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

10 *ALI FARAJ, on behalf of himself and*  
11 *others similarly situated,*

Plaintiff,

12 vs.

13  
14 MARRIOTT INTERNATIONAL, INC.,

15 Defendant.  
16

CASE NO. 13cv300-BEN(KSC)

**ORDER DETERMINING  
DISCOVERY DISPUTE, AND**

[Doc. No. 35]

**EXTENDING CLASS DISCOVERY  
AND CLASS CERTIFICATION  
FILING DEADLINES**

[Doc. No. 40]

17 On December 31, 2013, the parties filed a Joint Motion for Determination of  
18 Discovery Dispute. [Doc. No. 35] Plaintiff Ali Faraj (“plaintiff”) seeks an order  
19 compelling defendant Marriott (“defendant”)<sup>1</sup> to produce responses to certain document  
20 requests and to identify Rule 30(b)(6) designees subject to deposition regarding three  
21 topics. Defendant argues that the Rule 30(b)(6) topics outlined by plaintiff are overly  
22 broad and exceed the scope of the issues raised in the First Amended Complaint. In  
23 addition, on January 17, 2014, the parties jointly filed a Stipulation to Amend  
24 Scheduling Order seeking to extend the deadlines for class discovery and the filing of  
25 a class certification motion. [Doc. No. 40]

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27 <sup>1</sup> While the December 31, 2013 Joint Motion refers to two defendants, (1)  
28 Marriott International, Inc., and (2) Host Hotels & Resorts, on January 3, 2014 the  
Court granted [Doc. No. 38] the parties’ December 30, 2013 Joint Motion to Dismiss  
Defendant Host Hotels & Resorts, L.P. [Doc. No. 34], dismissing Host Hotels without  
prejudice. For purposes of this Order, the Court will refer to defendant Marriott  
singularly, as it is the only defendant currently named in this action.

1 For the reasons outlined in greater detail below, plaintiff's request for a Court  
2 order compelling defendant's complete responses to the discovery requests at issue  
3 [Doc. No. 35] is **DENIED**. Further, and as articulated below, the parties' jointly filed  
4 Stipulation to Amend Scheduling Order [Doc. No. 40] is **GRANTED**.

5 **I. PROCEDURAL HISTORY**

6 On February 6, 2013, plaintiff filed suit [Doc. No. 1], and on April 15, 2013, he  
7 filed a First Amended Complaint ("FAC"), which is the operative complaint in this  
8 action. [Doc. No. 10] In the FAC, plaintiff alleges that he is a blind Event Billing  
9 Specialist at defendant Marriott, that he uses a screen reading software called Jobs  
10 Access with Speech ("JAWS") to perform work on the computer, and that he  
11 unsuccessfully applied for approximately 25 management positions (primarily sales  
12 manager positions), all of which require use of the Consolidated Inventory/Total Yield  
13 ("CI/TY")<sup>2</sup> system computer software. *Id.* at ¶¶ 3, 30, 32, 38, 40. Plaintiff alleges in  
14 the FAC that he was denied "equal promotional opportunities" to these positions  
15 because JAWS or other screen reading software is not fully compatible with CI/TY. *Id.*  
16 at ¶¶ 4, 9, 33, 40.

17 On September 27, 2013, the undersigned Magistrate Judge held a Rule 16(b)  
18 Case Management Conference. [Doc. No. 20] On September 30, 2013, the Court issued  
19 a Scheduling Order, *inter alia*, setting November 1, 2013 as the deadline for filing a  
20 motion to amend the complaint. [Doc. No. 21] On November 1, 2013, plaintiff filed a  
21 Motion for Leave to File Second Amended Complaint. [Doc. No. 22] The proposed  
22 Second Amended Complaint ("SAC") sought to add as plaintiffs to this action Justin  
23 Hull and Amy Sweigard, described by plaintiff as visually impaired current or former  
24 employees of defendant who rely on "screen access software." *Id.* at ¶¶ 2, 5, 24, 28, 33.  
25 According to plaintiff, putative plaintiffs Hull and Sweigard were also allegedly denied  
26 employment or advancement opportunities because the screen access software they use  
27 is not compatible with the software used in the positions sought. *Id.*

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<sup>2</sup> Plaintiff refers to CI/TY as "Siebel CRM" in the FAC.

