

**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.)	

**DEFENDANT MIDWEST GERIATRIC MANAGEMENT, LLC’S
MOTION FOR LIMITED MODIFICATION OF SCHEDULING ORDER**

COMES NOW Defendant Midwest Geriatric Management, LLC (“MGM”), by and through its undersigned counsel, and for its Motion for Limited Modification of Scheduling Order, states as follows:

1. Pursuant to the operative Second Amended Case Management Order (the “Scheduling Order”), discovery is set to close on December 28, 2021, motions for summary judgment are due on January 26, 2022, and trial is set for May 2, 2022. (*See* Dkt. 56.)

2. MGM now moves for a limited modification of the Scheduling Order, to accommodate timely noticed depositions that are, through no fault of MGM, likely to occur in January 2022.

A. Deposition of Plaintiff’s Husband, Alton Greenough

3. Over the past month,¹ counsel for MGM has attempted to schedule a deposition of Plaintiff Mark Horton’s (“Plaintiff”) husband, Alton Greenough.

¹ Party depositions occurred on October 14, 2021 (Plaintiff), October 27, 2021 (Faye Bienstock), and November 9, 2021 (Judah Bienstock).

4. Counsel for MGM has worked with counsel for Plaintiff, who is authorized by Mr. Greenough to produce Mr. Greenough for deposition, in this scheduling process.

5. Because of an accident in early November, Mr. Greenough has been unable to sit for a deposition. Counsel for the parties have been working cooperatively to schedule a date for Mr. Greenough's deposition, to accommodate his current medical situation.²

6. Given the intervening holidays and to avoid the potential for repeated motions with the Court in light of Mr. Greenough's likely evolving medical situation, MGM believes that Mr. Greenough's deposition can be accomplished within the next thirty (30) days.

B. Deposition of Plaintiff's Former Employer, Celtic Healthcare

7. On December 8, 2021, MGM served a subpoena on Celtic Healthcare, setting a corporate representative deposition to occur via Zoom on December 21, 2021.

8. An instructional letter was served along with the subpoena, directing Celtic Healthcare to contact counsel for MGM for Zoom information, and to discuss any scheduling issues Celtic Healthcare might have, given the holidays.

9. Celtic Healthcare ignored the subpoena and accompanying letter.

10. On December 20, 2021, MGM sent a correspondence via overnight certified mail to Celtic Healthcare regarding its refusal to comply with the subpoena and asking to be contacted by December 24, 2021 to discuss rescheduling the deposition.

11. Celtic Healthcare ignored MGM's December 20, 2021 correspondence as well.

² Given the evolving scheduling situation and the intervening holidays, counsel for MGM has not had an opportunity to correspond with counsel for Plaintiff regarding consent to the requested scheduling modification. MGM presumes, given the parties' scheduling discussions, that Plaintiff will not oppose the requested scheduling modification.

12. MGM anticipates filing an appropriate motion with the Court over the coming days regarding Celtic Healthcare's refusal to comply with the subpoena.³

13. MGM anticipates that Celtic Healthcare can be compelled to, and thereafter will, honor the subpoena and appear for deposition within sixty (60) days.

C. Requested Limited Modification of the Scheduling Order

14. Unlike Plaintiff's recent motions, which the Court denied on December 14, 2021 (Dkt. 61), MGM's instant Motion does not seek to assert new claims or defenses, does not seek to add additional parties, and does not seek to begin this litigation anew. Rather, MGM's instant Motion seeks only a limited modification of the schedule, solely to accommodate the depositions of Mr. Greenough and Celtic Healthcare. This limited extension would necessitate corresponding, brief extensions of the summary judgment deadline and the trial setting.

15. For the reasons discussed above, good cause and exceptional circumstances exist for the limited modification of the Scheduling Order sought by MGM. This modification is necessitated by circumstances outside of MGM's control. MGM timely sought to take the depositions at issue, but unexpectedly and through no fault of MGM, those depositions will not occur until January 2022. MGM is entitled to conduct these depositions and use this deposition testimony in its forthcoming summary judgment papers (and at trial, should a trial be necessary).

16. A proposed Third Amended Case Management Order is attached hereto and will be emailed to the Court's proposed orders email.

WHEREFORE, Defendant Midwest Geriatric Management, LLC respectfully requests that the Court grant this Motion; enter the proposed Third Amended Case Management Order; and grant such other and further relief as the Court deems just and proper.

³ The Scheduling Order provides that motions to compel must be filed within eleven (11) days of the close of discovery. (See Doc. 56.)

Dated: December 28, 2021

Respectfully submitted,

LEWIS RICE, LLC

/s/ Michael L. Jente

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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).)	

THIRD 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 **February 28, 2022**. **Discovery after December 28, 2021 shall be limited to the depositions of Alton Greenough and Celtic Healthcare.**

(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 **March 28, 2022**. Any response shall be filed no later than **April 27, 2022**. Any reply shall be filed no later than **May 11, 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 **August 8, 2022**, at **9:00 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

