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

BETTY GUZMAN, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

BRIDGEPOINT EDUCATION, INC.,
et al.,

Defendants.

Case No. 11-cv-69-BAS(WVG)
**ORDER DENYING PLAINTIFF'S
MOTION TO SET ASIDE
MAGISTRATE JUDGE'S MARCH
18, 2014 ORDER**

[ECF No. 70]

On January 12, 2011, Plaintiff Betty Guzman commenced this putative class action against Defendants Bridgepoint Education, Inc. ("Bridgepoint"), Ashford University ("Ashford"), and University of the Rockies, asserting claims for violations of California's Unfair Trade Practices Act, False Advertising Act, and Consumer Legal Remedies Act, among others.¹ These claims arise from the allegations that Defendants disseminated false and misleading information regarding, among other things, the true costs of attendance, the transferability of credits, the quality of the education, and the

¹ When Plaintiff filed her Second Amended Complaint ("SAC") on August 8, 2012, which is currently the operative complaint, University of the Rockies was not included as a defendant. The Court will refer to the remaining defendants, Bridgepoint and Ashford, collectively as "Defendants" for the purposes of this order.

1 prospects of post-graduation employment. Plaintiff now moves for this Court to set
2 aside the magistrate judge’s March 18, 2014 order. Defendants oppose.

3 The Court finds this motion suitable for determination on the papers submitted
4 and without oral argument. *See* Civ. L.R. 7.1(d.1). For the following reasons, the
5 Court **DENIES** Plaintiff’s motion.

6
7 **I. RELEVANT BACKGROUND**

8 On September 23, 2013, United States Magistrate Judge William V. Gallo issued
9 an order regulating discovery that was expressly limited to class-certification issues
10 only. (CMC Order 1:19–23.) March 31, 2014 was the deadline for completion of all
11 class-certification-related discovery. (*Id.* at 2:17–19.) The court defined “completed”
12 to mean that “all discovery under Rules 30-36 of the Federal Rules of Civil Procedure
13 must be initiated a sufficient period of time in advance of the cut-off date, so that it
14 may be completed by the cut-off date, taking into account the times for services, notice,
15 and response as set forth in the Federal Rules of Civil Procedure.” (*Id.* at 2:20–23
16 (emphasis in original).) The court added that “[a]ll disputes concerning discovery shall
17 be brought to the attention of the Magistrate Judge no later than thirty (30) days
18 following the date upon which the event giving rise to the discovery dispute occurred.”
19 (*Id.* at 2:23–25.) Judge Gallo’s Chambers Rules state that “[f]or written discovery, the
20 event giving rise to the discovery dispute is the date of service of the response.” (Pl.’s
21 Mot. Ex. 25.)

22
23 **A. Plaintiff’s First Set of Interrogatories**

24 On August 5, 2013, Plaintiff served Defendants with her First Set of
25 Interrogatories. Thereafter, the parties agreed to extend the deadline for Defendants
26 to respond by 30 days to October 9, 2013. Defendants served responses to the
27 interrogatories on October 9, 2013. In their response, Defendants objected to
28 Interrogatory No. 7 on several grounds.

1 On October 29, 2013, Plaintiff sent a meet-and-confer letter addressing certain
2 perceived deficiencies in the responses. (Pl.'s Mot. Ex. 6.) In the letter, Plaintiff
3 requested that Defendants cure the identified deficiencies by November 1, 2013, and
4 sought to schedule an in-person meet-and-confer conference during the week of
5 November 4, 2013. (*Id.*)

6 "Mindful of the magistrate judge's 30-day deadline to raise discovery disputes,
7 and out of an abundance of caution, [Plaintiff] sought and obtained Defendants'
8 consent to make a joint motion for extension of time to file a joint statement for
9 determination of discovery disputes," which the parties subsequently filed on
10 November 8, 2013. (Kolesnikov Decl. ¶ 12.) To justify the extension, the parties
11 stated in their joint motion that "following a mutual extension of time to respond [to
12 the discovery requests]," the parties "ha[d] been working diligently to resolve the
13 above-mentioned disputes," "ha[d] exchanged meet-and-confer letters regarding the
14 disputes," and "[were] reviewing the respective letters regarding the disputes and have
15 discussed meeting in person very soon in an attempt to resolve the disputes[.]" (ECF
16 No. 64.)

