

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Manuel Fausto, et al.,

Plaintiffs,

v.

Credigy Services Corp., et al.,

Defendants.

NO. C 07-05658 JW

**ORDER GRANTING THE CREDIGY
DEFENDANTS' EX PARTE
APPLICATION TO MODIFY THE
SCHEDULING ORDER**

Presently before the Court is Defendants Credigy Services Corp., Credigy Receivables, Inc. and Credigy Solutions, Inc.'s (collectively, "Defendants") *Ex Parte* Application to modify the Court's March 28, 2008 Scheduling Order. (hereafter, "Application," Docket Item No. 153.) Defendants seek to modify the Court's March 28, 2008 Scheduling Order only to change the last date for hearing dispositive motions to December 29, 2008. (Application at 1.)

On March 28, 2008, the Court issued a Scheduling Order setting December 1, 2008 as the last date for hearing dispositive motions. (See Scheduling Order at 1, Docket Item No. 20.) Under the December 1, 2008 deadline, the parties will have to file, notice and serve their motions no later than October 27, 2008 in order to comply with the Civil Local Rules. See Civ. L.R. 7-2(a). The parties are currently scheduled to appear for a final pretrial conference on February 9, 2009 and a trial is scheduled to begin on March 4, 2009. (See Preliminary Pretrial Conference Order at 1, Docket Item No. 141.)

Under Fed. R. Civ. P. 16(b)(4), a court may modify its Scheduling Order for "good cause" shown. Here, Defendants contend that good cause exists to modify the last date for hearing dispositive motions because, even though discovery was scheduled to close on October 13, 2008,

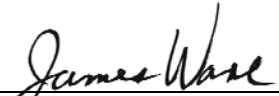
1 discovery will remain open until at least October 23, 2008, a few days before dispositive motions
2 must be filed. Defendants have been ordered to make several witnesses available for depositions no
3 later than October 23, 2008. (Order Granting in Part and Denying in Part Motion to Compel, Docket
4 Item No. 150.) Additionally, a hearing on a motion to quash a subpoena issued by Defendants is not
5 set to be heard until November 5, 2008.

6 Plaintiffs have filed a timely opposition to Defendants' motion. (Plaintiffs' Memorandum in
7 Opposition to Defendants' *Ex Parte* Motion and Motion to Modify Deadline for Hearing on
8 Dispositive Motions in Scheduling Order at 2, hereafter, "Opposition," Docket Item No. 156.)
9 Plaintiffs first contend that Defendants will not be prejudiced by the December 1, 2008 deadline for
10 filing dispositive motion because most of the outstanding discovery is in the control or possession of
11 Defendants. The Court finds this argument unpersuasive since the outstanding discovery may be
12 material to Defendants' dispositive motions.

13 Second, Plaintiffs contend that the need for more time is of Defendants' own making and
14 should therefore be denied. (Opposition at 2.) Since the only date to be modified is the last date for
15 hearing dispositive motions, and the Magistrate Judge's order compelling further discovery was not
16 issued until October 3, 2008, the Court finds that Defendants' request is made in good faith. In
17 addition, Plaintiffs fail to establish that they will suffer any substantial prejudice as a result of the
18 modification requested by Defendants. Thus, the Court finds that good cause exists to modify the
19 deadline for hearing dispositive motions.

20 Accordingly, the Court GRANTS Defendants' Application to Modify the Scheduling Order.
21 The last date for hearing dispositive motions is **January 26, 2009**.¹ The Court will not entertain any
22 further requests for modification of the Scheduling Order.

23
24 Dated: October 21, 2008



JAMES WARE
United States District Judge

25
26 _____
27 ¹ The Court extends Defendants' request from December 31, 2008 to this date because of the
28 Court's unavailability.

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

- 2 Balam Osberto Letona letonalaw@gmail.com
- 3 David Humphreys david@hwh-law.com
- 4 David J. Kaminski kaminsk@cmtdlaw.com
- 5 Jeffrey A. Topor jtopor@snllp.com
- 6 Lucius James Wallace luke@hwh-law.com
- 7 Ronald Wilcox ronaldwilcox@post.harvard.edu
- 8 Tomio Buck Narita tnarita@snllp.com

9 **Dated: October 21, 2008**

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28