1 On January 23, 2014, the Court issued an Order Denying Plaintiff's Motion for  
2 Leave to File Second Amended Complaint. [Doc. No. 41] In denying plaintiff's Motion  
3 for Leave to amend, the Court specifically found that: "The allegations corresponding  
4 to these two new plaintiffs are substantially different from those in the FAC." *Id.* at 3.  
5 Specifically, and in comparison with the claims identified and advanced by plaintiff in  
6 the FAC, the Court reasoned that the proposed SAC "greatly expands the allegations  
7 in terms of the software at issue and the type of position sought." *Id.*

## 8 II. DISCOVERY DISPUTE

9 In plaintiff's portion of the parties' December 31, 2013 Joint Motion for  
10 Determination of Discovery Dispute, plaintiff argues: "At the core of the dispute is  
11 [d]efendant's unjustifiably narrow reading of the operative complaint and,  
12 consequently, [d]efendant's attempt to unilaterally limit the scope of [p]laintiff's class  
13 discovery." [Doc. No. 35, p. 3] Plaintiff argues that "by unilaterally narrowing the  
14 scope of plaintiff's complaint as applying to only one of [defendant's] software systems  
15 and a narrow set of management positions, [d]efendant has repeatedly refused to  
16 designate Rule 30(b)(6) witnesses." *Id.* Given these considerations, plaintiff requested  
17 that "the Court rule on the proper scope of the operative complaint in order to obviate  
18 further motions practice regarding [d]efendant's other written discovery responses,  
19 where [d]efendants take the same narrow approach." *Id.* at 3-4.

20 Based on the findings contained in this Court's January 23, 2014 Order denying  
21 plaintiff's Motion for Leave to File Second Amended Complaint, wherein the Court  
22 clarified the proper scope of the operative complaint as being limited to certain types  
23 of software at issue and types of positions sought, defendant's reading of the operative  
24 complaint is not unjustifiably narrow. To the contrary, defendant's interpretation is  
25 consistent with the rationale of this Court in denying plaintiff leave to file a second  
26 amended complaint. Accordingly, the discovery dispute presently before the Court is  
27 moot. To the extent that plaintiff is seeking discovery outside of this Court's reading  
28

1 of the FAC, plaintiff's request is **DENIED**.<sup>3</sup>

2 **III. STIPULATION TO AMEND SCHEDULING ORDER**

3 District Courts have broad discretion to supervise the pre-trial phase of litigation  
4 and to "manage the discovery process to facilitate prompt and efficient resolution of the  
5 lawsuit." *Crawford-El v. Britton*, 523 U.S. 574, 599 (1998). Scheduling Orders are  
6 issued pursuant to Federal Rule of Civil Procedure 16(b) to limit the time to join other  
7 parties, amend the pleadings, complete discovery, and file motions. FED.R.CIV.P.  
8 16(b)(1)-(3). Once in place, "[a] schedule may be modified only for good cause and  
9 with the judge's consent." FED.R.CIV.P. 16(b)(4). The "good cause" requirement of  
10 Rule 16 primarily considers the diligence of the party seeking the amendment. *Johnson*  
11 *v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.1992). "The district court  
12 may modify the pretrial schedule if it cannot reasonably be met despite the diligence  
13 of the party seeking the extension." *Id.* (internal citation and quotation marks omitted).  
14 Further, prejudice to the opposing party "might supply additional reasons" to deny  
15 modification of a Scheduling Order. *Id.*

16 The Court finds good cause to extend the deadlines set forth in its September 30,  
17 2013 Scheduling Order. Prior to the Court's denial of plaintiff's Motion for Leave to  
18 File Second Amended Complaint [Doc. No. 41], the parties had fundamentally different  
19 interpretations of the scope of the case, and it appears that these perspectives impeded  
20 the exchange of discovery in this action. Given defendant's prior unwillingness to  
21 respond to discovery requests which sought documents and information beyond the  
22 FAC, which interpretation was subsequently accepted by the District Court in its ruling  
23 on January 23, 2014 [Doc. No. 41], a brief extension to the discovery deadlines is  
24 warranted to allow for discovery to proceed within the scope described by the Court in  
25 its January 23, 2014 Order.

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<sup>3</sup> To the extent that the discovery process uncovers other software impacting plaintiff directly, the parties will be permitted to explore those relevant areas.


1 Good cause appearing, the dates contained in the Court's September 30, 2013  
2 Scheduling Order will be amended as follows:

- 3 1. Class Discovery Cut-Off: April 23, 2014
- 4 2. Filing of Motion for Class Certification: June 9, 2014

5 The parties are to refer to the more detailed language contained in the Court's  
6 September 30, 2013 Scheduling Order [Doc. No. 21] in complying with these  
7 deadlines.

8 **IT IS SO ORDERED.**

9 DATE: January 30, 2014



KAREN S. CRAWFORD  
United States Magistrate Judge

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