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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Steve Muscatell,

NO. C 08-00361 JW

Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION TO EXTEND DEADLINE FOR
DISCLOSING EXPERTS; MODIFYING
SCHEDULING ORDER**

v.

John Deere Construction and Forestry
Company, et al.,

Defendants.

Presently before the Court is Plaintiff's Motion to Extend the Deadline to Disclose Experts.¹ (hereafter, "Motion," Docket Item No. 43.) Plaintiff seeks to extend the deadline for disclosing experts in this case until June 2, 2009. Defendant John Deere Construction and Forestry Company ("John Deere") filed a timely opposition. (See Docket Item No. 50.)

Discovery was initially scheduled to close on March 2, 2009, and the parties were ordered to disclose their experts pursuant to Fed. R. Civ. P. 26, sixty-three days prior to the close of discovery. (See Docket Item No. 19.) On March 26, 2009, the Court extended discovery until June 1, 2009 and ordered the parties to disclose all experts pursuant to Fed. R. Civ. P. 26 no later than April 2, 2009.

Plaintiff contends that an extension of the deadline for disclosing experts and a corresponding modification of the close of discovery is appropriate because he has been unable to

¹ Plaintiff also filed a Motion to Shorten Time, seeking to expedite the hearing on this Motion. (See Docket Item No. 47.) However, since the issue is fully briefed by the parties, the Court finds it appropriate to take this matter under submission without oral argument. See Civ. L.R. 7-3(b). Accordingly, Plaintiff's Motion to Shorten time is DENIED as moot and the May 11, 2009 hearing is VACATED.

1 depose a key witness on Defendant’s side which is necessary for him to designate an appropriate
2 expert. (Declaration of John C. Stein in Support of Motion to Extend Deadline to Disclose Experts
3 ¶¶ 2-4, Docket Item No. 44.)

4 Under Fed. R. Civ. P. 26(a)(2)(C), expert testimony must be disclosed to all parties “at least
5 90 days before the date set for trial or for the case to be ready for trial.” However, the court can set a
6 different date for disclosure. Fed. R. Civ. P. 26(a)(2)(C). Once a schedule has been set by a court, it
7 may modify its schedule for “good cause.” Fed. R. Civ. P. 16(b)(4).

8 In this case, trial is not set to begin until September 22, 2009. In light of the significant
9 amount of time that remains until trial, the Court finds that Defendant John Deere has failed to show
10 any prejudice that would result from allowing the parties to conduct limited further discovery with
11 respect to expert disclosure. In contrast, Plaintiff may be prejudiced if he is unable to disclose and
12 ultimately offer the testimony of experts in support of his case. Thus, the Court finds good cause
13 exists for allowing Plaintiff additional time to provide the expert disclosures required under Fed. R.
14 Civ. P. 26(a)(2).

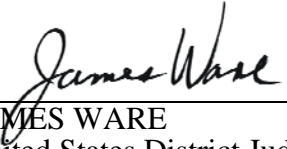
15 Accordingly, the Court orders as follows:

- 16 (1) The Court GRANTS Plaintiff’s Motion to Extend the Deadline to Disclose Experts,
17 and DENIES Plaintiff’s Application for Order Shortening Time as moot.
- 18 (2) Any party wishing to present expert witness testimony with respect to a claim or a
19 defense shall lodge with the Court and serve on all other parties the name, address,
20 qualifications, résumé and a written report which complies with Fed. R. Civ. P.
21 26(a)(2)(B) on or before **June 2, 2009**.
- 22 (3) Discovery shall remain open until **July 1, 2009** for the limited purpose of deposing
23 newly disclosed experts.
- 24 (4) In light of the parties’ inability to coordinate the deposition of Daniel Griswold, the
25 Court now orders that Mr. Griswold deposition be completed no later than **May 15,**
26 **2009**. To the extent that there are any further disputes concerning this issue, the
27 parties are referred to Magistrate Judge Trumbull.

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(5) No further modifications to the schedule in this case will be allowed.

Dated: April 10, 2009



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Harry C. Gilbert hgilbert@travelers.com
3 John Charles Stein jstein@boccardo.com
4 Rebekka R. Martorano rmartorano@ryanfong.com
5 Timothy John Ryan tryan@ryanfong.com

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Dated: April 10, 2009

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy