Ma v. RSM McGladrey, Inc. et al Doc. 75

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

LI DONG MA, Plaintiff, v. RSM MCGLADREY, INC., et al., Defendants	Case Number C 08-1729 JF (PVT) **ORDER[1] DENYING PLAINTIFF'S MOTION FOR ADMINISTRATIVE RELIEF**

At a case management conference on May 8, 2009, the Court set a case schedule that included a deadline of February 9, 2010, for filing of Plaintiff's motion for class certification. A hearing on the class certification motion was set for May 17, 2010. Plaintiff has yet to file her motion to certify the class. On April 16, 2010, Plaintiff filed a motion for administrative relief and a request to set a new case schedule. Defendants filed opposition on April 20, 2010. Under Local Rule 7-11(c), the administrative motion is appropriate for determination without a hearing.

Plaintiff's administrative motion is brought pursuant to Fed. R. Civ. P. 6(b)(1)(B) and Local Rules 6-3 and 7-11. Plaintiff argues that her failure to file the class certification motion in accordance with the established schedule was the result of a good faith mistake caused when one

[1] This disposition is not designated for publication in the official reports.

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of her attorneys changed firms. Plaintiff also contends that Defendants have refused to produce discovery necessary to the class certification motion.

Defendants point out that Plaintiff has three attorneys and argue that the fact that one of the attorneys changed firms is insufficient to warrant relief from the class certification schedule. Defendants also maintain that even if Plaintiff's failure to adhere to the briefing schedule is the result of excusable neglect, Plaintiff has failed to pursue discovery diligently. According to Defendants, Plaintiff sought no discovery between January 2009 and March 2010, and Plaintiff's deposition notices, which were not served until March 12, 2010, purported to set depositions for April 9, 2010, the date Plaintiff purportedly mistook for the class certification filing deadline.[2]

Based on the record before it, the Court concludes that Plaintiff has failed to show good cause for relief. However, two motions to compel Defendant to produce discovery currently are pending before Magistrate Judge Trumbull. Because it is conceivable that Judge Trumbull could find that Defendants' actions with respect to discovery may have affected Plaintiff's ability to move for class certification in a timely manner, the Court will deny the instant motion without prejudice.[3]

IT IS SO ORDERED

DATED: 4/27/10

JEREMY FOGEL
United States District Judge

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[2]Defendant also objects to the instant administrative motion on procedural grounds. In light of the disposition of the motion, the objections are moot.

[3]Defendant's motion to dismiss Plaintiff's class action claims is set for hearing on May 14, 2010. To the extent that denial of that motion would affect the parties' arguments with respect to rescheduling the motion for class certification, the Court will address the issue at the appropriate time.