

IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF HAWAII

JJCO, INC., dba JACKSON	)	CIVIL NO. 08-00419 SOM-LEK
ISUZU, a Hawaii corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ISUZU MOTORS AMERICA, INC., a	)	
Michigan corporation, et al.,	)	
	)	
Defendant.	)	
_____	)	

**ORDER GRANTING IN PART AND DENYING IN PART  
 DEFENDANT’S MOTION TO EXTEND PRETRIAL DEADLINES**

Before the Court is Defendant Isuzu Motors America, Inc.’s Motion to Extend Pretrial Deadlines (“Motion”), filed on August 12, 2009. Plaintiff JJCO, Inc. dba Jackson Isuzu (“Plaintiff”) filed its memorandum in opposition on August 20, 2009. This matter came on for hearing on September 4, 2009. Present at the hearing were Dennis W. King, Esq. and Paul Herran, Esq., counsel for Plaintiff, and Joseph Stewart, Esq., counsel for Defendant. After careful consideration of the Motion, supporting and opposing memoranda, argument by counsel and the relevant legal authority, the Court hereby GRANTS IN PART AND DENIES IN PART the Motion for the reasons set forth below.

**BACKGROUND**

The facts of this diversity action have been previously and thoroughly set forth in the Order Denying Plaintiff’s Motion

for Partial Summary Judgment, filed May 22, 2009, and therefore this Court will not repeat the same here, except as may be relevant to the instant Motion.

On December 15, 2008, the Court filed its Rule 16 Scheduling Order ("Scheduling Order") in this matter. The relevant deadlines in the Scheduling Order are as follows: (I) jury trial to commence January 12, 2010, (ii) other non-dispositive motions, except for motions in limine and discovery motions, shall be filed by October 14, 2009, (iii) dispositive motions shall be filed by August 12, 2009, and (iv) expert witness disclosure deadline for Plaintiff, July 13, 2009, and for Defendant, August 12, 2009.

In the instant Motion, Defendant seeks to amend the Scheduling Order to extend the deadline for (I) filing of non-dispositive motions from October 14, 2009 to October 19, 2009, (ii) filing of dispositive motions from August 12, 2009 to October 5, 2009, and (iii) Defendant's expert witness disclosures from August 12, 2009 to September 28, 2009. Defendant contends that there is good cause to extend the requested deadlines on the basis that there has been a delay by Plaintiff in responses to Defendant's discovery requests and making witnesses available for depositions. Defendant also contends that Plaintiff recently supplemented its discovery responses and changed the calculation of damages that Plaintiff now seeks.

In its opposition, Plaintiff disputes that it has delayed providing discovery responses or making witnesses available for depositions. Plaintiff asserts that Defendant has simply failed to diligently engage in discovery and that the instant request to extend certain pretrial deadlines does not meet the standard of good cause required to so amend. Plaintiff acknowledges that it made a minor modification to its expert's report by reducing one portion of future damages, but contends that such modification does not constitute a reason to extend the Defendant's expert disclosure deadline.

#### **DISCUSSION**

A scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). The good cause inquiry focuses on the diligence of the party seeking to modify the scheduling order; if the party seeking the modification was not diligent, the court should deny the motion. See Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002). "The pretrial schedule may be modified 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" Id. (quoting Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)).

The Court finds good cause to extend the non-dispositive motions deadline from October 14, 2009 to October 19, 2009. The Court notes that the recent discovery in this case has

been vigorously contested and that the five day extension will not impact any of the other deadlines in the Scheduling Order or otherwise prejudice Plaintiff. The Court further finds good cause to extend Defendant's expert disclosure deadline from August 12, 2009 to September 28, 2009, but only to the extent such expert disclosure relates to the modification of damages as set forth in the amended answer to Interrogatory Request No. 14 of Plaintiff's First Supplemental Response to Defendant Isuzu Motors America, Inc.'s First Request for Answers to Interrogatories to Plaintiff JJCO, Inc., dba Jackson Isuzu dated June 2, 2009. The Motion is denied in all other respects, including Defendant's request to extend the dispositive motions deadline.<sup>1</sup>

**CONCLUSION**

On the basis of the foregoing, Defendant's Motion to Extend Pretrial Deadlines, filed August 12, 2009, is HEREBY GRANTED IN PART AND DENIED IN PART.

IT IS SO ORDERED.

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<sup>1</sup> The Court notes that Plaintiff has filed a Motion to Amend the Complaint that is to be heard on September 29, 2009, and to the extent such motion is granted, new Scheduling Order deadlines may be forthcoming.

DATED AT HONOLULU, HAWAII, September 9, 2009.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States Magistrate Judge

**JJCO, INC. V. ISUZU MOTORS AMERICA, INC., ET AL; CIVIL NO. 08-00419 SOM-LEK; ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO EXTEND PRETRIAL DEADLINES**