

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.)	

PLAINTIFF’S MOTION TO MODIFY CASE MANAGEMENT ORDER

COMES NOW Plaintiff, Mark Horton (“Plaintiff”), by and through his undersigned counsel, pursuant to Fed. R. Civ. P. 16(b)(4), and requests that the Court modify the current Case Management Order (“CMO”) to extend the remaining dates and deadlines, and in support of said Motion respectfully states as follows:

1. On July 23, 2021, the Court entered its Second Amended CMO, which provided, in relevant part, that: (i) all discovery be completed by December 28, 2021; (ii) all dispositive motions be filed by January 26, 2022; and (iii) that trial occur on May 2, 2022.¹ (Doc. 56.)

2. The parties had jointly requested the entry of the Second Amended CMO following their good faith participation in a mediation, service of written discovery, service of third-party subpoenas, and resolution of numerous discovery disputes independently without court involvement.

¹ 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. Following the entry of the Second Amended CMO, the parties scheduled depositions and continued to receive and exchange documents from third parties pursuant to subpoenas.

4. Plaintiff's deposition was taken on October 14, 2021. The depositions of two key witnesses on behalf of the Defendant, Faye Bienstock and Judah Bienstock, were taken on October 27, 2021, and November 9, 2021, respectively.

5. During the depositions of Faye Bienstock and Judah Bienstock, additional information was discovered warranting the amendment of Plaintiff's Complaint to add additional parties and causes of action.

6. Filed contemporaneously herewith is Plaintiff's Motion for Leave to File Second Amended Complaint, which Plaintiff incorporates herein by reference.

7. As set forth in Plaintiff's Motion for Leave to File Second Amended Complaint, the information disclosed during the depositions of Faye Bienstock and Judah Bienstock gives rise to multiple additional claims, both against the Defendant MGM and against two third parties (Jobplex, Inc. and HireRight, LLC) retained by Defendant Midwest Geriatric Management, LLC ("MGM") and who directly participated in the events leading up to and including MGM's decision to withdraw the written job offer which Plaintiff had accepted.

8. During their depositions, the Bienstocks testified that they relied on certain information and communications from Jobplex, Inc., and HireRight, LLC, in deciding to withdraw Plaintiff's offer of employment.

9. This information was exclusively in the possession of Defendant MGM, Jobplex and HireRight, and was not disclosed to Plaintiff prior to the depositions, and was not discovered by Plaintiff until the depositions of the Bienstocks were recently completed.

10. The Bienstocks' depositions were completed well before the December 28, 2021, discovery deadline, and Plaintiff hereby seeks leave to amend within 10 days of the completion of the depositions giving rise to these newly discovered facts.

11. Plaintiff has therefore been diligent in attempting to meet the scheduling order's requirements, but an additional amendment to the scheduling order is necessary, despite Plaintiff's diligence. *See Ellingsworth v. Vermeer Mfg. Co.*, 949 F.3d 1097, 1100 (8th Cir. 2020) (good cause for amendment of scheduling order measured by movant's diligence in attempting to meet the scheduling order's requirements; good cause may be shown by pointing to newly discovered facts).

12. Plaintiff hereby requests additional time to permit the amendment of the Complaint, service on the third-parties, Jobplex, Inc. and HireRight, LLC, and an appropriate amount of time to permit discovery and depositions. Plaintiff reasonably believes that an additional 180 days is necessary to allow for the completion of these tasks.

13. Accordingly, Plaintiff respectfully requests that the Court modify the current CMO as follows:

- (a) That the current deadline of December 28, 2021, to complete all discovery be extended 181 days, to Monday, June 27, 2022;
- (b) That the current deadline of January 26, 2022, to file dispositive motions be extended 180 days, to Monday, July 25, 2022; and
- (c) That the current trial date of May 2, 2022, be continued to the next available setting for the Court 180 days after the current setting, *i.e.*, on a date on or after November 1, 2022.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant his Motion to Modify Case Management Order, and for such other and further relief as the Court deems just and proper.

Respectfully Submitted,

MATHIS, MARIFIAN & RICHTER, LTD.

By /s/Mark S. Schuver

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CERTIFICATE OF SERVICE

I hereby certify that, on November 19 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

