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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEBORAH MAIORANO,
individually, and as Successor In
Interest to ANTHONY MAIORANO,
Plaintiff,
v.
HOME DEPOT USA, INC., and,
RESIN PARTNERS, INC.,
Defendants.

Case No.: 16cv2862-BEN-MDD

**ORDER ON JOINT MOTION
FOR DETERMINATION OF
DISCOVERY DISPUTE
REGARDING DEFENDANTS'
RESPONSES TO REQUESTS
FOR PRODUCTION OF
DOCUMENTS**

[ECF NO. 29]

Before the Court is the Joint Motion of the parties, filed on October 5, 2017, to determine a discovery dispute regarding each of the Defendants' responses to requests for production ("RFP"). (ECF No. 29). At issue are Defendants' responses to four RFPs each. For Defendant Home Depot, at issue are its responses to RFP Nos. 1, 4, 7, and 8. (ECF No. 29 at 4-9). For Defendant Resin Partners, at issue are its responses to RFP Nos. 6, 7, 8, and 13. (ECF No. 29 at 10-19).

LEGAL STANDARD

The Federal Rules of Civil Procedure authorize parties to obtain discovery of "any nonprivileged matter that is relevant to any party's claim or

1 defense and proportional to the needs of the case” Fed. R. Civ. P.
2 26(b)(1). “Information within the scope of discovery need not be admissible in
3 evidence to be discoverable.” *Id.* District courts have broad discretion to
4 limit discovery where the discovery sought is “unreasonably cumulative or
5 duplicative, or can be obtained from some other source that is more
6 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C).

7 A party may request the production of any document within the scope of
8 Rule 26(b). Fed. R. Civ. P. 34(a). “For each item or category, the response
9 must either state that inspection and related activities will be permitted as
10 requested or state an objection to the request, including the reasons.” Rule
11 34(b)(2)(B). If the responding party chooses to produce responsive
12 information, rather than allow for inspection, the production must be
13 completed no later than the time specified in the request or another
14 reasonable time specified in the response. *Id.* An objection must state
15 whether any responsive materials are being withheld on the basis of that
16 objection. Rule 34(b)(2)(C). An objection to part of a request must specify the
17 part and permit inspection or production of the rest. *Id.* The responding
18 party is responsible for all items in “the responding party’s possession,
19 custody, or control.” Rule 34(a)(1). Actual possession, custody or control is
20 not required. Rather, “[a] party may be ordered to produce a document in the
21 possession of a non-party entity if that party has a legal right to obtain the
22 document or has control over the entity who is in possession of the
23 document.” *Soto v. City of Concord*, 162 F.R.D. 603, 620 (N.D. Cal. 1995).

24 DISCUSSION

25 A. Threshold Issues

26 Defendants assert that the Court should not entertain the instant
27 motion because Plaintiff did not comply with this Court’s Chambers Rules

1 regarding the presentation of discovery disputes. (ECF No. 29 at 27-28).
2 Defendants claim that the instant motion is untimely under this Court’s “30-
3 day rule.” Also, Defendants assert that the parties were required to meet and
4 confer regarding the dispute in person as counsel are located in the same
5 district.

6 1. 30-day Rule

7 Regarding the “30-day rule,” this Court’s Chambers Rules section
8 IV.C.2 provides that in regard to written discovery requests:

9 Any motion related to discovery disputes must be filed no later than
10 thirty (30) days after the date upon which the event giving rise to the
11 dispute occurred. ... For written discovery, the event giving rise to the
12 discovery dispute is the date of service of the response, **not** the date on
which counsel reach an impasse in meet and confer efforts.

13 The 30-day rule is consistent with the duty of the Court and parties to “to
14 secure the just, speedy, and inexpensive determination of every action and
15 proceeding.” Rule 1, Fed. R. Civ. P.

