

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 11-cv-01138-REB-BNB

ROBERT LOPEZ, and
KELLI LOPEZ, individually, and as Guardians *ad litem* for SIERRA WINDHOLZ, a
minor,

Plaintiffs,

v.

DEL MONTE FRESH PRODUCE, N.A., INC., a foreign corporation,
PRODUCTS AGRICOLAS DE ORIENTE, S.A. a Guatemalan corporation,
COSTCO WHOLESALE CORPORATION, a foreign corporation, and
JOHN DOES 1-10,

Defendants.

**ORDER ADOPTING RECOMMENDATION OF
THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the following: (1) the parties' **Joint Motion for Extension of Case Schedule and To Continue Trial Date** [#56]¹ filed December 6, 2011; and 2) the **Recommendation of United States Magistrate Judge** [#59] filed December 7, 2011. I approve and adopt the recommendation of the magistrate judge and grant the parties' joint motion.

None of the parties filed objections to the recommendation. Thus, I review the recommendation only for plain error. **See *Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10th Cir. 2005). I have considered

¹ “[#56]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

carefully the recommendation, the record, and the applicable caselaw.

The United States Court of Appeals for the Tenth Circuit has prescribed four primary factors that should be considered to determine if a continuance is necessary.

See, e.g., Morrison Knudsen Corp. v. Fireman's Fund Ins. Co., 175 F.3d 1221, 1230 (10th Cir. 1999) (citing **U.S. v. West**, 828 F.2d 1468, 1469 (10th Cir. 1987) (listing factors)). The key relevant factors are:

(1) the diligence of the party requesting the continuance; (2) the likelihood that the continuance, if granted, would accomplish the purpose underlying the party's expressed need for the continuance; (3) the inconvenience to the opposing party, its witnesses, and the court resulting from the continuance; [and] (4) the need asserted for the continuance and the harm that [movant] might suffer as result of the district court's denial of the continuance.

United States v. Rivera, 900 F.2d 1462, 1475 (10th Cir. 1990) (quoting **United States v. West**, 828 F.2d 1468, 1470 (10th Cir. 1987)).

For reasons described in the motion, the plaintiffs have not been able to serve defendant Productos Agrícolas de Oriente, S.A., a Guatemalan corporation. Service of this defendant has taken some time, despite the plaintiffs' reasonably diligent efforts to serve this defendant. Applying the **West** factors, I conclude as follows. All parties to this case have proceeded with reasonable diligence. Given the difficulty of serving defendant Productos Agrícolas de Oriente, S.A., a Guatemalan corporation, adjustment of the discovery schedule and continuance of the trial date will serve the purpose of achieving a fair and efficient resolution of the claims at issue in this case.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#59] filed December 7, 2011, is **APPROVED** and **ADOPTED** as an order of this court;
2. That the parties' **Joint Motion for Extension of Case Schedule and To**

Continue Trial Date [#56] filed December 6, 2011, is **GRANTED** on the terms stated in the recommendation and this order;

3. That the Trial Preparation Conference currently set for May 18, 2012, and the trial set to commence on June 4, 2012, both are **VACATED** and **CONTINUED**, pending further order of court;


4. That counsel **SHALL CONTACT** the court's administrative assistant, **Susan Schmitz**, at (303) 335-2350 on **January 23, 2012, at 9:30 a.m.**, to reschedule the Trial Preparation Conference and trial;

5. That the magistrate judge **SHALL ISSUE** a revised scheduling order specifying new deadlines for discovery, dispositive motions, and expert disclosures, consistent with the revised schedule outlined in the recommendation [#59]; and

6. That the **Trial Preparation Conference Order** [#25] filed June 22, 2011, is **AMENDED** to the extent necessary to facilitate and implement these orders, but is ratified otherwise.

Dated December 28, 2011, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge