

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

February 1, 2024 at 11:00 a.m.

1. [22-90415-E-7](#)
[23-9011](#)
DB-1

JOHN MENDOZA
Peter Macaluso

MOTION TO EXTEND TIME O.S.T.
1-18-24 [\[21\]](#)

WVJP 2021-4, LP V. MENDOZA

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney on January 18, 2024. By the court's calculation, 14 days' notice was provided. The court set the Hearing for February 1, 2024, granting Plaintiff's Motion to Shorten Time on January 19, 2024. Order, Docket 26.

The Motion to Extend Time was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p>The Motion to Extend Time is granted, and the discovery deadline is extended to XXXXXXX.</p>
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WVJP 2021-4, LP, Plaintiff in this adversary proceeding (“Plaintiff”), moves the court to grant an extension of Plaintiff’s discovery deadline pursuant to 11 U.S.C. § 105 and Fed. R. Civ. P. 16, made applicable through Fed. R. Bankr. P. 7016.

The deadline for Plaintiff’s non-expert discovery was set on February 2, 2024. Order, Docket 17, p. 2:9-10. However, Plaintiff’s non-expert discovery is still ongoing. Specifically, after missing her first discovery date, Jenaé-Desiree Mendoza’s Rule 2004 examination occurred on January 15, 2024, and has been continued to a later date beyond the February 2, 2024 deadline. Decl., Docket 23 ¶¶ 3-4. Plaintiff also argues that Plaintiff and the Trustee are pursuing similar causes of action in this adversary proceeding, yet the Chapter 7 Trustee, Gary Farrar’s (“Trustee”) deadlines for discovery are set for months beyond Plaintiff’s deadlines. *See* Order, Docket 22, Case no. 23-09020. To avoid unnecessary and duplicative expenses, Plaintiff requests the court extend Plaintiff’s discovery deadlines to the same dates as Trustee’s deadlines as Plaintiff has been relying largely on Trustee’s discovery.

Additionally, Plaintiff alleges that Debtor-Defendant, John Mendoza, and his family members, have been interfering with discovery attempts, thereby making the process take more time than anticipated. Mtn., Docket 21 p. 4:10-24. Plaintiff submits the Declaration of Jeffrey Golden, special counsel for Trustee, as Exhibit 1, Docket 24, showing some of the difficulties in getting John Mendoza and his family scheduled for depositions. Decl., Docket 24.

DISCUSSION

Fed. R. Civ. P. 16, made applicable through Fed. R. Bankr. P. 7016, states “[a] schedule may be modified only for good cause and with the judge’s consent.” The ‘good cause’ standard “primarily considers the diligence of the party seeking the amendment. The district court may modify the pretrial schedule if it cannot reasonably be met despite the diligence of the party seeking the extension.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (internal quotations omitted).

In this case, Plaintiff has been diligent in conducting discovery and does not seek an extension for carelessly letting any deadlines slip by. To save time and costs, Plaintiff has been relying on Trustee’s discovery as both parties are seeking largely the same information. Now, as Plaintiff’s deadline approaches, non-expert depositions have not yet been concluded, not due to any fault on behalf of the Plaintiff. Plaintiff explains in its supporting Declaration that Jenaé-Desiree Mendoza missed her first Rule 2004 examination that was scheduled for October 23, 2023, which is now continued beyond Plaintiff’s February 2, 2024 deadline. Decl., Docket 23 ¶ 3. Further, the evidence shows a series of attempts to coordinate with John Mendoza and his other family members agreeable times to conduct discovery, and the dates continue to be pushed back or blown off by the Mendozas. Decl., Docket 24 ¶¶ 2-11. The court finds a delay in conducting discovery is not due to any lack of diligence on behalf of Plaintiff. Therefore, the court finds there is good cause for extending the discovery deadlines.

The Motion is granted, and the discovery deadline is set to **XXXXXXX**.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend Time filed by WVJP 2021-4, LP, Plaintiff in this adversary proceeding (“Plaintiff”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **granted**, and the discovery deadline is extended to **XXXXXXX**.