17 On November 12, 2013, the magistrate judge denied the parties' joint motion for
18 an extension of time. (ECF No. 65.) That order stated the following:

19 Counsel waited until the date a Joint Statement of Discovery
20 Disputes was due to file the Joint Motion and have not yet
21 met and conferred in person regarding the discovery
22 disputes.

23 Counsel have essentially treated the granting of the Joint
24 Motion as a forgone conclusion, the Court's approval being
25 a mere formality in the process. **However, the Court is not
26 a mere rubber stamp**, and the Court would be justified in
27 denying the Joint Motion because it was received on the date
28 the Joint Statement was due.

29 (*Id.* (emphasis in original).)

30 On November 15, 2013, Defendants responded to Plaintiff's meet-and-confer
31 letter. (Pl.'s Mot. Ex. 8.) The parties subsequently agreed to continue to meet and
32 confer in order to resolve their disagreements. (Young Decl. ¶ 4.) On November 22,

1 2013, counsel for the parties met in person to discuss the issues raised in the October
2 29, 2013 letter. (*Id.* ¶ 5; Kolesnikov Decl. ¶ 17.) During the conference, the parties
3 agreed to review certain responses and determine whether supplementing the responses
4 was necessary. (Young Decl. ¶ 5; Kolesnikov Decl. ¶ 17.)

5 Defendants served supplemental responses to Plaintiff’s interrogatories on
6 February 3, 2014. (Pl.’s Mot. Es. 20–23.) However, Defendants maintain that they
7 “did *not* supplement their response to Interrogatory No. 7.” (Defs.’ Opp’n 3:15–17.)
8 Interrogatory No. 7 requests that Defendants “[i]dentify all enrollment advisors at
9 BRIDGEPOINT or ASHFORD who were disciplined, demoted, or otherwise received
10 negative performance reviews during the Relevant Period because of the number of
11 students they enrolled.” (Pl.’s Mot. Ex. 2.)

12
13 **B. Plaintiff’s First Set of Requests for Production**

14 On November 22, 2013, Plaintiff served Defendants with her First Set of
15 Requests for Production (“RFPs”). On December 23, 2013, Defendants served
16 responses to the RFPs. Defendants objected to RFP No. 11 and RFP No. 16. (Pl.’s
17 Mot. Exs. 14–15.) RFP No. 11 requests “[a]ll DOCUMENTS CONCERNING the
18 discipline, demotion, or termination of any of BRIDGEPOINT’s enrollment advisors
19 during the RELEVANT PERIOD, including, but not limited to, the names of those
20 individuals, the dates when they were disciplined, demoted, or terminated, and the
21 reasons for the discipline, demotion, or termination”; RFP No. 16 requests “[a]ll
22 DOCUMENTS CONCERNING all complaints from students and graduates during the
23 RELEVANT PERIOD received by BRIDGEPOINT.” (Pl.’s Mot. Ex. 12.)

24 On January 23, 2014, Plaintiff sent a meet-and-confer letter to Defendants
25 requesting that Defendants cure certain perceived deficiencies in Defendants’
26 responses. (Pl.’s Mot. Ex. 18.) Plaintiff also sought to schedule an in-person meet-
27 and-confer conference for February 3, 2014. (Kolesnikov Decl. ¶ 25.)

28 //

1 On January 27, 2014, Defendants responded to Plaintiff's letter, and maintained
2 their objections as previously stated. (Pl.'s Mot. Ex. 19.) At Plaintiff's request, the
3 parties met and conferred in person on February 3, 2014, where Defendants reiterated
4 their objections. (Young Decl. ¶¶ 8–9.) Defendants initially produced documents in
5 response to Plaintiff's RFPs on February 24, 2014. (*Id.* ¶ 11.)

6 Despite the meet-and-confer efforts, the parties were unable to resolve the
7 discovery disputes without court intervention. As a result, Plaintiff submitted to the
8 magistrate judge a Joint Statement for Determination of Discovery Disputes,²
9 specifically requesting an order compelling further responses to Interrogatory No. 7
10 and RFP Nos. 11 and 16. (Pl.'s Mot. Ex. 24.)

11 Plaintiff also preemptively addressed the timeliness of the Joint Statement in the
12 Joint Statement, providing two reasons under Judge Gallo's Chambers Rules. (Pl.'s
13 Mot. Ex. 24.) The entirety of that explanation is as follows:

14 Ms. Guzman believes that the current Joint Statement is
15 timely under the Chambers Rules for two reasons. First, this
16 Joint Statement concerns deficiencies in Defendants'
17 *supplemental* responses to Interrogatories, which were
18 served on **February 3, 2014**. Second, Ms. Guzman has at all
19 times *proceeded diligently* with attempting to conduct a
20 thorough meet-and-confer *before* filing any motion to
21 compel. To that effect, Ms. Guzman sent Defendants an
22 eleven-page meet-and-confer letter on October 29, 2013,
23 which is *within 30 days* of Ashford's service of its initial
discovery responses. However, only on November 15, 2013
did Defendants respond to that letter. Counsel promptly met
and conferred in person on November 22, 2013. Thereafter,
it took Defendants *another two months* to serve
supplemental responses. Nonetheless, the meet-and-confer
process was able to narrow the disagreement between the
parties to only three discovery responses discussed in this
Joint Statement. Accordingly, Ms. Guzman urges the Court
to reach the merits of the underlying discovery disputes.

24 (*Id.* (footnotes and citations omitted) (emphases in original).) Defendants disputed
25 Plaintiff's position that the need for an extension of time was a product of Defendants'
26 delay:

27
28 ² The Joint Statement includes Plaintiff's request to compel discovery. Consequently, the parties also refer to the Joint Statement as a motion to compel. For the purposes of this order, the two terms will be used interchangeably.

1 Defendants served interrogatory responses on October 9,
2 2013. Nearly three weeks later, on October 29, Plaintiff set
3 a meet and confer letter. Then, on the afternoon of
4 November 8—the very day this Court’s 30-day discovery
5 dispute deadline was set to expire, Plaintiff hurriedly asked
6 Defendants to agree to an extension of time to submit a
7 discovery dispute to this Court and consent to a joint motion
8 being filed, which, as a courtesy, Defendants did.
9 (*Id.* (footnote omitted.) Defendants also argued that Plaintiff’s request was untimely
10 because their responses to Interrogatory No. 7 and RFP Nos. 11 and 16 have remained
11 unchanged since they were originally served, respectively, on October 9, 2013, and
12 December 23, 2013: they contend that their February 3, 2014 supplemental responses
13 did not supplement their response to Interrogatory No. 7, and their January 27, 2014
14 letter did not clarify their response to RFP Nos. 11 and 16. (*Id.*)

11
12 **C. Magistrate Judge’s March 18, 2014 Order**

13 On March 18, 2014, the magistrate judge denied Plaintiff’s motion to compel as
14 untimely. (ECF No. 69.) With respect to Interrogatory No. 7, the magistrate judge
15 explained:

16 In accordance with Federal Rules of Civil Procedure
17 33(b)(2) and 36(a)(3), Ashford and Bridgepoint each had
18 until September 4, 2013, to provide their responses to
19 Plaintiff’s discovery requests. When they did not respond on
20 time, the 30-day clock to resolve those disputes began to run.
21 Ashford’s untimely responses 30 days later on October 9,
22 2013, did not reset the clock, but even assuming that it did,
23 Plaintiff had until November 12, 2013, to bring the matter to
24 the Court’s attention. Defendant’s Supplemental Responses
25 served on February 3, 2014 also did not reset the clock as
26 Plaintiff contends. To follow Plaintiff’s logic, the 30-day
27 clock would never begin to run as long as the opposing party
28 continued to amend or supplement earlier responses. The
filing by the parties of their Joint Motion For Extension on
November 8, 2013, by itself, was insufficient to toll the
clock.

