses the accused feature.
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17 Defendant argues that Plaintiff has not acted diligently for
18 a variety of reasons. However, the Court is not persuaded that
19 Plaintiff should have been able to identify Bank of America as a
20 customer using the infringing feature through documents produced
21 prior to August 12, 2011. While the original interrogatory
22 responses identify Bank of America as a third party with whom
23 Defendant may have had communications regarding the accused
24 feature, they do not identify Bank of America as being a customer
25 who uses that feature, and Plaintiff served a subpoena less than a
26 week after learning this information. Further, given the ongoing
27 discovery efforts by both parties at the time, it does not appear
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1 that Plaintiff lacked diligence by serving its first
2 interrogatories on July 1, 2011. Defendant also represented that
3 it agreed that the deposition could occur as far after the fact
4 discovery deadline as late October, and Defendant helped to create
5 some of the subsequent delay through its motion to quash the
6 second subpoena in mid-November. Plaintiff diligently filed this
7 motion five days after Defendant filed that motion to quash.
8

9 Accordingly, the Court finds that there is good cause to
10 extend the fact discovery deadline for the limited purpose of
11 allowing Plaintiff to depose a representative of Bank of America.

12 CONCLUSION

13 For the foregoing reasons, Plaintiff's motion for relief from
14 the case management schedule is GRANTED (Docket No. 108). The
15 fact discovery deadline is extended for the limited purpose of
16 allowing Plaintiff to take a deposition of a Bank of America
17 representative within twenty days after either of the following
18 events: (1) entry of an order in the Western District of North
19 Carolina authorizing a deposition; or (2) agreement by Bank of
20 America to make a representative available for deposition.
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22 IT IS SO ORDERED.
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24 Dated: 12/16/2011

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26 CLAUDIA WILKEN
27 United States District Judge
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