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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICTORIA URENIA, an individual; SOLEDAD CORONA, an individual,)	Case No. CV 13-01934 DDP (AJWx)
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S EX PARTE APPLICATION TO EXTEND DISCOVERY CUT-OFF
)	
v.)	[Dkt. No. 177]
)	
PUBLIC STORAGE, a real estate investment trust;)	
CITY OF LOS ANGELES, a governmental entity; BANK OF AMERICA, N.A.; MICHAEL ANZ,)	
Defendants.)	

On March 25, 2015, the Court granted Plaintiffs' previous ex parte application to extend the discovery cut-off date to April 20, 2015, over Defendants' opposition.¹ (Dkt. Nos. 147, 153, 162.) Plaintiffs now once again move ex parte to extend the date to June 20, 2015, arguing that "Plaintiffs have been prevented from obtaining discovery from the Defendants." (Dkt. No. 177 at 6.)

¹This was the third extension of the cut-off date, although the prior extensions were not on Plaintiffs' motion. (See Dkt. Nos. 55, 115.)

1 "A schedule may be modified only for good cause and with the
2 judge's consent." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good
3 cause' standard primarily considers the diligence of the party
4 seeking the amendment." Johnson v. Mammoth Recreations, Inc., 975
5 F.2d 604, 609 (9th Cir. 1992) (internal quotation marks omitted).

6 There are two active Defendants remaining in this case: Bank
7 of America, N.A. ("BANA") and the City of Los Angeles ("the city").
8 Plaintiff wished to take depositions of so-called "persons most
9 knowledgeable" ("PMK" witnesses) from both defendants. Defendants,
10 similarly, wished to take depositions of the Plaintiffs. On
11 February 9, 2015, the magistrate judge in this case determined that
12 it would make the most sense for the Plaintiffs to be deposed
13 before Defendants' PMKs. (Decl. Peter Kennedy, Ex. B at 4.) The
14 magistrate judge also suggested that the proposed subjects on which
15 Defendants' PMKs were to be deposed might be overly broad: "I do
16 think they should be narrowed." (Id. at 27.) However, the
17 magistrate judge also suggested that they might not need to be
18 narrowed as much as defense counsel wished, and that "counsel
19 should discuss these categories." (Id.)

20 On March 26, 2015, the day after the Court's order granting
21 Plaintiffs' previous ex parte extending the cut-off date,
22 Plaintiff's counsel sent an email to the separate counsel for the
23 two Defendants asking them "agree on five (5) dates that your
24 clients are available for depositions." (Decl. Elizabeth
25 Greenwood, Ex. 1.) The email also stated that Plaintiffs' counsel
26 was available either March 27 or April 2nd to meet and confer.
27 (Id.)

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1 On April 6, the city's counsel emailed Plaintiffs' counsel
2 saying she had "narrowed some of the issues on the PMK deposition"
3 and that she had identified two people who "may be able to cover
4 most of what you are looking for." (Id., Ex. 2.) Counsel for the
5 city also suggested April 13, 14, and 15 for depositions of the
6 Plaintiffs and another witness. (Id.) Counsel for the city
7 declares that she followed up by phone and left a voicemail.
8 (Decl. Elizabeth Greenwood, ¶¶ 4-5.) On April 7, counsel for the
9 city again emailed Plaintiff's counsel, again inquiring about
10 Plaintiff's availability and also volunteering to provide the
11 city's PMKs before April 13 "if necessary." (Decl. Elizabeth
12 Greenwood, Ex. 3.) On April 8, counsel for the city unilaterally
13 set dates for the depositions of the Plaintiffs. (Id., Ex. 4.)

14 There then followed a series of increasingly confrontational
15 emails between Plaintiffs' counsel and counsel for the city.
16 Plaintiffs' counsel claimed to have no recollection of defense
17 counsel's previous communications and stated that she, Plaintiffs'
18 counsel, had sent "multiple emails attempting to meet and confer,"
19 although these appear nowhere in the record. (Id., Ex. 6.)
20 Plaintiffs' counsel announced her intent to file a motion to compel
21 if an agreement could not be reached. (Id.) In response, the
22 city's counsel stated that she would "happily make available" two
23 PMK witnesses who would be able to answer "most if not all" of
24 Plaintiffs' questions. (Id.) She also offered to make them
25 available before April 13, or, alternatively, in the afternoon
26 after Brenda Hernandez' deposition. (Id., Ex. 7.)