It appears to the Court that the Response to Interrogatory No.
7 is the only interrogatory at issue in the Joint Statement.
The Response to Interrogatory No. 7 was served on October
9, 2013. The response was never changed or supplemented.
Any motion to compel a supplemental response to
Interrogatory No. 7 was due on November 12, 2013. Since
the Joint Statement was not received by the Court until
March 4, 2014, the motion to compel further response to
Interrogatory No. 7 is untimely.

1 (March 18, 2014 Order 4:11–5:10 (footnote omitted).) Addressing RFP Nos. 11 and
2 16, the magistrate judge explained:

3 It appears to the Court that the Responses to Requests for
4 Production of Documents Nos. 11 and 16 are at issue. The
5 Response to Requests for Production of Documents Nos. 11
6 and 16 was served on December 23, 2013. Any joint
7 statement containing a motion to compel further responses
8 to Requests for Production of Documents Nos. 11 and 16
9 was due on January 23, 2014. Since the Joint Statement was
10 received by the Court on March 4, 2014, the motion to
11 compel further responses to Requests for Production of
12 Documents Nos. 11 and 16 is untimely.

13 (*Id.* at 6:9–22.) The magistrate judge’s order ended by stating that “[n]either party, but
14 particularly Plaintiff, has explained, let alone justified, the extraordinary delay in
15 bringing these disputes to the Court’s attention. Without good cause having been
16 demonstrated, there is no reason to grant the parties’ requests.” (*Id.* at 8:7–11.)

17 Thereafter, Plaintiff filed this motion to set aside the magistrate judge’s March
18 18, 2014 order under Rule 72(a). Defendants oppose.

19 **II. STANDARD OF REVIEW**

20 A party may object to a non-dispositive pretrial order of a magistrate judge
21 within fourteen days after service of the order. *See* Fed. R. Civ. P. 72(a). The
22 magistrate judge’s order will be upheld unless it is “clearly erroneous or contrary to
23 law.” *Id.*; 28 U.S.C. § 636(b)(1)(A). The “clearly erroneous” standard applies to
24 factual findings and discretionary decisions made in connection with non-dispositive
25 pretrial discovery matters. *F.D.I.C. v. Fid. & Deposit Co. of Md.*, 196 F.R.D. 375, 378
26 (S.D. Cal. 2000); *Joiner v. Hercules, Inc.*, 169 F.R.D. 695, 697 (S.D. Ga. 1996)
27 (reviewing magistrate judge’s order addressing attorney-client issues in discovery for
28 clear error). Review under this standard is “significantly deferential, requiring a
definite and firm conviction that a mistake has been committed.” *Concrete Pipe &
Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. of S. Cal.*, 508 U.S. 602, 623
(1993) (internal quotation marks omitted).

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1 On the other hand, the “contrary to law” standard permits independent review
2 of purely legal determinations by a magistrate judge. *See, e.g., Haines v. Liggett*
3 *Group, Inc.*, 975 F.2d 81, 91 (3d Cir. 1992) (“the phrase ‘contrary to law’ indicates
4 plenary review as to matters of law.”); *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D.
5 Ohio 1992), *aff’d*, 19 F.3d 1432 (6th Cir. 1994); 12 Charles A. Wright, et al., *Federal*
6 *Practice and Procedure* § 3069 (2d ed., 2010 update). “Thus, [the district court] must
7 exercise its independent judgment with respect to a magistrate judge’s legal
8 conclusions.” *Gandee*, 785 F. Supp. at 686. “A decision is contrary to law if it fails
9 to apply or misapplies relevant statutes, case law, or rules of procedure.” *United States*
10 *v. Cathcart*, No. C 07-4762 PJH, 2009 WL 1764642, at *2 (N.D. Cal. June 18, 2009).

11 12 **III. DISCUSSION**

13 Plaintiff presents three arguments in support of her position that the magistrate
14 judge’s March 18, 2014 order is clearly erroneous and contrary to law: (1) the motion
15 to compel was timely because Plaintiff brought the discovery disputes to the magistrate
16 judge’s attention within 30 days after exhausting the meet-and-confer process; (2)
17 Plaintiff demonstrated good cause to extend her deadline to file the motion to compel;
18 and (3) the magistrate judge’s order conflicts with *Foman’s* policy of favoring
19 decisions on the merits. The Court will address each argument below.

20 21 **A. Timeliness of Plaintiff’s Motion to Compel**

22 In arguing that her motion to compel was timely, Plaintiff disagrees with the
23 magistrate judge’s findings as to when the 30-day discovery dispute clock commenced.
24 Plaintiff argues that the November 12, 2013 deadline for any motion to compel a
25 supplemental response to Interrogatory No. 7 and the January 23, 2014 deadline for any
26 motion to compel further responses to RFP Nos. 11 and 16 are incorrect, and the
27 correct deadline is March 4, 2014, 30 days after February 3, 2014 “when the parties’
28 meet-and-confer efforts reached an impasse.” (Pl.’s Mot. 12:14–19.)

1 Judge Gallo's Chambers Rules and the September 23, 2013 Case Management
2 Conference ("CMC") Order explicitly require "[a]ll disputes concerning discovery [to]
3 be brought to the attention of the Magistrate Judge no later than thirty (30) days
4 following the date upon which the event giving rise to the discovery dispute occurred."
5 (CMC Order 2:23-25; *see also* Pl.'s Mot. Ex. 25.) Judge Gallo's Chambers Rules
6 clearly define "the event giving rise to the discovery dispute" for written discovery as
7 "the date of the service of the response." (Pl.'s Mot. Ex. 25.) The rules do not define
8 the event giving rise to the discovery dispute as when the parties' meet-and-confer
9 efforts reach an impasse. (*See id.*)

10 Defendants served their response to the interrogatories on October 9, 2013, and
11 they served their responses to the RFPs on December 23, 2013. As the magistrate
12 judge noted, only Defendants' initial responses addressed Interrogatory No. 7 and RFP
13 Nos. 11 and 16; Defendants' following responses did not alter the nature of their
14 objection or the dispute at all from their initial responses. Consequently, the date when
15 the parties' meet-and-confer efforts reached an impasse is not relevant to the magistrate
16 judge's calculation of the due dates based on the language of Judge Gallo's Chambers
17 Rules.³ Applying the aforementioned rules as they are written to the circumstances of
18 this case, Plaintiff's deadline to file a Joint Statement for the interrogatories was
19 November 12, 2013⁴ and for the RFPs was January 23, 2014, which the parties failed
20 to meet.

21 The Court cannot conclude that the magistrate judge made any mistake in
22 calculating the applicable deadlines. *See Concrete Pipe*, 508 U.S. at 623. The Court
23 also cannot identify any failure or misapplication of relevant statutes, case law, or rules
24 of procedure by the magistrate judge. *See Cathcart*, 2009 WL 1764642, at *2. In fact,
25

26 ³ Insofar as Plaintiff argues that Judge Gallo's Chambers Rules are invalid—namely, that there
27 is a meet-and-confer policy that somehow overrides Judge Gallo's Chambers Rules—Plaintiff fails
to demonstrate that that issue is proper for this Court to consider at this time under Rule 72(a).

28 ⁴ The magistrate judge noted that November 12, 2013 is the first business day after Veteran's
Day, a federal court holiday. (March 18, 2014 Order 2:18-24 n.2.)

1 the magistrate judge followed the applicable rules to a tee. Therefore, the magistrate
2 judge's calculations of the applicable deadlines and his finding that the Joint Statement
3 was untimely are neither clearly erroneous nor contrary to law. *See* Fed. R. Civ. P.
4 72(a); 28 U.S.C. § 636(b)(1)(A).

