

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MARK HORTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:17-CV-2324
	)	
MIDWEST GERIATRIC	)	
MANAGEMENT, LLC,	)	
	)	
Defendant.	)	

**SECOND JOINT MOTION TO MODIFY CASE MANAGEMENT ORDER**

COME NOW Plaintiff, Mark Horton (“Plaintiff”), and Defendant, Midwest Geriatric Management, LLC (“Defendant”) (Plaintiff and Defendant together, the “Parties”), by and through their respective undersigned counsel, and jointly request, pursuant to Fed. R. Civ. P. 16(b)(4), that the Court modify the current Case Management Order (“CMO”) to extend the remaining dates and deadlines. In support of this Motion, the Parties respectfully state:

1. On August 11, 2020, the Court entered a CMO, which provided, in relevant part, that: (i) all discovery be completed by April 30, 2021; (ii) all dispositive motions be filed by May 31, 2021; and (iii) that trial occur on October 4, 2021.<sup>1</sup> (Doc. 37.)

2. Following the entry of the CMO, Plaintiff filed his operative First Amended Complaint (Doc. 40) and Defendant filed its operative Answer and Affirmative and Additional Defenses to Plaintiff’s Complaint (Doc. 41).

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<sup>1</sup> Although the CMO also provided deadlines regarding expert witnesses and physical or mental examinations, the Parties agreed that no expert witnesses or physical or mental examinations were necessary in this case.

3. The Parties thereafter promptly served written discovery on each other, and have sought documents from various third parties as well.

4. On January 27, 2021, the Parties participated in good faith in a mediation with Francis X. Neuner, Jr. Unfortunately, the Parties did not achieve a settlement at mediation. (*See* Doc. 50.)

5. Following mediation, the Parties continued to engage in discovery, including by: (i) serving on each other meet-and-confer letters regarding outstanding written discovery issues; (ii) participating in lengthy telephone conferences regarding the same; and (iii) working on scheduling dates for various depositions.

6. On March 1, 2021, the Parties submitted a Joint Motion to Modify Case Management Order (Doc. 51), which was granted that same date (Doc. 52). The currently operative Amended Case Management Order provides, in relevant part, that: (i) all discovery be completed by August 30, 2021; (ii) all dispositive motions be filed by September 28, 2021; and (iii) that trial occur on January 3, 2022.<sup>2</sup> (Doc. 53.)

7. Since that date, the Parties have diligently worked cooperatively to resolve various discovery disputes, which have resulted in the production of voluminous documents. In addition, the Parties have worked to schedule a number of depositions of the Parties and their representatives.

8. Despite the Parties' efforts, the Parties believe that additional time, namely an additional 120 days, is necessary for the Parties to complete discovery, given the additional

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<sup>2</sup> Although the CMO also provides deadlines regarding expert witnesses and physical or mental examinations, the Parties agree that no expert witnesses or physical or mental examinations are necessary in this case.

discovery the Parties have identified as needing to be conducted and the delays caused by COVID-19, which has slowed the Parties' discovery efforts.

9. The Parties respectfully submit that their diligence in conducting discovery and in seeking the instant requested modification of the CMO—before the passage of any date or deadline sought to be extended—constitutes good cause, *see Harris v. FedEx Nat. LTL, Inc.*, 760 F.3d 780, 786 (8th Cir. 2014) (“The primary measure of good cause is the movant’s diligence in attempting to meet the [scheduling] order’s requirements.”), as well as exceptional circumstances warranting a modification of the current CMO. (*See* Amended CMO, Doc. 53, p. 1 (providing that the Amended CMO will be modified “only upon a showing of exceptional circumstances”)).

10. Accordingly, the Parties respectfully request that the Court modify the current CMO as follows:

- (a) That the current deadline of August 30, 2021 to complete all discovery be extended 120 days, to Tuesday, December 28, 2021;
- (b) That the current deadline of September 28, 2021 to file dispositive motions be extended 120 days, to Wednesday, January 26, 2022; and
- (c) That the current trial date of January 3, 2022 be continued to the next available setting for the Court 120 days after the current setting, *i.e.*, on a date on or after May 3, 2022.

WHEREFORE, the Parties respectfully request that this Court grant their Second Joint Motion to Modify Case Management Order, and for such other and further relief as the Court deems just and proper.

Dated: July 23, 2021

Respectfully submitted,

**MATHIS, MARIFIAN & RICHTER, LTD.    LEWIS RICE, LLC**

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*Attorneys for Defendant Midwest Geriatric  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on July 23, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of Missouri by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

*/s/Mark S. Schuver*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MARK HORTON,	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	No. 4:17-CV-02324-JCH
	)	
MIDWEST GERIATRIC MANAGEMENT,	)	
LLC,	)	
	)	
Defendant(s).	)	

**SECOND AMENDED CASE MANAGEMENT ORDER**

Pursuant to the Civil Justice Reform Act Expense and Delay Reduction Plan and the Differentiated Case Management Program of the United States District Court of the Eastern District of Missouri,

**IT IS HEREBY ORDERED** that the following schedule shall apply in this case, and will be modified only upon a showing of exceptional circumstances:

**I. SCHEDULING PLAN**

1. This case has been assigned to Track 2 (Standard).
2. All motions for joinder of additional parties or amendment of pleadings shall be filed no later than **September 2, 2020**.
3. Disclosure shall proceed in the following manner:
  - (a) The parties shall make all disclosures required by Rule 26(a)(1), Fed. R. Civ. P., no later than **September 1, 2020**.
  - (b) Plaintiff shall disclose all expert witnesses and shall provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **January 15, 2021**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **February 15, 2021**.
  - (c) Defendant shall disclose all expert witnesses and shall provide the reports required by Rule 26(a)(2), Fed. R. Civ. P., no later than **March 15, 2021**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **April 15, 2021**.

