

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

GARRY BOYD, BOYD MEDICAL, INC.,)
CHARLES WETHERILL, and)
ADDISON MEDICAL, INC.,)
)
Plaintiffs,)

v.)

Civil No. **07-751-MJR**

TORNIER, INC.,)
NEXA ORTHOPEDICS, INC.,)
ARCHWAY MEDICAL, INC.,)
and JAMES O'DAY,)
)
Defendants.)

ORDER

PROUD, Magistrate Judge:

Before the court is plaintiffs' Motion to Compel and to Extend the Discovery Cut-Off Date. (**Doc. 58**).

Plaintiffs filed their motion on October 9, 2008, which is the discovery deadline. Plaintiffs served their first request for production of documents directed to defendant Tornier in April, 2008. These requests sought production of all documents regarding the termination and replacement of plaintiffs as Tornier distributors, the appointment of Archway Medical, Inc., as a distributor, and documents related to the association between Nexa and Tornier. In response, defendants produced two pages of handwritten notes.

Plaintiffs assert that they learned of the existence of additional responsive documents during depositions which took place in September, 2008. Plaintiffs' counsel sent a letter requesting the additional documents, as well as second request for production of documents, on

September 16, 2008. Defendant produced some of the requested documents, while asserting that others were not responsive to the first request for production. Defendant objected to the second set of production requests because it was untimely. **See, Ex. 7 attached to Doc. 58.**

Plaintiffs ask the court to compel defendant to produce an Archway Rep Resource Binder as identified by Chris Harber during his deposition, and a notebook maintained by a Mr. Sherburn. As the record now before the court is not sufficient to determine whether those documents should be produced, the court will defer ruling on that aspect of the motion.

Plaintiffs also ask the court to extend the discovery deadline and order defendant to respond to the second request for production. It appears that documents responsive to the first request for production may not have been identified until the September, 2008, depositions. The court will, therefore, extend the discovery deadline for as to plaintiffs' second request for production of documents only.

Upon consideration and for good cause shown, plaintiffs' Motion to Compel and to Extend the Discovery Cut-Off Date (**Doc. 58**) is **GRANTED in part as follows:**

The discovery deadline is extended as to plaintiffs' second request for production of documents directed to defendant Tornier, Inc., only. Defendant Tornier shall respond to plaintiffs' second request for production by **October 20, 2008**. The court will defer ruling on the request to compel pending defendant's response.

IT IS SO ORDERED.

DATE: October 10, 2008.

s/ Clifford J. Proud
CLIFFORD J. PROUD
UNITED STATES MAGISTRATE JUDGE