

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

‘O’

Case No. 2:16-cv-00305-CAS (JEMx) Date April 4, 2017

Title JANE DOE v. LOS ANGELES UNIFIED SCHOOL DISTRICT, ET AL.

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) - EX PARTE APPLICATION TO CONTINUE TRIAL DATE AND MODIFY SCHEDULING ORDER (Filed March 27, 2017, Dkt. 94)

The Court is in receipt of plaintiff’s motion to continue the trial date and modify the scheduling order. Dkt. 94. The Court is also in receipt of Defendant Steven Carnine’s opposition, dkt. 95, as well as the remaining defendants’ opposition, dkt. 96.

On March 30, 2017, in light of plaintiff’s counsel’s impending travel plans, the Court promptly reviewed the application and oppositions and denied the motion for a continuance of the trial. Dkt. 100. In its order, the Court stated that a, “separate detailed ruling will follow.” Id. Herein the Court will explain its reasons for the denial of the motion to continue trial in this matter.

Rule 16(b) of the Federal Rules of Civil Procedure provides that a scheduling order may be modified “only for good cause.” Fed.R.Civ.P. 16(b)(4).

Rule 16(b)'s good cause standard primarily considers the diligence of the party seeking the amendment Carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief. Although the existence or degree of prejudice to the party opposing the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party's reasons for seeking modification. If that party was not diligent, the inquiry should end.

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Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.1992) (internal quotations and citations omitted). “The pretrial schedule may be modified ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’” Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir.2002) (quoting Johnson, 975 F.2d at 609). “The district court is given broad discretion in supervising the pretrial phase of litigation, and its decisions regarding the preclusive effect of a pretrial order . . . will not be disturbed unless they evidence a clear abuse of discretion.” Miller v. Safeco Title Ins. Co., 758 F.2d 364, 369 (9th Cir.1985).

Trial in this matter is scheduled to commence on May 9, 2017, at 9:30 a.m. Dkt. 68 (“Scheduling Order”). Pursuant to the Scheduling Order, a pretrial conference and hearing on motions in limine is scheduled for April 24, 2017, at 11:00 a.m. Id. Motions in limine were to be noticed for April 24, 2017, and filed no later than yesterday, April 4, 2017. Id. Defendants have collectively filed thirteen motions in limine, see dkt. 103-110; 112-116, whereas plaintiff appears not to have filed any. On April 3, 2017, defendants filed witness and exhibits lists as well as contentions of fact and law. Dkts. 118-122. On the same day, plaintiffs filed a witness list, dkt. 124, an exhibit list, dkt. 125, and contentions of fact and law, dkt. 123.

Plaintiff seeks a continuance of the trial date to July 18, 2017. Plaintiff’s counsel offers numerous reasons for seeking a continuance. None satisfies the requirement that counsel demonstrate good cause for a continuance.

Plaintiff sought to substitute counsel on March 17, 2017. Dkt. 92. On March 21, 2017, the Court approved the substitution and Jonathan Nielsen substituted for Rob Henning and Sam Brown as counsel of record for plaintiff. Dkt. 93. Nielsen avers that, as of the instant application, he had yet to receive the complete file from plaintiff’s prior counsel. Apparently, as of March 27, 2017, Nielson’s file was missing “several videotapes depositions and other documents and evidence provided by Plaintiff to her prior Counsel.” Dkt. 94, Declaration of Jonathan Nielsen (“Nielsen Decl.”) ¶ 11.

Nielsen evidently also had/has a “prepaid vacation scheduled from March 31, 2017, through April 12, 2017 . . . which has been scheduled for more than a year.” Id. ¶ 13. Nielsen also claims to have been seeking a mediation date with defendants, for which he was preparing. Id. ¶ 10. On March 27, 2017, defense counsel notified Nielsen

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that defendants would not agree to a mediation on March 30, 2017.¹ Id. At bottom, plaintiff’s ex parte application for a continuance rests upon his contention that he is missing portions of plaintiff’s file.² Plaintiff’s counsel argues that he has “no way of complying” with the Court’s deadlines without the complete file. Motion at 5. Plaintiff’s counsel explains:

Despite requesting the entire file, Plaintiff’s prior counsel has been unjustifiably slow in delivering the entire file. This has hindered the Plaintiff’s ability to properly prepare the pretrial documents and motions in limine. This delay coupled with Plaintiff Counsel’s upcoming vacation will make it nearly impossible to meet and confer with Defense Counsel to prepare the trial documents.

Id. at 6.

Plaintiff’s counsel does not purport to have an unavoidable scheduling conflict with the trial date, the pretrial conference date, or the date by which pretrial conference

¹ Plaintiff’s counsel avers that he had reason to believe the parties would meet for mediation on March 30, 2017. Defendants disagree and aver that counsel for Los Angeles Unified School District never represented that mediation would occur on March 30, 2017, unless other preconditions were met relating to plaintiff’s settlement offer. Dkt. 96, Declaration of Lucien Schmit (“Schmit Decl.”) ¶¶ 4-8. The Court need not resolve the parties’ dispute regarding the extent to which the parties’ agreed or did not agree to a mediation on March 30, 2017 – ongoing settlement discussions regularly coincide with preparation for trial. One party’s efforts at seeking settlement do not provide good cause for a continuance of the trial.

² Neither plaintiff’s counsel’s vacation, nor the parties’ failure to meet for mediation provide good cause for a continuance. With motions in limine due no later than April 3, 2017, plaintiff’s counsel was aware that, if mediation failed, he would be required to file any motions in limine no later than April 3, 2017, while he would be on vacation. Plaintiff’s counsel’s failure to plan for motions in limine while he traveled does not provide good cause for a continuance.

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documents are due.³ The only date for which plaintiff’s counsel has an actual conflict appears to be the date by which motions in limine were to be filed, April 3, 2017, during which plaintiff’s counsel had vacation plans. However, counsel’s travel plans do not provide good cause for a continuance of the motions in limine date or the trial. Plaintiff’s counsel knew or should have known the scheduled trial date prior to substituting into this action and was also aware of his travel plans when he accepted plaintiff’s representation.

As defendants point out, plaintiff’s counsel does not purport to be missing the transcripts of the depositions at issue, nor does he explain what other evidence is missing from the file he obtained from plaintiff’s prior counsel. Plaintiff elected to substitute counsel and should have been assured that counsel was aware of the scheduling order and could satisfy its requirements. Plaintiff’s new counsel agreed to substitute in and failed to disclose his vacation or that there was a possibility that he would seek a continuance. “To find good cause simply on the basis of new counsel would be to allow a party to manufacture good cause at any time simply by switching counsel.” Alexander v. Westbury Union Free Sch. Dist., 829 F. Supp. 2d 89, 118 (E.D.N.Y. 2011) (quotation marks omitted). The same principle applies here. Present or prior counsel’s errors in managing plaintiff’s documents and files do not present good cause for continuing the trial because they are uniquely within one party’s control. Accordingly, plaintiff’s motion to continue the trial is **DENIED**.

IT IS SO ORDERED.

Initials of Preparer 00 00
CMJ

³ Because the pretrial conference is April 24, 2017, pretrial conference documents are due no later than April 13, 2017.