(d) The presumptive limits of ten (10) depositions per side as set forth in Rule 30(a)(2)(A), Fed. R. Civ. P., and twenty-five (25) interrogatories per party as set forth in Rule 33(a), Fed. R. Civ. P., shall apply.

(e) Requests for physical or mental examinations of parties pursuant to Rule 35, Fed. R. Civ. P., must be made no later than **March 1, 2021**, and any exam must be completed by **April 30, 2021**.

(f) The parties shall complete all discovery in this case no later than **December 28, 2021**.

(g) Motions to compel shall be pursued in a diligent and timely manner, but in no event filed more than eleven (11) days following the discovery deadline set out above.

4. Any motions to dismiss, for summary judgment, motions for judgment on the pleadings or, if applicable, any motion to exclude testimony pursuant to Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) or Kuhmo Tire Co. Ltd v. Carmichael, 526 U.S. 137 (1999), must be filed no later than **January 26, 2022**. Any response shall be filed no later than **February 28, 2022**. Any reply shall be filed no later than **March 14, 2022**. In the event dispositive motions are filed prior to the above specified date, the opposing party shall file a response thirty days after the filing of the dispositive motion. A reply may be filed ten (10) days after the filing of the response. Briefing of such motions shall be governed by E. D. Mo. L. R. 4.01.

## II. ORDER RELATING TO TRIAL

This action is set for a **JURY** trial on **May 3, 2022**, at **09:00 AM**. **This is a four- week docket, and the parties are expected to be ready and available for trial on the first day of the docket and thereafter on twenty-four hours notice. Parties should be prepared to select a jury prior to the trial date if called upon to do so by the Court.**

Pursuant to Local Rule 8.04 the court may tax against one or all parties the per diem, mileage, and other expenses of providing a jury for the parties, when the case is terminated or settled by the parties at a time too late to cancel the jury attendance or to use the summoned jurors in another trial, unless good cause for the delayed termination or settlement is shown.

**In this case, unless otherwise ordered by the Court, the attorneys shall, not less than twenty (20) days prior to the date set for trial:**

1. **Stipulation**: Meet and jointly prepare and file with the Clerk a JOINT Stipulation of all uncontested facts, which may be read into evidence subject to any objections of any party set forth in said stipulation (including a brief summary of the case which may be used on Voir Dire).

2. **Witnesses**:

(a) Deliver to opposing counsel, and to the Clerk, a list of all proposed witnesses,

identifying those witnesses who will be called to testify and those who may be called.

(b) Except for good cause shown, no party will be permitted to call any witnesses not listed in compliance with this Order.

3. **Exhibits:**

(a) Mark for identification all exhibits to be offered in evidence at the trial (Plaintiffs to use Arabic numerals and defendants to use letters, e.g., Pltf-1, Deft.-A, or Pltf Jones-1, Deft Smith-A, if there is more than one plaintiff or defendant), and deliver to opposing counsel and to the Clerk a list of such exhibits, identifying those that will be introduced into evidence and those that may be introduced. The list shall clearly indicate for each business record whether the proponent seeks to authenticate the business record by affidavit or declaration pursuant to Fed. R. Evid. 902(11) or 902(12).

(b) Submit said exhibits or true copies thereof, and copies of all affidavits or declarations pursuant to Fed. R. Evid. 902(11) or 902(12), to opposing counsel for examination. Prior to trial, the parties shall stipulate which exhibits may be introduced without objection or preliminary identification, and shall file written objections to all other exhibits.

(c) Except for good cause shown, no party will be permitted to offer any exhibits not identified or not submitted by said party for examination by opposing counsel in compliance with this Order. Any objections not made in writing at least ten (10) days prior to trial may be considered waived.

4. **Depositions, Interrogatory Answers, and Request for Admissions:**

(a) Deliver to opposing counsel and to the Clerk a list of all interrogatory answers or parts thereof and depositions or parts thereof (identified by page and line numbers), and answers to requests for admissions proposed to be offered in evidence. At least ten (10) days before trial, opposing counsel shall state in writing any objections to such testimony and shall identify any additional portions of such depositions not listed by the offering party which opposing counsel proposes to offer.

(b) Except for good cause shown, no party will be permitted to offer any interrogatory answer, or deposition or part thereof, or answer to a request for admissions not listed in compliance with this Order. Any objections not made as above required may be considered waived.

5. **Instructions:** Submit to the Court and to opposing counsel their written request for instructions and forms of verdicts reserving the right to submit requests for additional or modified instructions at least ten (10) days before trial in light of opposing party's requests for instructions. (Each request must be supported by at least one pertinent citation.).

6. **Trial Brief:** Submit to the Court and opposing counsel a trial brief stating the legal and factual issues and authorities relied on and discussing any anticipated substantive or procedural problems.

7. **Motions In Limine:** File all motions in limine to exclude evidence, and submit a