27 Parallel to these communications with the city's counsel,
28 Plaintiffs' counsel was also in communication with BANA's counsel.

1 As noted above, Plaintiff's counsel had sent an email asking
2 Defendants for "five (5) dates that your clients are available for
3 depositions." BANA's counsel replied to Plaintiffs' counsel on
4 March 30 to ask for dates for depositions of the Plaintiffs, which,
5 he noted, "must be completed before BANA's deposition." (Decl.
6 Peter Kennedy, Ex. C.) Plaintiffs' counsel responded the same day:
7 "Answer my question, and I will be more than glad to [answer] yours
8 Peter." (Id., Ex. D.)

9 On April 8, after the city's counsel unilaterally set dates to
10 depose Plaintiffs, BANA's counsel again emailed Plaintiffs' counsel
11 to request confirmation of the dates as well as proposed topics for
12 the deposition of BANA's PMK. (Id., Ex. E.) Plaintiffs' counsel
13 then responded, somewhat confusingly, "Please confirm that your
14 clients will be able to testify prior to discovery cut off in this
15 case after your proposed dates for deposition testimony." (Id.,
16 Ex. F.) She also declined to give any specific proposals for
17 narrowing the topics of the PMK deposition. (Id.) BANA's counsel
18 appears to have interpreted this as a refusal to confirm the dates
19 of the depositions of the Plaintiffs or to narrow the proposed
20 topics of the PMK depositions. (Id.)

21 On April 10, Plaintiffs' counsel filed an ex parte motion to
22 compel Defendants' depositions as well as a motion for a protective
23 order. (Dkt. No. 168.) The city's counsel emailed Plaintiffs'
24 counsel twice that day to reiterate her offer to make two PMK
25 witnesses available. (Decl. Elizabeth Greenwood, Ex. 11.) The
26 motion for a protective order was denied the same day, and the
27 magistrate judge invited Plaintiffs to schedule a discovery
28 conference to discuss the PMK depositions. (Dkt. No. 171.) On

1 April 15, a discovery conference was set for April 22 - two days
2 after the discovery cut-off. (Dkt. No. 175.) At that conference,
3 the magistrate judge deferred the question of what to do about the
4 PMK depositions, pending the Court's decision on this ex parte
5 application. (Dkt. No. 183.)

6 Plaintiffs bear the burden of showing there is good cause to
7 modify the scheduling order. Johnson, 975 F.2d at 609 (denying
8 motion because moving party failed to demonstrate good cause). In
9 this case, Plaintiffs have not met that burden. As to the city's
10 witnesses, it seems obvious from this record that the city's
11 counsel made every attempt to make the city's PMK witnesses
12 available to Plaintiffs' counsel. Plaintiffs declined, entirely,
13 to take up any of her offers to set a date to depose those
14 witnesses. Plaintiffs were not diligent as to the city's
15 witnesses.

16 As to BANA's PMK witness or witnesses, although BANA's counsel
17 was not as forthcoming and cooperative as the city's counsel, BANA
18 nonetheless was not unreasonable in asking Plaintiffs for possible
19 deposition dates, since the magistrate judge had apparently
20 established the order in which the depositions should occur.
21 Plaintiffs' counsel provided no such dates, instead demanding that
22 BANA's counsel set dates first. The discussion then stalled,
23 around March 30. At that point, Plaintiffs could have filed a
24 motion to compel discovery if they believed that it was not
25 possible to come to an agreement on dates.² Or, if they believed

26
27 ²Plaintiffs' counsel did eventually file a motion to compel.
28 It is unfortunate that a discovery conference related to that
motion could not be held until after the discovery cut-off. But
(continued...)

1 that the magistrate had *not* set a particular order for the
2 depositions, Plaintiffs could simply have noticed the desired
3 depositions and let BANA file for a protective order if it wished
4 to do so. Either way, had Plaintiffs acted promptly, the matter
5 could have been resolved by the magistrate. Plaintiffs were not
6 diligent as to the BANA witnesses.

7 Plaintiffs have not shown that there is good cause to modify
8 the scheduling order again. The ex parte application is DENIED.

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10 IT IS SO ORDERED.

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13 Dated: May 7, 2015



DEAN D. PREGERSON
United States District Judge

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²(...continued)
that is a result of Plaintiffs' counsel's decision to wait to file
the motion until ten days before the discovery cut-off. Given that
Plaintiffs and BANA apparently reached an impasse on March 30, and
given that Plaintiffs knew the discovery cut-off was looming, there
was no reason to wait so long.