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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NOVADAQ TECHNOLOGIES, INC.,  
Plaintiff,  
v.  
KARL STORZ GMBH & CO. K.G., et al.,  
Defendants.

Case No. [14-cv-04853-PSG](#)

**ORDER DENYING REQUEST FOR  
RULING OF NO PRECLUSION**

**(Re: Docket Nos. 273, 274)**

After the close of fact discovery in this trademark infringement case, Plaintiff Novadaq Technologies, Inc. discovered that a Novadaq clinical sales specialist, Heather Arnold, allegedly encountered an instance of actual confusion at the Michael E. DeBakey VA Medical Center in Houston, Texas.<sup>1</sup> The court already has denied Novadaq leave to file a declaration from Arnold in support of its opposition to summary judgment motions by Defendants Karl Storz GmbH & Co., K.G. and Karl Storz Endoscopy-America, Inc.<sup>2</sup> Novadaq now asks the court to rule that it should not be precluded from offering Arnold’s testimony at trial.<sup>3</sup> Karl Storz objects, citing the untimeliness of the disclosure and the prejudice that Karl Storz would suffer from the admission.<sup>4</sup> Karl Storz argues that the late disclosure hampers its ability to depose Arnold and obtain discovery from the DeBakey Medical Center employees who Arnold claims were confused, especially given

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<sup>1</sup> See Docket No. 274 at 1-2.

<sup>2</sup> See Docket No. 263.

<sup>3</sup> See Docket No. 274.

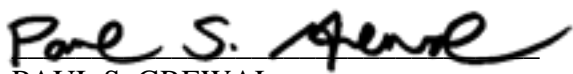
<sup>4</sup> See Docket No. 273.

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the impending deadlines for pretrial filings and the trial date in early January.<sup>5</sup> In light of this prejudice to Karl Storz, the court DENIES Novadaq’s request for a ruling of no preclusion.

**SO ORDERED.**

Dated: October 21, 2015

  
PAUL S. GREWAL  
United States Magistrate Judge

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<sup>5</sup> See *id.* at 4.