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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICK FRIERI, on behalf of himself and
all others similarly situated, and on behalf
of the general public,

Plaintiff,

v.

SYSCO CORPORATION; SYSCO SAN
DIEGO, INC.; AND DOES 1-100,

Defendants.

Case No.: 3:16-cv-01432-JLS-NLS

ORDER

**(1) DENYING PLAINTIFF’S EX
PARTE APPLICATION TO EXTEND
DEADLINES FOR DISCOVERY
AND MOTION FOR CLASS
CERTIFICATION; and**

**(2) ISSUING AN ORDER TO SHOW
CAUSE AS TO WHY DEFENDANTS
HAVE NOT PRODUCED
DOCUMENTS CONSISTENT WITH
THE COURT’S ORDER**

(ECF No. 35)

1 Before the Court is the Plaintiff's *ex parte* application to extend the deadlines for
2 both discovery and the time to file a motion for class certification. ECF No. 35. Having
3 considered the arguments presented by both parties and for the reasons set forth herein
4 and as detailed below, the Court **DENIES** the Plaintiff's request.

5 **I. Background**

6 This case presents a putative class action of truck drivers for alleged wage and
7 hour violations while employed as drivers for defendants Sysco San Diego, Inc. and/or
8 Sysco Corporation. *See* ECF No. 15. Plaintiff alleges violations on behalf of a state-
9 wide putative class. *Id.* Plaintiff's motion for class certification is due to be filed by
10 November 10, 2017. ECF No. 30.

11 The parties have been engaged in discovery, presenting two separate disputes for
12 judicial determination. ECF Nos. 24, 33. The Court also previously granted a
13 continuance of 90 days to facilitate discovery of the parties prior to class certification.
14 ECF No. 30.

15 Plaintiff requests an extension of time of an additional 90 days to review any email
16 production and complete two depositions. ECF Nos. 35 at 6; 35-2, ¶40. Plaintiff argues
17 it has been meeting and conferring and working diligently to complete discovery, but
18 cannot do so without documents and depositions. ECF No. 35 at 9. Defendant opposes
19 any such extension of time on several grounds, including (1) that production will be
20 complete within the discovery period; (2) it has provided deposition dates within the
21 discovery cut-off; and (3) Plaintiff's counsel's alleged failure to timely meet and confer.
22 ECF No. 37.

23 **II. DISCUSSION**

24 The Court previously granted an extension of 90 days to permit additional
25 discovery, and set deadlines for compliance consistent therewith. Defendant represents
26 discovery will be complete prior to the cut off and deposition dates have been provided.
27 Plaintiff has not shown good cause to justify an additional three months, for a combined
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1 total of six months of extension for class discovery alone. Plaintiff's request is **DENIED**
2 **WITHOUT PREJUDICE.**

3 In the event production of documents is not completed by the discovery cut-off
4 date, Plaintiff may re-file a request for an extension of time.

5 **III. ORDER TO SHOW CAUSE**

6 Plaintiff's submission also indicates that Defendant has not produced documents
7 consistent with the deadlines set forth in this Court's orders. Defendants concede that
8 emails have not been produced, and assert emails "will be" produced by the discovery
9 cut-off of October 13, 2017. ECF Nos. 37 at 3; 4 ("the email production is all that
10 remains to be produced pursuant to the discovery orders"); 37-1 at ¶ 3. The Court
11 ordered emails be produced by **August 31, 2017**. ECF No. 32. As it stands, Defendants
12 are in violation of a Court Order.

13 Even assuming that Sysco's headquarters and/or employees were affected by
14 Hurricane Harvey (which Defendants' counsel does not state specifically, see ECF No.
15 37-1 at ¶ 3), Defendants' counsel represents they were aware that the client
16 representatives assigned to assist with email production were in the Houston area as early
17 as July 20, 2017, more than a month in advance of the storm and production deadline.
18 ECF No. 37-1, ¶ 3. Nonetheless, the docket reflects no pre-emptive submissions from
19 Defendant seeking an extension of time or modification of the production deadline prior
20 to, during, or after the storm, which most significantly affected the Houston area from
21 about August 25-September 3. To comply with the Court's production deadline of
22 August 31, emails should have been provided to counsel for review and production prior
23 to the time of the storm.

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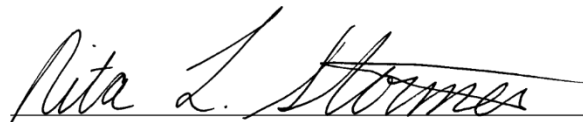
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1 The Court hereby issues an **ORDER TO SHOW CAUSE** as to why Defendants
2 have not produced documents consistent with the time periods set forth and should not be
3 subject to discovery sanctions in an amount to be determined for each day that production
4 is tardy. Defendants must file explanatory briefing and/or declarations, totaling no more
5 than 10 pages, by **September 29, 2017**. Failure to do so will result in discovery
6 sanctions.

7 **IT IS SO ORDERED.**

8 Dated: September 22, 2017

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10 Hon. Nita L. Stormes
11 United States Magistrate Judge
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