

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

RICHARD LOWERY,

Plaintiff,

v.

LILLIAN MILLS, *et al.*,

Defendants.

Case No. 1:23-cv-00129-DAE

PARTIES' JOINT MOTION TO ABATE/EXTEND CASE DEADLINES

RULE CV-7(G) STATEMENT

Counsel conferred and agreed to file this motion jointly.

INTRODUCTION AND BACKGROUND

The parties jointly request this Court extend all case deadlines by the amount of time necessary to resolve Defendants' soon-to-be-filed motion to dismiss the new claims in the amended complaint. During this time period, currently pending discovery may proceed, but no new discovery would occur.

There are approximately forty-five days until the close of the discovery period on May 1. Recently, however, Magistrate Judge Howell issued a Report and Recommendation that the District Court grant Plaintiff Richard Lowery's Motion for Leave to Amend and to Add Jay Hartzell as Defendant. Because both parties agree that much of the remaining discovery should not proceed until the Court rules upon this motion to dismiss, parties ask this Court to abate all case deadlines.

Magistrate Judge Howell recently recommended that the District Court grant Lowery's motion to amend his complaint. Dkt. 120. As part of this amendment, Lowery adds a new second count and joins UT's president, Jay Hartzell, as defendant. *Id.*

Neither party objects to Judge Howell's Report and Recommendation, but Defendants do intend to file a motion to dismiss as to the new claims in Lowery's Amended Complaint.

Counsel conferred and agreed that new discovery and new depositions should not be held until after this Court resolves Defendants' motion to dismiss.

STIPULATED REQUEST FOR RELIEF

The parties, therefore, jointly request that this Court abate all remaining case deadlines during the resolution of Defendants' motion to dismiss. Once this Court rules on that motion, parties will jointly file within two days a new proposed scheduling order, extending discovery 60 days from the Court's order resolving the motion to dismiss, and dispositive motions due a month from that date.

During the time period that discovery is paused, only the following pending discovery will proceed: (1) deposition of Richard Flores; (2) deposition of former UT employee Ivy Oliver (subject to any motion for protection she might file if she retains independent counsel); and (3) Defendants will respond to Plaintiff's Seventh Requests for Production and First Requests for Admission.

This Court has the discretionary authority to modify its scheduling orders "for good cause." FED. R. CIV. P. 16(b)(4). This "good cause" standard is "midway" in stringency, because "imposing too demanding a standard for changing [scheduling] orders would be unrealistic and could be counterproductive," leading to inefficiencies. 3 *Moore's Federal Practice - Civil* § 16.14[1][a] (2023). The party seeking an extension meets this standard if it shows that "the deadlines cannot

reasonably be met despite the diligence of the party needing the extension.”

Olivarez v. T-Mobile USA, Inc., 997 F.3d 595, 602 (5th Cir. 2021) (internal quotation omitted). Here, both parties agree that they cannot reasonably complete discovery under the current deadlines. Extending the deadlines ensures the “just, speedy, and inexpensive determination” of this proceeding. FED. R. CIV. P. 1.

CONCLUSION

The parties respectfully request that the Court grant the parties’ joint motion and abate all case deadlines for the period needed to resolve Defendants’ upcoming motion to dismiss and that the Court order the parties to jointly file a new proposed scheduling order, extending discovery 60 days from the Court’s order resolving the motion to dismiss, and making dispositive motions due a month from the close of discovery.

Respectfully submitted,

Dated: March 15, 2024

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