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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KARMEN SMILEY,

Plaintiff,

v.

HOLOGIC, INC.,

Defendant.

Case No.: 16-cv-0158-WQH-MDD

**ORDER ON JOINT MOTION TO
EXTEND DEADLINE TO
ADDRESS DISCOVERY DISPUTE
REGARDING SUPPLEMENTAL
RESPONSES**

[ECF NO. 67]

Before the Court is the Joint Motion to Extend the Deadline to Address Discovery Dispute Re: Supplemental Discovery Responses filed on August 1, 2017. (ECF No. 67). The Joint Motion is **GRANTED IN PART** as provided below.

LEGAL STANDARD

Rule 26(e)(1)(A), Fed. R. Civ. P., governs supplementation of disclosures and responses. It provides:

1 A party who has made a disclosure under Rule 26(a) –
2 or who has responded to an interrogatory, request for
3 production, or request for admission – must
4 supplement or correct its disclosure or response . . . in a
5 timely manner if the party learns that in some
6 material respect the disclosure or response is
7 incomplete or incorrect, and if the additional or
corrective information has not otherwise been made
known to the other parties during the discovery process
or in writing....

8 Should a party fail to timely supplement a disclosure or response, Rule
9 37(c)(1), Fed. R. Civ. P., provides the available remedies, as follows:

10 If a party fails to provide information or identify a
11 witness as required by Rule 26(a) or (e), the party is
12 not allowed to use that information or witness to
13 supply evidence on a motion, at a hearing, or at a trial,
unless the failure was substantially justified or is
harmless.

14 Additional sanctions also are available for failing timely to supplement a
15 disclosure or response. *See* Rule 37(c)(1)(A)-(C).

16 DISCUSSION

17 Discovery in this case closed on September 1, 2016. (ECF No. 10 ¶ 3).
18 The time to bring before the Court any disputes regarding the adequacy of
19 discovery responses is long past. According to the Joint Motion, Plaintiff has
20 provided Defendant with a number of supplemental responses and Defendant
21 has requested that Plaintiff provide further supplemental responses to
22 previously served discovery. *See Joint Motion* at 2 (ECF No. 67 at 2). The
23 parties appear to be meeting and conferring regarding the supplemental
24 responses but seek leave of Court to bring any disputes regarding
25 supplemental responses before the Court no later than September 15, 2017.
26 *Id.* at 2-3.

1 Supplemental responses or disclosures are a one-way street: the burden
2 is placed upon the producing party to supplement responses or disclosures in
3 a timely manner upon finding that their initial responses or disclosures are
4 materially incomplete or inaccurate. *See* Rule 26(e)(1)(A). The receiving
5 party cannot compel supplemental disclosures or responses nor is there a
6 procedural vehicle for the receiving party to challenge the sufficiency of a
7 supplemental disclosure. The receiving party is limited to challenging
8 supplemental disclosures or responses as untimely. *See* Rule 37(c)(1). The
9 producing party carries the burden of convincing the Court that the
10 supplemental disclosures or responses are timely and, if not, the untimeliness
11 is substantially justified or harmless. *Id.*

12 The sufficiency of a supplemental response or disclosure only comes into
13 play if a party seeks to introduce evidence that the other party claims was
14 not previously disclosed in response to or in a supplement to a previous
15 discovery request. That is a matter for the district court to determine in
16 considering whether that evidence must be excluded under Rule 37(c)(1).

17 CONCLUSION

18 The Joint Motion is **GRANTED IN PART**. The parties may bring
19 before this Court any disputes regarding the timeliness of supplemental
20 disclosures or responses within thirty (30) days of the service of the
21 supplemental disclosures or responses.

22 **IT IS SO ORDERED.**

23 Dated: August 2, 2017

24 

25 Hon. Mitchell D. Dembin
26 United States Magistrate Judge