16 Plaintiff agrees that the date of service of Defendants’ discovery
17 responses was June 30, 2017, and that the responses were received July 3,
18 2017. Plaintiff asserts that in response to concerns raised with the
19 production, Defendants produced additional documents on September 11,
20 2017. Plaintiff asserts that since the supplemental production did not resolve
21 the dispute, the dispute arose on that date, making this instant motion
22 timely. Plaintiff appears to be suggesting that because Defendants later
23 produced additional information in response to meet and confer efforts, the
24 30-day rule was reset with the subsequent production.

25 The Court disagrees with Plaintiff’s interpretation of the rule. If
26 Plaintiff was correct, the 30-day rule would lose its meaning in the face of
27 rolling production and disagreements about production, followed by

1 additional production. The point of the 30-day rule is to compel parties
2 timely to address disputes and to allow the Court effectively to monitor
3 discovery and timely to intervene. The Court regularly receives joint motions
4 from parties asking to extend the 30-day rule on the very grounds as exist
5 here. These motions allow the Court to monitor the progress of discovery
6 and, if necessary, hold a discovery conference or hearing to ensure the
7 parties' pace and diligence. In this Court's experience, even prisoners
8 involved in litigation have known to file motions to extend the 30-day rule for
9 good cause.

10 The Court finds that Plaintiff has not complied with the Court's 30-day
11 rule. Enforcing the rule can have harsh consequences. The Court is mindful
12 that granting or denying discovery impacts the progress and potentially the
13 resolution of a case. Doing so on procedural grounds, rather than reaching
14 the merits, is unpleasant. Consequently, the Court will reach the merits of
15 the dispute but only in a cursory manner – the Court will examine the
16 dispute to determine whether the issues presented are so material to the case
17 that it would be fundamentally unfair to fail fully to consider the merits.

18 2. Meet and Confer Requirements

19 The Court's Chambers Rules paragraph IV.A. provides: "Counsel must
20 meet and confer on all issues before contacting the Court. If counsel are
21 located in the same district, the meet and confer must be in person."
22 Defendants assert that the Court should not hear this discovery dispute
23 because counsel for the parties are located in the Central District of
24 California and the required meet and confer sessions were initiated and
25 conducted by Plaintiff by telephone, email or written correspondence. The
26 Rule addresses all parties; Defendants were obliged to insist on a personal
27 meeting or bring the matter to the Court. Defendants' failure to object and

1 acquiescence to Plaintiff's error waives their objection. Otherwise,
2 sandbagging would be encouraged.

3 B. The Merits

4 1. Home Depot's Responses

5 Regarding RFPs 1, 4, 7, and 8, Defendant Home Depot has agreed to
6 provide additional responsive documents. The Court has two concerns. First,
7 Home Depot's responses that it will be producing additional documents is
8 insufficient under Rule 34(b)(2)(B). It is incumbent upon the producing party
9 to produce responsive documents either within the time specified in the
10 request or "another reasonable time specified in the response." Rule
11 34(b)(2)(B). Home Depot should have provided a reasonable date certain by
12 which the additional responses would be forthcoming. The Court ORDERS
13 such additional production to be completed no later than 14 days from the
14 date of this Order.

15 Home Depot's responses raise a more serious concern. In response to
16 these RFPs, Home Depot initially asserted that it had no responsive
17 documents. After Plaintiff presented Home Depot with responsive documents
18 from Defendant Resin Partners, which reflected correspondence with Home
19 Depot personnel, Home Depot conducted additional searches and found
20 responsive documents. This calls into question the reasonableness of the
21 initial searches conducted by Home Depot. This is the sort of thing that can
22 result in serious sanctions under Rule 37 and under Rule 26(g). But,
23 considering the circumstances of this motion, and the fact that responsive
24 materials have been located and are being produced, the Court will decline to
25 consider sanctions at this time. Home Depot is cautioned to be significantly
26 more diligent in the future.

27 In Home Depot's response to RFP No. 8, it takes the position that an

1 RFP calling for “all design and development documents . . .” does not include
2 correspondence about the design and development documents. The Court
3 finds no fault with Home Depot here. Had Plaintiff requested “all documents
4 pertaining to the design and development of [the sawhorse],” we would have
5 a different outcome. But, asking only for design and development documents
6 is a narrower request and does not extend to all documents about the design
7 and development of the product. No further response is required.

