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

KIM ALLEN, LAINIE RIDEOUT,
and KATHLEEN HAIRSTON, on
behalf of themselves, and all others
similarly situated, and the general
public,

Plaintiffs,

v.

SIMILASAN CORPORATION,

Defendant.

Case No. 12-cv-376-BAS(JLB)

**ORDER OVERRULING
DEFENDANT'S OBJECTIONS TO
MAGISTRATE JUDGE'S APRIL
28, 2014 DISCOVERY ORDER
(DOC. 89)**

On October 11, 2013, Plaintiffs filed their Third Amended Complaint in this action for for statutory and common law claims related to Defendant's line of homeopathic products. Plaintiffs allege that Defendant's products do not work as advertised, are ineffective, and are advertised in false and misleading ways. Thus far, Defendant's motions to dismiss have been granted, with leave to amend (Docs. 34; 57). The Court, when granting Defendant's Motion to Dismiss the Second Amended Complaint, prohibited filing further motions to dismiss. (Doc. 57) Instead, Defendant is required to proceed by moving for summary judgment. (*Id.*) The Third Amended Complaint seeks injunctive relief. (Doc. 58, 48:16–20).

Pending before the Court is Defendants' objection to United States Magistrate Judge Jill L. Burkhardt's April 28, 2014 discovery order (Doc. 89). Judge Burkhardt granted in part and denied in part Plaintiffs' request to compel Defendant to produce responsive documents

1 from March 2012 to the present. (Doc. 79, 3:13–14). Defendant erroneously relied on a
2 misinterpretation of statutes of limitation to incorrectly limit their response to Plaintiffs’
3 request. (Doc. 85, 1:11–21). Therefore Judge Burkhardt correctly granted Plaintiffs’ motion
4 to compel discovery.

5 The Court decides the matter on the papers submitted and without oral argument. *See*
6 Civ. L.R. 7.1(d.1). For the following reasons, the Court **OVERRULES** Defendant’s objection
7 (Doc. 89).

8

9 **I. STANDARD OF REVIEW**

10 A party may object to a non-dispositive pretrial order of a magistrate judge within
11 fourteen days after service of the order. *See* Fed. R. Civ. P. 72(a). The magistrate judge’s
12 order will be upheld unless it is “clearly erroneous or contrary to law.” *Id.*; 28 U.S.C. §
13 636(b)(1)(A). The “contrary to law” standard permits independent review of purely legal
14 determinations by a magistrate judge. *See, e.g., Haines v. Liggett Group, Inc.*, 975 F.2d 81,
15 91 (3d Cir. 1992) (“the phrase ‘contrary to law’ indicates plenary review as to matters of
16 law.”); *Gandee v. Glaser*, 785 F. Supp. 684, 686 (S.D. Ohio 1992), *aff’d*, 19 F.3d 1432 (6th
17 Cir. 1994); 12 Charles A. Wright, et al., *Federal Practice and Procedure* § 3069 (2d ed., 2010
18 update). “Thus, [the district court] must exercise its independent judgment with respect to a
19 magistrate judge’s legal conclusions.” *Gandee*, 785 F. Supp. at 686. “A decision is contrary
20 to law if it fails to apply or misapplies relevant statutes, case law, or rules of procedure.”
21 *United States v. Cathcart*, No. C 07-4762 PJH, 2009 WL 1764642, at *2 (N.D. Cal. June 18,
22 2009).

23

24 **II. DISCUSSION**

25 The crux of Defendants’ objection relies on its interpretation of statutes of limitation
26 and class certification, which are legal issues the district court independently reviews. *Gandee*,
27 785 F. Supp. at 686. In this case, it is Defendant who “misapplies relevant statutes [and] case
28 law.” *Cathcart*, 2009 WL 17642, at *2.

1 Defendant argues that the end date for responsive discovery must be determined by the
2 “statute of limitation” period applicable to the named plaintiffs’ claims. However, statutes of
3 limitation are affirmative defenses that run from the accrual of a claim until litigation
4 commences. *See Aryeh v. Canon Bus. Solutions, Inc.*, 292 P.3d 871, 875 (Cal. 2013).
5 Generally, they do not affect discovery. Defendant’s unpersuasive analysis of *In re Syntex*
6 *Corp. Sec. Litig.*, 95 F.3d 922 (9th Cir. 1996) relates to a securities fraud case in which the
7 class period closed based on a uniform event. Additionally, *In re Syntex Corp.* relates to
8 statutes of limitation, and Defendant cites no precedent associating statutes of limitation with
9 discovery. Here, the advertising at issue remains unchanged, potentially leaving the certifiable
10 class open. As Judge Burkhardt correctly observed, class certification is more appropriately
11 addressed at the class certification stage, not as an issue in discovery (Doc. 89, 3:25–28). The
12 prospective class in question may or may not remain open, but Defendant may not decide it as
13 a basis to deny discovery; Judge Burkhardt therefore rightly rejected limiting relevant
14 discovery based on a novel and unsupported view of statutes of limitation.

15 Defendant, in its opposition, relies on Plaintiffs’ prayer for injunctive relief. Judge
16 Burkhardt and this Court’s orders rely on other independent grounds such that Defendant’s
17 arguments related to injunctive relief in the Third Amended Complaint are irrelevant and need
18 not be addressed here.

19 Accordingly, Defendants fail to show that Judge Burkhardt’s order is clearly erroneous
20 or contrary to law.

21 **III. CONCLUSION & ORDER**

22 In light of the foregoing, the Court **OVERRULES** Defendants’ objection to Judge
23 Burkhardt’s April 28, 2014 discovery order. (Doc. 89.)

24 **IT IS SO ORDERED.**

25
26 **DATED: May 27, 2014**

27 
28 **Hon. Cynthia Bashant**
United States District Judge