
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

| | |
|--|--|
| <p>Cvent Inc.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>RainFocus,</p> <p style="text-align: center;">Defendant.</p> | <p>MEMORANDUM DECISION AND ORDER GRANTING RAINFOCUS’ MOTION FOR AMENDED SCHEDULING ORDER</p> <p>Case No. 2:17-cv-00230-RJS-DBP</p> <p>Chief District Judge Robert J. Shelby</p> <p>Chief Magistrate Judge Dustin B. Pead</p> |
|--|--|

This matter is before the court on Defendant RainFocus’ Motion for Amended Scheduling Order. ([ECf No. 349](#).) In short, the parties have agreed to extend certain deadlines. A dispute remains, however, regarding whether the written fact discovery deadline should also be moved. RainFocus seeks to move the fact discovery deadline, including for written discovery, while Cvent opposes it. Both parties point the court to their email correspondence in support of their positions. The court has carefully reviewed the parties’ correspondence, and the prior scheduling orders, and finds they support RainFocus’ motion.

In an effort to address the serious problems created by the COVID-19 pandemic, the parties sought to reach an agreement on transitioning from an in-person source code review to a remote review. The parties agreed on a “protocol” for review. As part of the protocol the parties agreed to file a “stipulated motion to amend the close of fact discovery deadline to August 19, 2020,” *Id.* at p. 3 (quoting Remote Source Code Protocol, Ex. B). When a stipulated motion and proposed order was circulated among the parties the disagreement arose over whether the written factual deadline would be extended. Cvent points to emails back in April during a prior round of negotiations about extending the schedule, which support an agreement to distinguish

between different fact deadlines. The court has reviewed the correspondence between the parties' counsel, and despite some movement toward distinguishing among fact discovery deadlines, such an agreement was not entirely reached by the parties. *See, e.g., Rex Real Estate I, L.P. v. Rex Real Estate Exch., Inc.*, No. A-19-CV-696-RP, 2020 WL 710201, at *1 (W.D. Tex. Feb. 12, 2020) (using correspondence between counsel for the parties to determine the parties' agreement). The lack of such an agreement supports RainFocus' motion.

More importantly, such an agreement was never memorialized by the court in an order. Most recently, on May 11, 2020, the court entered an order amending the case deadlines. ([ECF No. 315.](#)) In that order the court provided the "Fact Discovery Cutoff shall be: July 3, 2020", and the court did not carve out a separate date for written discovery. *Id.* at p. 1. Similarly, in February of this year, the court extended fact discovery without specifying a separate date for written fact discovery. ([ECF No. 309.](#)) The court also did the same in October 2019 based upon a stipulation of the parties. ([ECF No. 280.](#)) This pattern of not distinguishing between written fact discovery and other fact discovery deadlines in previous scheduling orders lends further support to the motion.

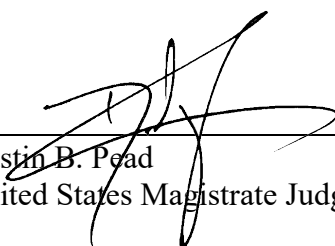
The court therefore GRANTS RainFocus' Motion for Amended Scheduling Order. The following deadlines are established.

1. Cvent shall produce its technical expert report on: July 29, 2020;
2. The fact discovery cutoff shall be: August 19, 2020;
3. The last date for supplementing responses to previously-served discovery shall be: August 28, 2020;
4. Cvent's damages report shall be due on: September 4, 2020;
5. The Defendants' rebuttal expert reports shall be due on: October 9, 2020;

6. The expert discovery cutoff shall be: November 6, 2020;
7. The dispositive motion deadline shall be: November 20, 2020; and
8. The Daubert motion deadline shall be: December 4, 2020.

IT IS SO ORDERED.

DATED this 30 July 2020.



Dustin B. Pead
United States Magistrate Judge