

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Vega v. DNC Parks & Resorts at Asilomar, Inc.

Vega · No. 1:19-cv-00484-ADA-SAB · Decided March 3, 2023

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF
CALIFORNIA 10 MARIA SOCORRO VEGA, Case No. 1:19-cv-00484-ADA-SAB 11 Plaintiff,
ORDER DIRECTING PLAINTIFF TO FILE 12 OPPOSITION OR STATEMENT OF NON- v.
OPPOSITION TO EX PARTE MOTION 13 DNC PARKS & RESORTS AT ORDER
EXTENDING DEADLINE TO FILE 14 ASILOMAR, INC., et al., OPPOSITION TO CLASS
CERTIFICATION MOTION 15 Defendants.

ORDER CONTINUING APRIL 5, 2023 16 HEARING ON CLASS CERTIFICATION MOTION
17 (ECF Nos. 82, 83, 86) 18 19 20 I. 21 INTRODUCTION 22 Plaintiff initiated this putative class
action on April 12, 2029. (ECF No. 1.) Pursuant to 23 the amended scheduling order, the pre-
certification discovery cutoff was set for December 14, 24 2022. (ECF No. 81.) Plaintiff filed a
motion to certify class on February 17, 2023.

(ECF No. 25 82.) The hearing on the motion is currently set for April 5, 2023. (ECF No. 83.) On
March 2, 26 2023, Defendants filed an ex parte application (1) to extend the deadline to file their
opposition 27 to Plaintiff’s motion for class certification to allow time for depositions of putative
class members who submitted declarations in support of Plaintiff’s motion for class certification;
(2) 1 for leave to take the depositions of the 16 witnesses who submitted declarations in support of
2 Plaintiff’s motion; and (3) for an order providing that the declarations will be stricken if the 3
declarants are not produced for deposition within 60 days.

(ECF No. 86.) 4 II. 5 DISCUSSION 6 1. Ex Parte Relief 7 In general, the Court will not grant ex
parte relief unless “the moving party’s cause will 8 be irreparably prejudiced if the underlying
motion is heard according to regular noticed motion 9 procedures” and “the moving party is
without fault in creating the crisis that requires ex parte 10 relief, or ... the crisis occurred as a
result of excusable neglect.” *Mission Power Eng’g Co. v. 11 Continental Cas.*

Co. (Mission Power), 883 F. Supp. 488, 492 (C.D. Cal. 1995); see also *Erichsen 12 v. Cty. of
Orange*, 677 Fed. App’x 379, 380 (9th Cir. 2017) (affirming determination that moving 13 parties
failed to meet the “threshold requirement” for ex parte relief because “they did not 14 establish
they were ‘without fault in creating the crisis that requires ex parte relief’ ”).

15 Defendants proffer they are entitled to ex parte relief because the parties originally 16 agreed to stipulate to produce witnesses and extend the opposition deadlines, but Plaintiff's 17 counsel reneged on this agreement on the eve of Defendants' deadline to oppose the class 18 certification motion.

The Court finds Defendants would be irreparably prejudiced because, 19 absent ex parte relief, the deadline to oppose the class certification motion, March 3, 2023, will 20 have passed before Defendants have had an opportunity to be heard on the merits of their motion 21 to modify the schedule, and they may be unable to meaningfully oppose the class certification 22 motion without the requested discovery.

Further, the Court finds Defendants are without fault in 23 creating the instant situation requiring ex parte relief because they reasonably believed a 24 stipulation was forthcoming until Plaintiffs altered the terms of the stipulation on the eve of 25 Defendants' filing deadline.

On this record, the Court finds ex parte relief is warranted. *Mission 26 Power*, 883 F. Supp. 488, 492. 27 2. Motion to Modify Schedule and Extend Deadlines 1 filed, the "schedule may be modified only for good cause and with the judge's consent." Fed. R. 2 Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the 3 party seeking amendment." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.

4 1992). A court may modify the schedule "if it cannot reasonably be met despite the diligence of 5 the party seeking the extension." *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087 (9th 6 Cir. 2002) (citing *Johnson*, 975 F.2d at 609).

However, "carelessness is not compatible with a 7 finding of diligence and offers no reason for a grant of relief." *Johnson*, 975 F.2d at 609 8 (compiling cases). Thus, if the party seeking the modification "was not diligent, the inquiry 9 should end." *Id.* 10 In the instant ex parte application, Defendants seek an extension of time to oppose 11 Plaintiff's class certification motion.

They also seek leave to take the depositions of the 16 12 witnesses who submitted declarations in support of Plaintiff's motion, an order requiring 13 Plaintiff to produce the declarants for depositions within 60 days, and a modification of the 14 schedule to reopen pre-certification discovery for this limited purpose. Defendants proffer good 15 cause exists for the requested relief because Plaintiff did not respond to Defendants' meet and 16 confer attempts to discover the identities of the class certification witnesses prior to the filing of 17 Plaintiff's class certification motion, and Defendants need to depositions in order to oppose the 18 class certification motion.

19 Given the nature of the proffers of defense counsel and Defendants' requested relief, the 20 Court shall require Plaintiff to file an opposition or statement of non-opposition to Defendants' 21 motion before it issues a ruling on the matter.

To that end, the Court shall grant Defendants a 22 brief extension of the deadline to oppose the class certification motion and shall continue the 23 hearing on Plaintiff's motion. 24 III. 25 CONCLUSION AND ORDER 26 Accordingly, IT IS HEREBY ORDERED that: 27 1. Plaintiffs shall file an opposition or statement of non-opposition to Defendants' ex 1 than March 13, 2023, at which time the ex parte motion will be deemed 2 submitted; 3 2.

The deadline for Defendants' opposition to Plaintiff's class certification motion 4 shall be extended to March 20, 2023; and 5 3 The April 4, 2023 hearing on the class certification motion is CONTINUED to 6 April 26, 2023, at 10:00 a.m. in Courtroom 9. 7 8 IT IS SO ORDERED. DAA (e_ 9 | Dated: _March 3, 2023 _ ef 10 UNITED STATES MAGISTRATE JUDGE 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28