5
6 **B. Good Cause for an Extension of Time**

7 Plaintiff also argues that good cause existed to extend the deadlines for
8 completing discovery and moving for class certification. The magistrate judge
9 unilaterally considered that “allow[ing] [Plaintiff’s] requested discovery would require
10 an extension of time for fact discovery to be completed, which in turn, would require
11 extending the date by which the critical Motion for Class Certification must be filed.”
12 (March 18, 2014 Order 7:7–15.) The court continued, stating that it was “unwilling to
13 extend any dates set in the Case Management Conference Order.” (*Id.*)

14 Upon reviewing the Joint Statement, the Court is unable to identify a formal
15 request to extend the deadlines for completing discovery and moving for class
16 certification. (*See* Pl.’s Mot. Ex. 24.) Rather, Plaintiff presented two reasons why she
17 believed that the Joint Statement was timely: “First, this Joint Statement concerns
18 deficiencies in Defendants’ *supplemental* responses to Interrogatories, which were
19 served on **February 3, 2014**”; and “[s]econd, Ms. Guzman has at all times proceeded
20 diligently with attempting to conduct a thorough meet-and-confer *before* filing any
21 motion to compel.” (*Id.*) After presenting her two reasons, Plaintiff “urge[d] the Court
22 to reach the merits of the underlying discovery disputes.” (*Id.*) Neither party requested
23 an extension of the deadlines for completing discovery and moving for class
24 certification. (*See id.*) Thus, this ground for setting aside the March 18, 2014 order is
25 likely outside the scope of this motion.

26 However, even if this Court considers the merits of whether Plaintiff established
27 good cause, the Court nonetheless concludes that Plaintiff failed to establish good
28 cause for an extension of time. Foremost, given that the parties did not formally make

1 such request for an extension of time, it is difficult to understand how they—but
2 especially Plaintiff—could have justified such a request with good cause.

3 Even if the Court considers Plaintiff’s apparent argument that her diligence
4 justified finding good cause to extend the deadline for completing discovery and
5 moving for class certification, her explanation still does not address the magistrate
6 judge’s finding, which this Court agrees with, that the initial response to Interrogatory
7 No. 7 was never changed or supplemented. Similarly, Plaintiff also fails to address the
8 fact that Defendants’ response to RFP Nos. 11 and 16 also remained unchanged since
9 the original response. It is an important fact that Defendants’ responses remained
10 unchanged throughout the discovery process, particularly in light of Judge Gallo’s
11 Chambers Rules that defines “the event giving rise to the discovery dispute” for written
12 discovery as “the date of the service of the response.” (Pl.’s Mot. Ex. 25.) Defendants’
13 initial responses that remained unchanged are the “events” that gave rise to the
14 discovery disputes.

15 Lastly, to determine whether the magistrate judge acted properly in not extending
16 the discovery and class-certification-motion deadlines, this Court must consider only
17 what the parties presented to the magistrate judge at the time the request was made.
18 With respect to diligence, the following is the entirety of Plaintiff’s explanation from
19 the Joint Statement:

20 Ms. Guzman has at all times proceeded diligently with
21 attempting to conduct a thorough meet-and-confer *before*
22 filing any motion to compel. To that effect, Ms. Guzman
23 sent Defendants an eleven-page meet-and-confer letter on
24 October 29, 2013, which is *within 30 days* of Ashford’s
25 service of its initial discovery responses. However, only on
26 November 15, 2013 did Defendants respond to that letter.
27 Counsel promptly met and conferred in person on November
28 22, 2013. Thereafter, it took Defendants *another two months*
to serve supplemental responses. Nonetheless, the meet-and-
confer process was able to narrow the disagreement between
the parties to only three discovery disputes. Accordingly,
Ms. Guzman urges the Court to reach the merits of the
underlying discovery disputes.

(Pl.’s Mot. Ex. 24 (emphases in original) (footnote omitted).)

