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2
3 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 MARGARET SANTOYO,

6 Plaintiff,

7 v.

8 HOWMEDICA OSTEONICS CORP.,

9 Defendant.

CASE NO. C15-5264 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION FOR
PROTECTIVE ORDER

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11 This matter comes before the Court on Defendant Howmedica Osteonics Corp.'s
12 ("HOC") motion for protective order (Dkt. 19). The Court has considered the pleadings
13 filed in support of and in opposition to the motion and the remainder of the file and
14 hereby grants in part and denies in part the motion for the reasons stated herein.

15 **I. PROCEDURAL HISTORY**

16 On April 9, 2015, Plaintiff Margaret Santoyo ("Santoyo") filed a first amended
17 complaint against HOC in Pierce County Superior Court for the State of Washington.
18 Dkt. 1, Exh. A ("Comp."). Santoyo asserts various torts stemming from a hip
19 replacement surgery. *Id.*

20 On April 24, 2015, HOC removed the matter to this Court. Dkt. 1.

21 On March 7, 2016, HOC filed a motion for a protective order. Dkt. 19. On March
22 1, 2016, Santoyo responded. Dkt. 27. On March 8, 2016, HOC replied. Dkt. 28.

1 **II. FACTUAL BACKGROUND**

2 On January 8, 2007, Santoyo underwent a total hip replacement surgery. Comp., ¶
3 64. During the surgery, Dr. Steven Teeny inserted two of HOC’s products into Santoyo.
4 One of the components was an Accolade stem made of titanium, molybdenum, zinc and
5 iron (“TMZF stem”), and the other was the LFIT Anatomic V40 Femoral Head, which is
6 made out of cobalt and chromium. *Id.*, ¶¶ 66–67.

7 In July 2012, tests revealed that Santoyo’s hip components were loose, and Dr.
8 Teeny recommended surgery to replace the components. *Id.*, ¶¶ 77–78. During the
9 revision surgery, Dr. Teeny recorded notes as follows:

10 Immediately upon entering the joint, a thick squirt of green, thick
11 fluid was expressed seemingly under pressure. . . . This was immediately
12 sent to laboratory for a gram stain and evaluation with some synovial tissue
13 for evaluation which showed minimal chronic inflammation. No acute
14 inflammation. No signs of polymorphonuclear leukocytes. With that in
15 mind, the feeling was it had a clinical picture of an ALVAL type reaction. .
16 . . We did a partial capsulectomy and capsulotomy which allowed us to
17 express the femoral head. A bone tamp was used to remove it. It noted a
18 large amount of corrosion material at the trunnion and some deep, what
19 appeared to be corrosion materials deep inside the femoral head as well,
20 even after head was removed. . . . The cup itself was completely loose. . . .
21 More green purulent-like material was found behind the cup along with
22 quite a bit of necrotic bone so that a fair portion of the posterior wall, some
of the superior wall, some of the anterior wall and inferiorly all with
significant bone loss. There was necrotic bone almost in a layer around the
cup as well.

23 *Id.*, ¶ 80. Dr. Teeny removed the LFIT metal head component and replaced it with a
24 ceramic component. *Id.*, ¶ 81.

25 Santoyo contends that her first hip components failed due to fretting and corrosion
26 of the different types of metal in the components. This allegation is based on Dr. Teeny’s

1 will result ‘if the protective order is not granted.’” *In re Catholic Archbishop of*
2 *Portland, Or.*, 661 F.3d 417, 424 (9th Cir. 2011) (quoting *Foltz v. State Farm Mut. Auto*
3 *Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003)).

4 With regard to the scope of discovery, the recently amended rule provides that
5 “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any
6 party’s claim or defense and proportional to the needs of the case” Fed. R. Civ. P.
7 26(b)(1). To determine the proportional needs of the case, the Court may consider:

8 (1) the importance of the issues at stake in the action; (2) the amount
9 in controversy; (3) the parties' relative access to relevant information; (4)
10 the parties' resources; (5) the importance of the discovery in resolving the
11 issues; and (6) whether the burden or expense of the proposed discovery
12 outweighs its likely benefit.

