

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EDGARDO DIAZ,	:	
	:	
Plaintiff,	:	<u>ORDER</u>
	:	
-v.-	:	18 Civ. 4910 (ALC) (GWG)
	:	
NEW YORK PAVING INC.,	:	
	:	
Defendant.	:	
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**GABRIEL W. GORENSTEIN, United States Magistrate Judge**

The Court has reviewed the parties' joint letter (Docket # 285). The Court begins by noting that the undersigned is setting the deadlines only for pre-trial matters, not the scheduling of the trial. The trial will be scheduled by Judge Carter and likely only after the parties have filed the pre-trial order required by Section 4.A of his Individual Practices. Once the trial date is set by Judge Carter, those Individual Practices will govern the filing of any motions in limine and trial memoranda (see Section 4.B).

As for remaining pre-trial issues, all fact discovery closed almost 2 years ago, on June 30, 2021. See Docket # 206. No party has filed a motion to re-open to discovery since that time. The parties should proceed on the assumption that there will no further fact discovery.<sup>1</sup>

The parties remain under a duty to timely supplement any previous discovery responses as required by Fed. R. Civ. P. 26(e)(1)(A). Based on the statements defendant made in Docket # 278, the Court assumes that defendant has already supplemented their payroll records in accordance with this rule. If such is not the case, defendant shall produce the updated payroll records no later than June 30, 2023.

As to any other matter, if a party has reason to believe that the other side has not fulfilled the duty to supplement, the parties shall immediately confer to see if the problem can be resolved and, if it cannot, shall promptly bring the dispute to the Court's attention in compliance with paragraph 2.A of the Court's Individual Practices.

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<sup>1</sup> Obviously, a party is free at any time to move to re-open discovery by following paragraph 2.A of the Court's Individual Practices. The filing of any such motion, however, will have no effect on the schedule set forth below unless the Court orders otherwise. And, obviously, the fact that the Court has noted that a party is free to move to reopen discovery is not meant to indicate that such a motion would be either timely or meritorious.

With regard to expert discovery, the Court did not set an expert disclosure schedule when it issued its original scheduling order (Docket # 36), but at the Rule 16 conference instructed the parties to seek an extension before the end of fact discovery if either side intended to use an expert at trial. See Docket # 43 at 14. The Court reads the parties' joint letter as indicating that both sides agree that an expert disclosure schedule should now be set.

Finally, the Court will not delay the deadline for the submission of the proposed class notice (or any other deadline) to account for the possibility that the pending motion to reconsider is successful. Any application to stay the issuance of the issuance of the class notice may be made to Judge Carter at the time the proposed notice is submitted to him.

Accordingly, the Court sets the following deadlines for this matter:

1. Plaintiffs to provide defendant with draft Class Notice: June 30, 2023 (the parties shall thereafter attempt to agree on the form of the notice)
2. Class Notice to be submitted to Judge Carter for approval (either in consented-to form or with both sides' proposals): July 24, 2023
3. Plaintiffs to disseminate Class Notice: Within 7 days of Judge Carter's approval
4. Plaintiff's expert disclosures as required by Fed. R. Civ. P. 26(a)(2): July 14, 2023
5. Defendant's responsive disclosures: September 15, 2023
6. Expert depositions to be completed: September 29, 2023
7. Filing of joint pretrial order required by Section 4.A of Judge Carter's Individual Practices: October 20, 2023

SO ORDERED.

Dated: June 7, 2023  
New York, New York

  
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GABRIEL W. CORENSTEIN  
United States Magistrate Judge