United States District Court For the Northern District of California

1 2 3 4 5	E-FILED on <u>11/26/08</u>	
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8	IN THE UNITED STATES DISTRICT COURT	
9	FOR THE NORTHERN DISTRICT OF CALIFORNIA	
10	SAN JOSE DIVISION	
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12	MARY SANBROOK on behalf of herself and others similarly situated,	No. C-07-05938 RMW
13 14	Plaintiff, v.	ORDER DENYING PLAINTIFF'S MOTION FOR ADDITIONAL TIME TO RESPOND
15	OFFICE DEPOT, INC.,	[Re Docket No. 68]
16 17	Defendant.	
 18 19 20 21 22 23 24 25 26 27 28 	Plaintiff Mary Sanbrook ("Sanbrook") moves under Fed. R. Civ. P. 56(f) for additional time o respond to defendant Office Depot, Inc.'s ("Office Depot") motion for summary judgment. Office Depot opposes the motion. For the reasons set forth below, the court denies Sanbrook's motion. On October 28th, 2008, Office Depot moved for summary judgment as to Sanbrook's adividual claims. Office Depot argues that Sanbrook is not entitled to relief as a matter of law ecause 1) Sanbrook's computer malfunctioned because of a software problem, which is not covered inder the warranty at issue; 2) Office Depot did agree to repair Sanbrook's computer; 3) Office Depot refunded the extended warranty plan amount and paid double Sanbrook's repair costs; 4) anbrook's extended warranty plan has now expired. Def.'s Mot. For Summ. J. 2. These allegations form the factual basis of Office Depot's motion.	
	ORDER DENYING PLAINTIFF'S MOTION FOR ADDITIONAL TIME TO RESPOND —No. C-07-05938 RMW JAS	
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DATED:

1 Rule 56(f) states that when "a party opposing the motion shows by affidavit that, for 2 specified reasons, it cannot present facts essential to justify its opposition, the court may ... order a 3 continuance to enable affidavits to be obtained, depositions to be taken, or other discovery to be 4 undertaken." Fed. R. Civ. P. 56(f). To justify such a continuance, a party must "identify by affidavit 5 the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment." Tatum v. City and County of San Francisco, 441 F.3d 1090, 1100 (9th Cir. 6 7 2006).

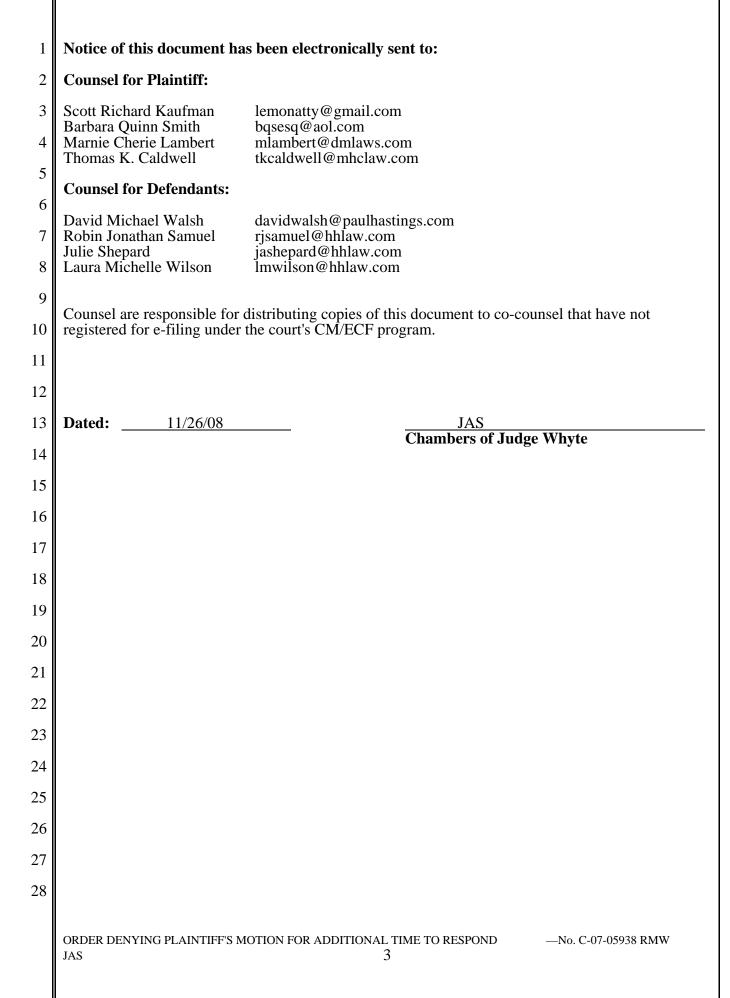
8 Sanbrook here fails to meet that standard. The affidavit supporting Sanbrook's motion states 9 that further discovery will likely produce the following "relevant information" regarding Office 10 Depot's training procedures, capability to service computers at its retail stores, and authority to repair computers under a manufacturer's warranty. Decl. of Barbara Quinn Smith 2. This 12 information may be relevant to Sanbrook's class claims, but it does not appear relevant to her 13 individual claim, which is all that Office Depot's summary judgment motion contests. Moreover, the 14 declaration does not explain how these facts, when discovered, would preclude summary judgment. 15 The court will not delay adjudication of Sanbrook's individual claim because class-related discovery 16 is incomplete.

17 Therefore, Sanbrook's motion for a continuance of time to respond to Office Depot's motion 18 for summary judgment is denied. Because of the instant motion, however, plaintiff may file her 19 opposition by December 5, 2008. Defendant shall file a reply by December 12, 2008. The hearing 20 will take place, as scheduled, on December 19, 2008.

11/26/08

United States District Judge

—No. C-07-05938 RMW



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