

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BLACKWELL PUBLISHING, INC.,
ELSEVIER, INC.,
OXFORD UNIVERSITY PRESS, INC.,
SAGE PUBLICATIONS, INC., and
JOHN WILEY & SONS, INC.,

Civil Action No. 07-CV-12731

Plaintiffs,

Hon. Avern Cohn

vs.

Mag. Morgan

EXCEL RESEARCH GROUP, LLC d/b/a
EXCEL TEST PREPARATION,
COURSEPACKS, & COPIES and
NORMAN MILLER, individually,

Defendants.

**PLAINTIFFS' UNOPPOSED MOTION FOR AMENDMENT OF PRETRIAL
AND SCHEDULING ORDER**

Plaintiffs hereby move that the Court grant an extension of the discovery period in this case, from September 12, 2008 to December 12, 2008, and reset the other dates in its Pretrial and Scheduling Order. Defendants' counsel of record have advised undersigned counsel that they do not oppose this motion.

As grounds for this motion plaintiffs state as follows:

1. On May 9, 2008, the Court issued a Pretrial and Scheduling Order, stating that discovery in this action was to be completed by September 12, 2008.
2. Shortly thereafter the parties communicated with each other to work out a schedule for the production of documents and other discovery.

3. In early July, 2008, before any document production or depositions had taken place, one of the parties initiated settlement discussions, and the other party responded with interest. Both parties agreed that they should not incur the expense of discovery if it were possible to settle this case without it.

4. Over the course of the next five weeks the parties' counsel had numerous communications regarding the outlines of a settlement, although they did not reach agreement on terms. As of August 14, 2008, defendants' counsel had in hand from plaintiffs' counsel a proposal and a request for certain relevant information.

5. On September 9, 2008, having not heard from defendants' counsel, plaintiffs' counsel sent an email inquiring about the status of their negotiations. Defendants' counsel, Alan Harris, replied by email that he expected to hear from defendants "in the next day."

6. On September 11, 2008, defendants' counsel advised plaintiffs' counsel by telephone that the relationship with their client had broken down to the point where it would be necessary for them to move to withdraw.

7. Defendants' counsel have now in fact moved to withdraw.

8. Given the situation just described, the chances of settlement are impossible to evaluate and it must be presumed that settlement is not possible at this time.

9. As of this date, there are outstanding, and unanswered, document production requests by both parties and interrogatories by defendants. No depositions have occurred.

10. Although discovery in this case is not expected to be extensive, if defendants' counsel's motion to withdraw is granted, defendants will presumably require

some time to obtain new counsel. New counsel, once retained, will need time to familiarize themselves with the case. In any event, it seems unlikely that the parties will be able to agree on a schedule for discovery until early October.

WHEREFORE plaintiffs respectfully request that the Court amend its Pretrial and Scheduling Order so as to extend the discovery period through December 12, 2008, and reset all other dates commensurate with such extension.

BRIEF IN SUPPORT

Plaintiffs rely upon the averments as stated in their Unopposed Motion for Amendment of Pretrial and Scheduling Order.

On May 9, 2008, the Court issued a Pretrial and Scheduling Order, stating that discovery in this action was to be completed by September 12, 2008. Before any document production or depositions had taken place, one of the parties initiated settlement discussions, which have been ongoing. The parties jointly decided to focus their attention on settling the case rather than incur the time and expense of discovery. As recently as September 9, 2008, plaintiffs' counsel expected to hear from defendants' counsel regarding their settlement proposal. However, settlement efforts have now ended, at least for the time being, due to the motion of plaintiffs' counsel to withdraw from their representation.

Due to their decision to focus on settlement efforts, the parties have not completed discovery in the originally allotted time frame. Settlement having eluded them at least for the time being, plaintiffs now seek a new scheduling order that will give them three months to complete discovery. Given that defendants' counsel have now moved to withdraw, that as of this date there are outstanding discovery requests by both parties, and that defendants will presumably require some time to obtain new counsel, it seems unlikely that the parties will be able to agree on a schedule for discovery until early October. Therefore, the time actually available for discovery is likely to be much nearer two months than three.

Pursuant to Local Rule 7.1(a), plaintiffs' counsel sought the concurrence of Defendants' counsel of record regarding their Motion for Amendment of Pretrial and

Scheduling Order. Defendants' counsel of record advised plaintiffs' counsel they will not oppose this motion.

Plaintiffs request that this Court grant their Unopposed Motion for Amendment of Pretrial and Scheduling Order so as to extend the discovery period through December 12, 2008, and reset all other dates commensurate with such extension.

Respectfully submitted,

BLACKWELL PUBLISHING, INC.,
ELSEVIER, INC.,
OXFORD UNIVERSITY PRESS, INC.,
SAGE PUBLICATIONS, INC.,
JOHN WILEY & SONS, INC.,

Plaintiffs,

By their Attorneys:

KOTIN, CRABTREE & STRONG LLP

Dated: September 12, 2008

By: /s/ William S. Strong
/s/ Amy C. Mainelli Burke
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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2008, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to the following:

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