

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-CV-21199-CMA

ANDREA ROSSI, *et al.*,

Plaintiffs,

v.

THOMAS DARDEN, *et al.*,

Defendants.

**PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME
TO COMPLY WITH SCHEDULING ORDER [DE 23].**

Plaintiffs, Andrea Rossi and Leonardo Corporation (“Plaintiffs”), by and through their undersigned counsel, hereby move for a two (2) week enlargement of time from Tuesday, April 18, 2017 to Tuesday, May 2, 2017, for all parties to comply with the Court’s June 30, 2016 Order requiring that Joint Pre-Trial Stipulations, Proposed Jury Instructions and Verdict Forms, Proposed Findings of Fact and Conclusions of Law, and Motions in Limine be submitted by April 18, 2017. Plaintiffs state the following in support:

1. On June 30, 2016, the Court entered an Order Setting Trial and Pre-Trial Schedule, Requiring Mediation, and Referring Certain Matters to Magistrate Judge [DE 23] (the “Trial Order”).
2. The Trial Order requires the parties to, *inter alia*, submit joint pre-trial stipulations, proposed jury instructions and verdict forms, proposed findings of fact and conclusions of law, and motions *in limine* by April 18, 2017.
3. However, on March 24, 2017, Magistrate Judge O’Sullivan held that the corporate representative testimony given on behalf of Defendants IPH International, B.V. (“IPH”) and Cherokee Investment Partners (“Cherokee”) during their respective 30(b)(6) depositions was

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“insufficient,” and ordered that the depositions be retaken on or before April 7, 2017. *See* DE 218 at 1.

4. On or about April 5, 2017, Plaintiffs and Defendants mutually agreed to take the IPH and Cherokee 30(b)(6) depositions on April 12, 2017 and April 13, 2017, respectively.

5. On April 6, 2017, Plaintiffs served Defendants IPH and Cherokee with a Notice of Taking Rule 30(b)(6) Videotaped Depositions Upon Oral Examination.

6. On April 7, 2017, Defendants objected to the scope of Plaintiffs’ notices, unilaterally cancelled the noticed depositions, and set the matter for hearing before Magistrate Judge O’Sullivan on April 20, 2017 at 3:00 PM – two days after the Trial Order’s April 18, 2017 deadline.

7. Because Defendants IPH and Cherokee intentionally gave what Magistrate O’Sullivan deemed “insufficient” testimony during the course of their depositions and subsequently objected to and unilaterally cancelled their respective re-noticed depositions, Plaintiffs have been prejudiced in that they are unable to determine the scope of issues to be addressed in their Motions in Limine, Joint Pre-Trial Stipulation, and Jury Instruction and Verdict Forms. Plaintiffs have no way of knowing, for example, whether the re-noticed depositions will render certain issues of fact or law undisputed, narrow or expand the scope of the parties’ respective claims, or vary the exhibits to be used by one or more of the parties at trial.

8. As additional grounds for the requested extension of time, Plaintiff Andrea Rossi has recently undergone surgery on his throat, and is still in the process of recovering.

9. As final grounds for the requested extension of time, Plaintiffs note that the general deadline falls within certain important religious holidays, including Passover (April 11-18), Good Friday (April 14), and Easter (April 16).

10. As of the date of this filing, the parties have yet to exchange drafts of Pre-Trial Stipulations or Proposed Jury Instructions and Verdict Forms.

11. Given the above considerations, and so as to avoid prejudicing any party, Plaintiffs respectfully request that this Court enter an Order granting the parties a two (2) week enlargement of time, up through and including Tuesday, May 2, 2017 to file and serve their Joint Pre-Trial Stipulations, Proposed Jury Instructions and Verdict Forms, Proposed Findings of Fact and Conclusions of Law, and Motions in Limine, in accordance with the Court's Trial Order.

12. Defendants have agreed to the proposed extension with respect to the Joint Pre-Trial Stipulation, but object to the requested relief as to the other filings.

Memorandum of Law

Rule 6(b) of the Federal Rules of Civil Procedure provides in part:

When by these rules or by a notice given thereunder or by order of a Court an act is required or allowed to be done at or within a specified time, the Court for cause shown may, at any time in its discretion (1) with or without motion, or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rule 50(b) and (c)(2), 52(b), and (3) and 60(b), except to the extent and under the conditions stated in them.

The award of the requested enlargement of time for all parties to file and serve their Joint Pre-Trial Stipulation, Proposed Jury Instructions and Verdict Form, Proposed Findings of Fact and Conclusions of Law, and Motions in Limine constitutes a proper use of this Court's

discretion. Plaintiffs have requested the enlargement of time prior to the deadline specified by the Court's Trial Order.

Given the considerations reflected in paragraphs 1-12 *supra*, Plaintiffs require the two (2) week enlargement of time to properly develop, prepare, confer about, and file Joint Pre-Trial Stipulations, Proposed Jury Instructions and Verdict Forms, Proposed Findings of Fact and Conclusions of Law, and Motions in Limine. In light of these considerations, Plaintiffs respectfully submit that the Court's discretion is best utilized by granting the requested enlargement of time.

Dated: April 13, 2017

Respectfully submitted,

/s/ John W. Annesser

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Counsel for Plaintiffs

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(a)(3)

The undersigned counsel hereby certifies that, in compliance with Rule 7.1(a)(3), Federal Rules of Civil Procedure, that undersigned counsel has conferred with counsel for Defendants in a good faith effort to resolve by agreement the issues raised in this Motion. At the time of filing the present Motion, Defendants have neither agreed, nor objected, to the requested relief.

/s/Brian W. Chaiken, Esq.

Brian W. Chaiken

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 13, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. Copies of the foregoing document will be served upon interested counsel either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/John W. Annesser _____
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ANDREA ROSSI, *et al.*,

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Defendants.

**[PROPOSED] ORDER ON PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME
TO COMPLY WITH SCHEDULING ORDER [DE 23].**

Before the Court is Plaintiffs' Motion for Enlargement of Time to Comply with the Court's June 30, 2016 Order requiring that the parties' Joint Pre-Trial Stipulation, Proposed Jury Instructions and Verdict Form, Proposed Findings of Fact and Conclusions of Law, and Motions in Limine be submitted by April 18, 2017. After considering the Motion and finding that good cause exists for granting the same, the Court is of the opinion that Plaintiffs' Motion for Enlargement of Time should be **GRANTED**.

IT IS THEREFORE ORDERED that the parties hereto shall have a two (2) week enlargement of time from Tuesday, April 18, 2017 up through and including Tuesday, May 2, 2017 to file and serve their Joint Pre-Trial Stipulation, Proposed Jury Instructions and Verdict Form, Proposed Findings of Fact and Conclusions of Law, and Motions in Limine.

DONE and ORDERED in chambers, at Miami, Florida, on this ___ day of April, 2017.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record