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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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11 THE MARINE GROUP, LLC dba MARINE
12 GROUP BOAT WORKS and NATIONAL
13 UNION FIRE INSURANCE CO. OF
14 PITTSBURGH, PENNSYLVANIA,

Plaintiffs,

15 vs.

16 MARINE TRVELIFT, INC.; OLSON
17 FABRICATION, INC. ALL-LIFT
18 SYSTEMS, INC.; and DOES 1-20,

Defendants.

CASE NO. 10cv846-BTM (KSC)

ORDER:

**(1) DENYING MOTION TO COMPEL
DISCOVERY**

**(2) GRANTING IN PART AND
DENYING IN PART THIRD PARTY
DEFENDANT'S EX PARTE
APPLICATION TO CONTINUE
SCHEDULING DATES**

[Doc. Nos. 127 & 135.]

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20 Before the Court are two motions. The first is Plaintiffs' Motion to Compel Marine Travelift,
21 Inc.'s ("MTL") compliance with an Order previously issued by Magistrate Judge Bencivengo on
22 December 22, 2011. [Doc. Nos. 116 & 127.] MTL has filed an Opposition. [Doc. No. 129.] For the
23 reasons stated below, the Court **DENIES** this motion.

24 The second motion is by Third-Party Defendant, Seymour Machine, requesting a continuance
25 of the scheduling dates. [Doc. No. 135.] Plaintiff has filed a Motion of Non-Opposition. [Doc. No.
26 137.] For the reasons stated below, the Court **GRANTS IN PART AND DENIES IN PART** this
27 motion.

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1 **BACKGROUND**

2 Plaintiff Marine Group, LLC, (“Marine Group”) is a boat and superyacht repair facility in
3 Chula Vista, California. [Doc. No. 75]; Amended Complaint (“Compl.”), ¶ 13. Plaintiff National
4 Union Fire Insurance Co., is the Marine Group’s general liability insurer, covering loss or damage to
5 property during business operations. *Id.* ¶ 14. Defendants, collectively MTL, are sellers, and/or
6 manufacturers, designers, suppliers and distributors of the MGBW Model 600C boat hoist and boat
7 handling equipment. *Id.* ¶ 15.

8 On January 19, 2009, Marine Group was lifting a motor yacht out of the water using the
9 MGBW boat hoist when the hoist allegedly malfunctioned, allowing the vessel to hit the sea wall and
10 fall back into the water. Both the vessel and equipment were damaged in the incident. Compl. ¶ 16.
11 Plaintiffs filed this action, claiming the boat hoist and handling equipment failed due to “improper
12 design, manufacture, supply, instructions, testing, warnings, and other wrongful acts” *Id.* ¶ 18.

13 On August 3, 2010 Judge Bencivengo issued a Scheduling Order setting discovery and pretrial
14 dates. [Doc. No. 23.] On September 29, 2011, Marine Group filed an Amended Complaint adding
15 new parties to the action: ExacTech, Inc., Just In Time Corp., and Southern Weaving Company. [Doc.
16 No. 75.] Accordingly, Judge Bencivengo issued a Second Amended Scheduling Order on October 24,
17 2011, moving the discovery deadline, among others, to April 27, 2012. [Doc. No. 91.] On December
18 13, 2011, Just In Time Corp. (“JIT”) filed a Third-Party Complaint against Seymour Machine Corp.
19 (“Seymour”). (Seymour’s Motion to Continue (“Seymour Mot.”) at 3.)

20 On February 8, 2012, Marine Group filed the current motion to compel discovery from MTL,
21 with a request for sanctions. [Doc. No. 127.] On February 13, 2012, this case was transferred from
22 the docket of Judge Bencivengo to the docket of Judge Skomal. [Doc. No. 128.] Thereafter, on
23 February 21, 2012 MTL filed an Opposition to the motion to compel. [Doc. No. 129.] On March 14,
24 2012, Seymour filed its current motion to continue scheduling dates. [Doc. No. 135.] On March 19,
25 2012, the case was transferred to this Court from the docket of Judge Skomal. [Doc. No. 136.] On
26 March 22, 2012, Marine Group filed a Notice of Non Opposition to Seymour’s request for continuance
27 of dates. [Doc. No. 137.]

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1 intervention in the parties' discovery disputes will not be entertained unless the parties certify that they
2 have first met and conferred in good faith. The Court further directs the parties to its online chambers'
3 rules requiring that a joint motion be filed in matters involving discovery disputes.¹

4 (b) *Merits of Motion*

5 If parties are unable to resolve their discovery disputes, the Court will apply the Federal Rules
6 of Civil Procedure to secure a "just, speedy, and inexpensive determination" of the matters presented.
7 Fed. R. Civ. P. 1. Rule 26 provides the scope of discovery:

8 Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
9 party's claim or defense For good cause, the court may order discovery of any
matter relevant to the subject matter involved in the action.