11 *Id.*

12 In this case, the parties’ disputes raise issues with relevancy and proportionality.
13 With regard to relevance, HOC attempts to limit Santoyo’s claims to the components that
14 were replaced in Santoyo’s hip. Specifically, HOC requests that the Court “narrow the
15 scope of Plaintiff’s discovery to the LFIT femoral head, the Trident acetabular cup, and
16 the Trident polyethylene insert.” Dkt. 19 at 12. While the relevance of these components
17 is obvious, the Court likewise finds that discovery relating to the specific stem that was
18 implanted into Santoyo is also relevant. Santoyo argues that the “TMZF stem still had a
19 direct causal relationship with Plaintiff’s injury and is an appropriate subject for
20 discovery” because “titanium in the TMZF stem and chromium/cobalt in the LFIT head,
21 created the corrosion problem that caused Plaintiff injury.” Dkt. 27 at 6. At this point,
22 Santoyo has presented a plausible metal-on-metal theory for the system failure, and HOC

1 has failed to show good cause to prevent Santoyo from obtaining discovery on every
2 component that was placed inside her body during this hip replacement surgery.

3 Therefore, the Court denies HOC's motion with regard to the TMZF stem.

4 On the other hand, the Court finds that, at this time, Santoyo has only shown
5 minimal relevance of the recalled components. In fact, Santoyo appears to
6 misunderstand the nature of the recalled components in alleging that "injuries have also
7 occurred when the TMZF stem was used in the now-recalled cobalt/chromium
8 Rejuvenate and ABG-II [products]." Dkt. 27 at 7. HOC explains that Rejuvenate and
9 ABG-II are also stems, which, if used in conjunction with the TMZF stem, would be
10 "like nailing two nails into the same hole" Dkt. 28 at 5. While the Court declines to
11 resolve factual disputes at this juncture, it is sufficient to conclude that HOC has shown
12 good cause to prevent Santoyo's discovery requests based on the possible
13 misunderstanding of the components in question. Therefore, the Court concludes that the
14 relevance of the recalled components is minimal, if there is any relevance at all.

15 With regard to proportionality, Santoyo does not appear to dispute that she is
16 requesting thousands of pages of documents. Dkt. 27 at 10. The parties, however, do
17 dispute the resources HOC would be required to expend to honor Santoyo's requests.
18 HOC "estimates that [Santoyo's requests] would require it to produce between
19 approximately 750,000 and 1 million pages of discovery at the staggering cost of over \$3
20 million dollars." Dkt. 28 at 2. These estimates are based on HOC's attorney's
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1 | experience with similar prior litigation. *Id.* at 29–31.¹ While his experience is relevant,
2 | greater detail should be provided in the future. Santoyo contends that “many of these
3 | documents may already have been compiled in other litigation and their production may
4 | merely take a few computer keystrokes to produce.” Dkt. 27 at 10. This assertion is
5 | supported by the fact that the Rejuvenate and ABG II components are the subject of a
6 | multi-district litigation. *Id.* at 11. In light of the slight relevance at this point, the amount
7 | in controversy² and the vast amount of discovery sought, the Court concludes that HOC
8 | has shown good cause to preclude discovery as to the Rejuvenate and ABG II
9 | components at this time. Therefore, the Court grants HOC’s motion on these issues.

10 | Going forward, the parties should strive to resolve these disputes without Court
11 | intervention. If Santoyo obtains evidence or opinion testimony establishing greater
12 | relevance of the recalled components to her injury, the parties are directed to meet and
13 | confer regarding the parameters of additional discovery. In the event that Court
14 | intervention becomes necessary, the Court requests actual facts as to the number of
15 | documents, whether they have already been produced, and, if possible, the amount of
16 | work required to review and produce such documents.

19 | ¹ Although this evidence was improperly submitted with the reply brief, Santoyo is not
20 | prejudice by the Court accepting the assertions for comparative purposes only. *Provenz v. Miller*,
102 F.3d 1478, 1483 (9th Cir. 1996).

21 | ² The record is lacking detail as to what Defendant’s exposure is to damages if liability is
22 | found. From the information that is available, that amount is likely less than the anticipated cost,
as estimated by the Defendant, to produce the requested discovery.

1 **IV. ORDER**

2 Therefore, it is hereby **ORDERED** that HOC's motion for protective order (Dkt.
3 19) is **GRANTED in part** and **DENIED in part** as stated herein.

4 Dated this 5th day of May, 2016.

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6 BENJAMIN H. SETTLE
7 United States District Judge

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