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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EDWINA PINON, individually and on behalf
of all persons similarly situated,

Plaintiff,

v.

TRISTAR PRODUCTS, INC.,

Defendant.

Case No. 1:16 -cv-00331-DAD-SAB

ORDER DENYING EX PARTE
APPLICATION TO AMEND SCHEDULING
ORDER AND REQUIRING PLAINTIFF TO
FILE A NOTICED MOTION

(ECF No. 45)

On May 16, 2017, Plaintiff filed an ex parte application to amend the scheduling order so she can file an amended complaint. In the application, Plaintiff states that Defendant likely will not oppose the motion but would not stipulate to the filing of the amended complaint because the deadline to file an amended complaint was past.

Plaintiff's application to amend the scheduling order is an inappropriate use of an ex parte application. "The expression 'ex parte motion' is a term of art. In its pure form it means a request a party makes to the court without any notice to the other side." Mission Power Eng'g Co. v. Cont'l Cas. Co., 883 F. Supp. 488, 490 (C.D. Cal. 1995). "Ex parte relief is generally disfavored when relief may be had through a regularly noticed motion." Hufnagle v. Rino Int'l Corp., No. CV 10-08695 DDP VBKX, 2012 WL 6553743, at *1 (C.D. Cal. Dec. 14, 2012). The Local Rules of the Eastern District recognize limited situations in which ex parte applications

1 may be filed: ex parte motions to extend time where the a stipulation cannot reasonably be
2 obtained as where a defendant has not been served or where there is an application to shorten
3 time (L.R. 144 (c) (e); injunctive relief (L.R. 231); and default judgment (L.R. 540). Plaintiff's
4 request does not fall within any of these situations. Consistent with the Local Rules, the process
5 by which the Court could entertain such requests would be to for a party to file a motion to
6 amend the scheduling order and submit with that motion an application for an order shortening
7 time to hear the matter, with notice to the opposing party, and on good cause. To the extent that
8 the motion needs to be heard on shortened time due to the pending deadline to file a motion for
9 class certification, Plaintiff is directed to Local Rule 144(e). Alternatively, the parties may
10 stipulate to amend the scheduling order.

11 Accordingly, Plaintiff's ex parte application to amend the scheduling order is HEREBY
12 DENIED without prejudice. Plaintiff shall file a noticed motion or the parties may seek to
13 amend the scheduling order by stipulation.

14 IT IS SO ORDERED.

15 Dated: May 17, 2017

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18 UNITED STATES MAGISTRATE JUDGE
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