10 Fed. R. Civ. P. 26(b)(1).

11 Judge Bencivengo ordered MTL to provide a declaration stating that for each of the document
12 requests a diligent search had been made and all responsive documents had either been produced or
13 MTL determined it had no responsive documents. [Doc. No. 116 at 2.] Judge Bencivengo's Order
14 also stated that if responsive arguments were withheld based on the attorney-client privilege or work
15 product protection, they should be accompanied by a privilege log to be produced no later than January
16 27, 2012. [*Id.* at 3.] On the same day as the privilege log was due, January 27, 2012, Judge
17 Bencivengo held a telephonic conference "to address the status of the production" she had ordered
18 previously. [Doc. No. 124.] In an Order following the Status Conference the Judge found that the
19 "declaration and production was served in accordance with the [previous] order." [Doc. No. 125 at
20 2.] However, the Judge narrowed the scope of design and engineering documents sought by Marine
21 Group and ordered further production of those documents. [Doc. No. 125 at 4.] The deadline for
22 production was set for February 17, 2012. [*Id.*] On that date, MTL timely filed responses to the
23 ordered discovery and provided Marine group with an updated privilege log. (Opp. at 2.)

24 Marine Group's statement that MTL has "never provided a privilege log" does not account for
25 the initial privilege log MTL produced (which MTL argues applies to Marine Group's second set of
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28 ¹ Marine Group further neglected to comply with Local Rules by failing to obtain a hearing date
for its current motion. L.Civ.R 7.1.

1 responses)² or the updated privilege log produced on February 17, 2012. Indeed, Marine Group's
2 Motion to Compel was filed on February 8, 2012, prior to the submission of the second privilege log.
3 Marine Group asserts that MTL can not plausibly argue it did not produce a privilege log due to a lack
4 of documents that are privileged because MTL's initial boilerplate responses all stated that Marine
5 Group sought documents that were "protected by attorney-client and work-product privileges." (Mot.
6 to Compel at 1.) Clearly, MTL is not making this argument. MTL's position is that they *have*
7 provided sufficient logs for the documents that they have withheld on privilege grounds. (Opp. at 2.)
8 Thus, Marine Group's allegation that "there are documents [MTL] has not produced based on the
9 assertion of a privilege" appears speculative based on the information presented in this motion. If
10 Marine Group seeks to dispute the privilege logs, it will need to file another motion outlining exactly
11 which responses are in issue and why the MTL privilege log is deficient. However, any such motion
12 shall be in the form of a joint motion for determination of discovery disputes outlined in the
13 chambers' rules online. At this juncture, the Court does not find good cause to compel MTL to
14 provide further documents or privilege logs. Accordingly, the Court finds there is no basis to order
15 payment of sanctions.

16 **II. Third-party Defendant's Motion to Continue Scheduling Dates**

17 Third-party Defendant Seymour seeks a six month continuance of the scheduling deadlines,
18 claiming it would suffer prejudice in conducting discovery under the current schedule. [Doc. No. 135.]
19 A notice of Non-Opposition has been filed by Marine Group. [Doc. No. 137.]

20 Pursuant to Federal Rule of Civil procedure 16(b), a scheduling order "shall not be modified
21 except upon a showing of good cause . . ." Primarily the good cause standard focuses on whether
22 existing scheduling deadlines cannot be reasonably met despite the diligence of the party seeking an
23 extension. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). "Although the
24 existence or degree of prejudice to the [other] party [] might supply [] reasons to deny a motion, the
25 focus of the inquiry is upon the moving party's reasons for seeking modification." *Id.* (internal citation
26 omitted).

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28 ² According to MTL, its responses to Marine Group's second set of requests included references to prior requests for which a privilege log had been provided. (Opp. at 2.)

1 This case has been pending in federal court since its removal from state court on April 21,
2 2010. [Doc. No. 1.] Seymour was served with the Third-Party Complaint on December 13, 2011 and
3 filed an Answer on January 19, 2012. [Doc. No. 120.] The operative Scheduling Order [*Second*
4 *Amended Case Management Order*; Doc. No. 91] provides a deadline of April 6, 2012 for expert
5 designation, a fact discovery deadline of April 27, 2012, and an expert discovery deadline of June 29,
6 2012, among others. Thus, from the time of the filing of the Answer, Seymour was faced with a three
7 to four month timeline for meeting the deadlines mentioned. Generally, the Court would afford
8 approximately six months for expert designation, five months for fact discovery, and seven months
9 for expert discovery. An extension of an additional six months would extend these deadlines well
10 beyond the normal and unnecessarily delay the progress of this case. The Court will grant Seymour's
11 request for an extension of scheduling deadlines but only by two months.


12 **CONCLUSION**

13 Based on the above discussion, the Court **HEREBY ORDERS** the following:

- 14 1. Plaintiff Marine Group's Motion to Compel Discovery and for Sanctions is **DENIED**.
- 15 2. Third Party Defendant Seymour's Motion to Extend Scheduling Deadlines is
16 **GRANTED IN PART AND DENIED IN PART**.
- 17 3. The Court will issue a new Scheduling Order concurrent with this Order, entitled Third
18 Amended Scheduling Order, containing modified pretrial deadlines.

19 **IT IS SO ORDERED.**

20 Date: 4/6/12

21 
22 Karen S. Crawford
United States Magistrate Judge