

United States District Court
Southern District of Texas

ENTERED

August 22, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

EVARISTO GUTIERREZ,
Plaintiff,

v.

WAL-MART STORES, INC., WAL-
MART STORES TEXAS, LLC, and
WAL-MART STORES TEXAS, LP,
Defendants.

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Civil Action No. 1:17-cv-06

**ORDER ADOPTING MAGISTRATE
JUDGE’S REPORT AND RECOMMENDATION**

The present case arises from Evaristo Gutierrez’ (hereafter “Plaintiff”) slip-and-fall accident at a Wal-Mart store (hereafter “Defendants”). Plaintiff, in a diversity suit, seeks to recover damages from Defendants based on a premise liability cause of action. Before the court are the following: (1) the “Magistrate Judge’s Report and Recommendation” (hereafter “R&R”) (Docket No. 12), (2) the “Defendants’ Motion for Summary Judgment and Memorandum in Support Thereof” (hereafter “MSJ”) (Docket No. 11), and (3) the “Plaintiff’s Motion for Leave to File Late Opposition to Defendants’ Motion for Summary Judgment” (hereafter “Motion for Leave”) (Docket No. 13). In summary, the R&R recommends the granting of the Defendants’ MSJ.

To resolve the issues pending before the Court, it is necessary to detail the procedural errors committed by the Plaintiff’s attorneys. On June 15, 2017, Defendants filed their MSJ. Plaintiff’s response to said MSJ was due July 6, 2017; Plaintiff failed to respond. On July 18, 2017, the Magistrate Judge issued the R&R. On July 31, 2017, forty-six days after Defendants filed their MSJ, Plaintiff filed the Motion for Leave, on the basis that one of Plaintiff’s attorneys was on vacation from June 17, 2017, to June 21, 2017, and when said attorney returned from vacation, “he failed to follow up with his administrative assistant to ensure that Plaintiff’s response date was calendared.” Docket No. 13 at 1–2.

The Court finds that the Plaintiff’s attorneys’ justifications lack merit to warrant the granting of the Motion for Leave. The record indicates Plaintiff has three attorneys, not just one. Docket No. 4 at 2–3. The responsibility of timely filing Plaintiff’s response to the MSJ was

shared equally by all three Plaintiff's attorneys. Further, the one attorney's vacation lasted only four days, ending June 21, 2017, fifteen days before the response deadline. Plaintiff's Motion for Leave is **DENIED**.

Plaintiff's sole objection to the R&R is that the Magistrate Judge "has not yet considered the evidence submitted in opposition to Defendants' Motion for Summary Judgment." Docket No. 15 at 2. The Plaintiff's objection to the R&R is overruled.

After a *de novo* review of the entire record, the R&R is **ADOPTED**. The Clerk's Office is hereby **ORDERED** to close this case.

Signed on this 22nd day of August, 2017.



Rolando Olvera
United States District Judge