8 2. Resin Partners

9 a. RFP Nos. 6 and 8

10 In RFP No. 6, Plaintiff requested the production of “[a]ll design
11 drawings for the Husky 23 inch compact sawhorse, 2 pack manufactured by
12 you.” In RFP No. 8, Plaintiff requested the production of “[a]ll design and
13 development documents for the Husky 23 inch compact sawhorse, 2-pack
14 manufactured by you.” In response to RFP No. 6, Resin Partners produced
15 the design drawings for the sawhorse sold to Plaintiff but initially did not
16 disclose designs for subsequent versions of the product. In response to
17 correspondence from Plaintiff, Defendant Resin Partners disclosed design
18 documents for a later version of the product. In response to RFP No. 8, Resin
19 Partners produced the same design documents produced in response in RFP
20 No. 6, including the later produced subsequent product design documents and
21 produced test results for the product purchased by Plaintiff.

22 Plaintiff challenges the manner in which Resin Partners responded to
23 RFP No. 6. Plaintiff asserts that when pressed for a further response from
24 Plaintiff, Defendant responded with 1300 pages of material without
25 identifying the responsive material contained within. Plaintiff appears to be
26 conflating the differing requirements of Rules 33 and Rule 34. Under Rule
27 33(d), a party can respond to an interrogatory by instead producing business

1 records but the party must specify the records to be reviewed in sufficient
2 detail and identify them as readily as the responding party could. Plaintiff's
3 complaint would be well-founded if this was a response to an interrogatory.
4 Rule 34, however, has no such specification requirements. Defendant
5 produced responsive information. Plaintiff's assertion that this production of
6 1300 pages of material is tantamount to a "data dump" is not-well-founded.

7 Regarding RFP No. 8, Plaintiff asserts that the responsive information
8 should have included such things as design schedules, budgets, materials,
9 emails, meeting minutes and videos/photographs of testing. Defendant
10 asserts that if Plaintiff wanted this information, Plaintiff should have
11 specifically asked for it. Defendant has the upper hand here. Rule
12 34(b)(1)(A) provides that a party requesting production of documents "must
13 describe with reasonable particularity each item or category of items to be
14 [produced]." The term "documents" without a supporting definition, does not
15 provide the level of specificity required by the Rule. Nevertheless, Defendant
16 has stated that it has produced responsive information. No further response
17 is required.

18 b. RFP No. 7

19 Plaintiff requests the production of "[a]ll documents related to testing of
20 the Husky 23 inch compact sawhorse, 2-pack manufactured by you,
21 specifically all test reports." Defendant initially responded by producing test
22 reports for the sawhorse purchased by Plaintiff. Upon request, Defendant
23 later produced test reports for the re-designed product. There is no apparent
24 dispute here.

25 c. RFP No. 13

26 Plaintiff requests "[a]ll documents reflecting communications between
27 [Resin Partners] and Home Depot relating to the design and manufacture of

1 any folding plastic sawhorse, including what eventually became the Husky 23
2 inch compact sawhorse, 2-pack.” Plaintiff complains that Defendant should
3 have produced documents for a sawhorse product called the “Workhorse 23.”
4 Defendant responds that Plaintiff should have specifically requested such
5 documents. Regardless, Defendant claims to have produced the responsive
6 information. Plaintiff’s bald assertion that Defendant’s production “appears”
7 incomplete is not persuasive. There is no dispute here. No further response
8 is required.

9 **CONCLUSION**

10 With the exception of requiring Defendant Home Depot to produce the
11 additional materials that it has agreed to produce by a date certain, 14 days
12 from the date of this Order, Plaintiff’s motion to compel, as presented in the
13 instant Joint Motion, otherwise is **DENIED**. No sanctions will be imposed.

14 **IT IS SO ORDERED.**

15 Dated: October 24, 2017

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17 Hon. Mitchell D. Dembin
18 United States Magistrate Judge
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