

1 \*E-Filed: March 24, 2014\*

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7 NOT FOR CITATION  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 MARTIN DELGADO, ET AL.,

No. C10-02799 HRL

12 Plaintiffs,

13 v.

**ORDER DENYING PLAINTIFFS' EX  
PARTE MOTION TO EXTEND  
DISCOVERY DEADLINE; ORDER ON  
DDJR #1**

14 MARIA DEANDA, ET AL.,

15 Defendants.

[Re: Docket Nos. 79, 82]

16 \_\_\_\_\_  
17 Plaintiffs sue the owners of Guadalajara Market for alleged violations of various state and  
18 federal employment laws. Default was entered against Defendants in November 2010. After the  
19 court issued an Order to Show Cause why the case should not be dismissed, Plaintiffs moved for  
20 default judgment in October 2011. The motion was granted, but the judgment was set aside in  
21 December 2012 and the case reopened. In March 2013, the then-presiding judge granted in part  
22 Plaintiffs Administrative Motion to Allow Limited Discovery Before Initial Case Management  
23 Conference, and discovery has been open since. In October 2013, the court set a fact discovery  
24 cutoff date of February 14, 2014. On the cutoff date, Plaintiffs filed the instant Ex Parte Motion to  
25 Extend Discovery Deadline to request a 60 day extension. *See* Dkt. No. 79. One week later,  
26 Defendants opposed the motion and filed Discovery Dispute Joint Report #1 ("DDJR #1") seeking  
27 an order to compel depositions and production of documents. *See* Dkt. Nos. 80, 82. DDJR #1  
28 contained only two paragraphs from Plaintiffs, who filed a Supplemental Report on DDRJ #1 five

1 days later. For the reasons discussed below, Plaintiffs’ motion is denied, and Defendants’ request  
2 for an order to compel is granted.

3 **BACKGROUND**

4 At the parties’ request during the October 2013 Case Management Conference, the Court  
5 ordered that a settlement conference be held by January 13, 2014. Counsel soon began exchanging  
6 emails to agree on a time. Plaintiffs’ counsel expressed some concern that if they waited too long,  
7 there would not be enough time to conduct discovery before the February 14 cutoff. Defendants’  
8 counsel agreed, but asked that they consider all available dates through the January 13 deadline due  
9 to his busy travel schedule. The parties scheduled a settlement conference for December 16, but it  
10 was continued after Plaintiffs’ counsel injured himself the day before. The settlement conference  
11 was finally held on January 13, but the case did not settle.

12 Two days later, on January 15, Defendants sent two discovery requests by messenger to the  
13 office of Plaintiffs’ counsel. The first was a Notice of Taking of Deposition of Plaintiff Martin  
14 Delgado and Request for Production of Documents (“Delgado Request”), which set the deposition  
15 and production date for February 13, 2014. The second was a Notice of Taking of Deposition of  
16 Plaintiff Angel Martinez and Request for Production of Documents (“Martinez Request”) which set  
17 the date for February 14, 2014. On February 12, a secretary in Defendants’ counsel’s office called  
18 Plaintiffs’ counsel to confirm the depositions. Instead, Plaintiffs’ counsel advised that he was  
19 unavailable and that Plaintiffs would not attend their depositions. Two days later, Plaintiffs moved  
20 to extend the discovery deadline by 60 days.

21 **DISCUSSION**

22 **A. Ex Parte Motion to Extend Discovery Deadline**

23 Pursuant to Rule 16(b), the court must issue a scheduling order which limits the time to  
24 complete discovery. Fed. R. Civ. P. 16(b)(1), (3)(a). “A schedule may be modified only for good  
25 cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard  
26 primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth*  
27 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).  
28

1 Plaintiffs assert that while they have been diligent, it is defendants who insisted that the  
2 settlement conference be delayed and that discovery be postponed until the settlement conference  
3 was complete. Then, an unfortunate injury kept Plaintiffs' counsel out of office through January.  
4 Thus, there is good cause to extend the discovery cutoff.

5 However, as Defendants' correctly point out, the emails attached to Plaintiffs' motion do not  
6 support their assertions. In the emails, Defendants' counsel merely suggests checking all available  
7 settlement conference dates within the 90 day period because of his busy travel schedule. But he  
8 also agreed that "[e]arlier better than later," and nowhere did he suggest putting off discovery. More  
9 importantly, however, Plaintiffs have not propounded a single discovery request throughout the  
10 entirety of the case, not even after being granted expedited discovery over year ago. Plaintiffs  
11 cannot be deemed to have been sufficiently diligent to demonstrate good cause to modify the Case  
12 Management Scheduling Order where they failed to engage in any discovery for the entire year it  
13 was open. Accordingly, Plaintiffs' motion is denied.

14 **B. Discovery Dispute Joint Report #1**

15 "A party who wants to depose a person by oral questions must give reasonable written notice  
16 to every other party." Fed. R. Civ. 30(b)(1). "The notice to a party deponent may be accompanied  
17 by a request under Rule 34 to produce documents and tangible things at the deposition." Fed. R.  
18 Civ. P. 30(b)(2). "The party to whom the [Rule 34] request is directed must respond in writing  
19 within 30 days after being served." Fed. R. Civ. P. 34(b)(2)(A).

20 The Delgado Request was served on January 15, 2014, and set the deposition and production  
21 date for February 13, 2014, twenty-nine (29) days later. While this is certainly "reasonable written  
22 notice" for a deposition, it does not provide the requisite thirty (30) days to respond to a Rule 34  
23 request for production. However, while the insufficient notice may have excused Delgado's  
24 obligation to produce documents at the deposition, it did not excuse his duty to attend the deposition  
25 or respond to the requests for production within thirty (30) days. *See Schultz v. Olympic Medical*  
26 *Center*, No. C07-5377 FDB, 2008 WL 3977523, at \*2 (W.D. Wash. Aug. 22, 2008) ("Due to the  
27 [less than thirty days' notice], Defendants simply had no duty to produce documents at [the]  
28 deposition. Defendants did, however, have the obligation to respond with the responsive documents


1 and/or written objections by the end of the thirty-day period.”). Delgado did not attend his  
2 reasonably noticed deposition, and he did not respond or object to the requests for production within  
3 thirty (30) days. Moreover, he failed to seek judicial relief or even meet and confer with opposing  
4 counsel. Accordingly, Defendants are entitled to an order compelling his deposition and production  
5 of documents.

6 The Martinez Request was served on January 15, 2014, and set the deposition and  
7 production date for February 14, 2014, thirty (30) days later. Thus, it was timely in all respects.  
8 Martinez’s failure to attend his deposition, respond or object to the requests for production, or seek  
9 judicial relief entitles Defendants to an order to compel.

10 Accordingly, within three (3) days of the date of this order, Defendants shall serve new  
11 notices of depositions and requests for documents for Delgado and Martinez to occur between ten  
12 (10) and fourteen (14) days from the date of this order. Defendants shall not make any substantive  
13 changes to the previous requests for production. Delgado and Martinez shall appear at their  
14 respective depositions with the requested documents and shall serve written responses or objections  
15 at least one day prior. The fact discovery cutoff is not extended except for this limited purpose.

16 **IT IS SO ORDERED.**

17 Dated: March 24, 2014

  
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HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

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**C10-02799 HRL Notice will be electronically mailed to:**

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