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1 In response, Defendants challenged Plaintiff’s contention that she proceeded
2 diligently. Defendants emphasized that Plaintiff did not send their meet-and-confer
3 letter until nearly three weeks after they served their interrogatory responses. (Pl.’s
4 Mot. Ex. 24.) Furthermore, on November 8, 2013—the day the magistrate judge’s 30-
5 day discovery-dispute deadline was set to expire—“Plaintiff hurriedly asked
6 Defendants to agree to an extension of time to submit a discovery dispute . . . and
7 consent to a joint motion being filed, which, as a courtesy, Defendants did.” (*Id.*)
8 Defendants further emphasized to the magistrate judge that their supplemental response
9 to the interrogatories and clarification letter addressing the RFPs did not alter in any
10 way the objections regarding Interrogatory No. 7 and RFP Nos. 11 and 16.

11 From these facts, this Court agrees with the magistrate judge that “[n]either
12 party, but particularly Plaintiff, has explained, let alone justified, the extraordinary
13 delay in bringing these disputes to the Court’s attention.” (*See* March 18, 2014 Order
14 8:7–11.) It is evident that there were delays in the parties’ responses, but no
15 explanation of what prompted those delays was presented to the magistrate judge.
16 Merely claiming “diligence” to justify or explain delays is inadequate. To the contrary,
17 the reasonable presumption is that parties proceeding diligently would respond quickly
18 and file their requests with the court in a timely manner. Plaintiff attempts to argue
19 circumstances now that were not presented to the magistrate judge, such as the “year-
20 end holidays” and “counsel’s prearranged travel plans,” but those additional facts are
21 outside the scope of this review precisely because these newly presented circumstances
22 were not presented to the magistrate judge. Courts are not omniscient. They can only
23 assess the circumstances based on what the parties present. The parties here,
24 particularly Plaintiff, failed to explain their delays and support their request for an
25 extension of time with good cause.

26 //

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1 In sum, the Court finds that a challenge to the magistrate judge’s refusal to
2 extend deadlines for completing discovery and moving for class certification are not
3 proper for consideration here. But alternatively, the Court nonetheless finds that any
4 request for an extension of the relevant deadlines, insofar as they were properly made,
5 were not supported by good cause. Therefore, the magistrate judge’s refusal to extend
6 the relevant deadlines was neither clearly erroneous nor contrary to law. *See* Fed. R.
7 Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A).

8
9 **C. Applicability of *Foman***

10 Finally, Plaintiff argues that the magistrate judge’s March 18, 2014 order
11 conflicts with the policy in *Foman v. Davis*, 371 U.S. 178 (1962), favoring decisions
12 on the merits. In *Foman*, the Supreme Court stated that

13 It is too late in the day entirely contrary to the spirit of the
14 Federal Rules of Civil Procedure for decisions on the merits
15 to be avoided on the basis of such mere technicalities. “The
16 Federal Rules reject the approach that pleading is a game of
17 skill in which one misstep by counsel may be decisive to the
18 outcome and accept the principle that the purpose of
19 pleading is to facilitate a proper decision on the merits.” The
20 Rules themselves provide that they are to be construed “to
21 secure the just, speedy, and inexpensive determination of
22 every action.”

23 *Foman*, 371 U.S. at 181-82 (quoting Fed. R. Civ. P. 1; *Conley v. Gibson*, 355 U.S. 41,
24 48 (1957)). However, that was in the context of the First Circuit holding that a defect
25 in a notice of appeal rendered it ineffective to review the district court’s judgment
26 dismissing the complaint. *Id.* at 180. The defect in the notice of appeal was that it
27 “failed to specify that the appeal was being taken from that judgment as well from the
28 orders denying the [certain] motions.” *Id.* at 180-81. *Foman* does not address
timeliness of meeting filing deadlines or disputes during discovery.

