

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

CARINA CANAAN and LEVI LANE,

Plaintiffs,

v.

CITY OF EL PASO,

Defendant.

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EP-16-CV-00132-DCG

ORDER

Pending before the Court are four motions: (a) two discovery motions, namely, Defendant City of El Paso's ("Defendant") "Motion for Protective Order" (ECF No. 54), filed on November 27, 2017, and Plaintiffs Carina Canaan and Levi Lane's (collectively "Plaintiffs") "Opposed Motion to Compel and Opposed Motion for Leave to File Out-of-Time Discovery Motion" (ECF No. 58) (hereinafter "Motion to Compel"), filed on December 6, 2017; (b) Defendant's "No Evidence and Traditional Motion for Summary Judgment" (ECF No. 57) (hereinafter "Motion for Summary Judgment"), filed on December 4, 2017; and (c) Plaintiffs' "Opposed Motion to Modify by Continuance of All Dates, Including Trial" (ECF No. 56) (hereinafter "Motion to Continue Trial") filed on December 4, 2017.

The Court issued a Scheduling Order (ECF No. 21) on November 16, 2016. Later, on May 24, 2017, at the parties' request, the Court issued an Amended Scheduling Order (ECF No. 46), wherein the Court vacated certain deadlines in the initial Scheduling Order (items numbered 7 through 15), including the trial setting, and in lieu thereof, set new deadlines. According to the Amended Scheduling Order, this case is currently set for a jury trial on March 19, 2018; further, that Order set forth the following relevant deadlines:

- discovery: October 9, 2017;

- motions to continue trial date: October 9, 2017;
- discovery-related motions: October 23, 2017; and
- dispositive motions: November 20, 2017.

The initial Scheduling Order remained in force in all other respects, including the instructions set forth therein.

Defendant's Motion for Summary Judgement and Plaintiffs' Motion to Continue Trial were filed after the above-mentioned deadlines. Plaintiffs indicate that the parties agreed to continue the deadline for dispositive motions from November 20, 2017, to December 4, 2017, and the deadline for motions to continue trial from October 9, 2017, to December 4, 2017. Mot. to Continue Trial ¶ 7, ECF No. 56. The initial Scheduling Order however states:

Only changes to the items **numbered 8, 9, 11, 14, and 15** require leave of Court and will be considered following an appropriate motion; however, the parties are required to file notice with the Court indicating the deadlines of any mutually agreed changes to the items numbered below. A change in any deadline contained herein will not extend any other deadlines unless those deadlines are specifically extended by order of the Court.

Scheduling Order at 1 (boldface in original), ECF No. 21. In that Order, the items numbered as 8 and 11 were the deadlines for motions to continue trial and for dispositive motions, respectively. Therefore, the parties were required to seek leave of Court to alter these deadlines as amended in the Amended Scheduling Order. This the parties failed to do. Consequently, Defendant's Motion for Summary Judgement and Plaintiffs' Motion to Continue Trial are untimely. The Court denies these motions.


Likewise, the parties' discovery motions are untimely; the item numbered 9 in the initial Scheduling Order is the deadline for discovery-related motions, the modification of which also required leave of Court. The parties agreed, without seeking leave of Court, to continue that deadline to November 27, 2017. Moreover, they agreed to continue the discovery deadline to

October 31, 2017. Mot. to Continue Trial ¶ 7. Although the parties need not seek leave of Court to continue discovery by agreement, “there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.” Am. Scheduling Order at 1, ECF No. 46. Finding no extraordinary circumstances, the Court also denies the discovery motions.

Accordingly, **IT IS ORDERED** that Defendant City of El Paso’s “Motion for Protective Order” (ECF No. 54) and “No Evidence and Traditional Motion for Summary Judgment” (ECF No. 57) are **DENIED**.

IT IS MOREOVER ORDERED that Plaintiffs Carina Canaan and Levi Lane’s “Opposed Motion to Modify by Continuance of All Dates, Including Trial” (ECF No. 56) and “Opposed Motion to Compel and Opposed Motion for Leave to File Out-of-Time Discovery Motion” (ECF No. 58) are **DENIED**.

So **ORDERED** and **SIGNED** this 11th day of December 2017.



DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE