

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

CATALINO VILLEGAS, *et al.*,

Plaintiffs,

v.

GRACE DISPOSAL SYSTEMS, LLC D/B/A
ROYAL DISPOSAL & RECYCLING, *et al.*,

Defendants.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION H-13-320

ORDER

Pending before the court are (1) a motion for reconsideration filed by defendants Grace Disposal Systems, LLC d/b/a Royal Disposal and Recycling, Royal Disposal and Recycle, LLC, David Hanna, and Charles Gregory, III (collectively, “Defendants”) (Dkt. 20); (2) a motion to expedite the motion for reconsideration (Dkt. 22); (3) a motion for extension of time to comply with the court’s order regarding providing information about potential class members (Dkt. 23); and (4) a motion to expedite the motion for an extension of time (Dkt. 24). After considering the motions and applicable law, the court is of the opinion that the motion to expedite the motion to reconsider and the motion to reconsider should be GRANTED, and the other two motions should be DENIED AS MOOT.

I. BACKGROUND AND ANALYSIS

The court granted the plaintiffs’ motion for conditional certification of a class of individuals employed by Defendants as drivers and drivers’ helpers on October 25, 2013. Dkt. 19. The court considered the plaintiffs’ motion as unopposed under Local Rule 7.4 because Defendants did not file a response by the submission date. Dkt. 19; *see* S.D. Tex. L.R. 7.4 (“Failure to respond will be taken as a representation of no opposition.”). Defendants filed a motion to vacate the order or reconsider

the order on the same day the order was docketed. Dkt. 20. Defendants argue that the motion for conditional certification was set for *oral* submission on December 18, 2013. Dkt. 20.

Local Rule 7.5, which is entitled “Oral Submission,” states that the parties may request oral *argument* “as helpful to the Court.” S.D. Tex. L.R. 7.5.A. Additionally, “[w]hen oral presentation is required by the Court, counsel will be notified by the clerk of a date for oral presentation *irrespective of any submission day.*” S.D. Tex. L.R. 7.5B (emphasis added). The scheduling order in this case contains a deadline for filing the motion, a deadline for discovery on the motion, and a date for the hearing. Dkt. 17. It does not contain a deadline for submission of the written response to the motion. *See id.* However, under the local rules, the deadline for written responses is twenty days after the motion is filed. S.D. Tex. L.R. 7.3-7.4. If a response is not filed by the submission day, it “will be taken as a representation of no opposition.” L.R. 7.4. If the court sets a hearing date, it is “irrespective of any submission day”; thus, it does not mean that the opposing party can disregard the twenty-day deadline for written submissions. In this case, the motion was submitted to the judge twenty days after it was filed, and because no response was submitted, the court considered the motion unopposed. The court expects oral presentations at scheduled hearings to *supplement* the written submissions, not be made in lieu of written submissions.

However, since Defendants misunderstood the interplay between the Local Rules and the scheduling order and are indeed opposed to conditional certification, the court will allow them additional time to respond. Defendants’ motion for reconsideration (Dkt. 20) is thus GRANTED.

II. CONCLUSION

The motion to expedite the motion to reconsider (Dkt. 22) is GRANTED. The motion to reconsider (Dkt. 20) is also GRANTED. The order granting conditional certification (Dkt. 19) is hereby WITHDRAWN. Defendants may file a response to the plaintiffs’ motion for conditional


certification on or before November 22, 2013. The plaintiffs may file a response within five days of the date of the response pursuant to the court's procedures.

The motion for an extension of time to comply with the order granting conditional certification (Dkt. 23) and the motion to expedite that motion (Dkt. 24) are hereby DENIED AS MOOT.

The hearing scheduled for December 18, 2013 is CANCELED. The court will set a hearing after the motion is fully briefed if a hearing is necessary.

It is so ORDERED.

Signed at Houston, Texas on October 29, 2013.



Gray H. Miller
United States District Judge