29 Plaintiff also cites *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986), as legal
30 authority in the Ninth Circuit that is consistent with *Foman*. But that is not entirely
31 accurate. Though the Ninth Circuit does state in *Eitel* that there is a “strong policy
32 underlying the Federal Rules of Civil Procedure favoring decisions on the merits,” that

1 policy was merely one factor *out of seven* that courts were instructed to consider in
2 exercising discretion to enter default judgment. *Eitel*, 782 F.2d at 1471-72. Contrary
3 to Plaintiff’s assertion, *Eitel* strongly suggests that the policy favoring decisions on the
4 merits is not an overriding policy that trumps all or even most others, but rather one
5 that courts should consider in its exercise of discretion in entering judgment. *See id.*
6 Like *Foman*, *Eitel* does not address timelessness of meeting filing deadlines or disputes
7 during discovery. Instead, both *Foman* and *Eitel* discussed the consideration of issuing
8 decisions on the merits when faced with the possibility of entering judgment against
9 a party. *See Foman*, 371 U.S. at 181-82; *Eitel*, 782 F.2d at 1471-72 (“Our starting
10 point is the general rule that default judgments are ordinarily disfavored. Cases should
11 be decided upon their merits whenever reasonably possible.”).

12 The Ninth Circuit took a more measured approach in balancing the policy
13 favoring disposition on the merits against the need for compliance with deadlines and
14 discovery obligations in *In re Phenylpropanolamine (PPA) Products Liability*
15 *Litigation*, 460 F.3d 1217 (9th Cir. 2006). The court recognized that the “public policy
16 favoring disposition of cases on their merits counsels against dismissal.” *In re*
17 *Phenylpropanolamine*, 460 F.3d at 1228. However, it continued, explaining:

18 At the same time, a case that is stalled or unreasonably
19 delayed by a party’s failure to comply with deadlines and
20 discovery obligations cannot move forward to resolution on
21 the merits. Thus, we have also recognized that this factor
“lends little support” to a party whose responsibility it is to
move a case toward disposition on the merits but whose
conduct impedes progress in that direction.

22 *Id.* (citing, among others, *In re Eisen*, 31 F.3d 1447, 1454 (9th Cir. 1994) (giving
23 weight to the plaintiff’s failure to specify why it is important that his action be resolved
24 on their merits); *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991)
25 (observing that it is the responsibility of the moving party to move toward disposition
26 on the merits)). The Ninth Circuit has also warned:

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1 In these days of heavy caseloads, trial courts in both the
2 federal and state systems routinely set schedules and
3 establish deadlines to foster the efficient treatment and
4 resolution of cases. Those efforts will be successful only if
5 the deadlines are taken seriously by the parties, and the best
6 way to encourage that is to enforce the deadlines. Parties
7 must understand that they will pay a price for failure to
8 comply strictly with scheduling and other orders, and that
9 failure to do so may properly support severe sanctions and
10 exclusions of evidence.

11 *Wong v. Regents of Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005).


12 Upon reviewing the relevant legal authority, this Court rejects Plaintiff's
13 suggestion that the public policy favoring disposition on the merits overrides the policy
14 promoting parties to comply with deadlines and discovery obligations. Furthermore,
15 insofar as the public policy favoring disposition on the merits applies to the
16 circumstances in this case, the Court finds that the magistrate judge's March 18, 2014
17 order does not conflict with *Foman*. Therefore, the magistrate judge's March 18, 2014
18 order was neither clearly erroneous nor contrary to law. *See* Fed. R. Civ. P. 72(a); 28
19 U.S.C. § 636(b)(1)(A).

20 **IV. CONCLUSION & ORDER**

21 In light of the foregoing, the Court **DENIES** Plaintiff's motion to set aside the
22 magistrate judge's March 18, 2014 order because the order was neither clearly
23 erroneous nor contrary to law. *See* Fed. R. Civ. P. 72(a); 28 U.S.C. § 636(b)(1)(A).
24 Consequently, the Court need not address Plaintiff's request to compel further
25 responses to Interrogatory No. 7 and RFPs Nos. 11 and 16.

26 **IT IS SO ORDERED.**

27 **DATED: July 10, 2014**

28 
Hon. Cynthia Bashant
United States District Judge