Lorrie Herman v. Hillstone Restaurant Group, Inc.
Case No. 8:25-cv-00002-JVS-KES

TENTATIVE Order Regarding Plaintiff's Motion to Extend Discovery Cut-Off Date [94] and Defendant's Motion for Reconsideration of Magistrate Judge's Discovery Order and to Modify the Scheduling Order [105]

Before the Court are two motions.

First, Plaintiff Lorrie Herman ("Herman") moves to extend the discovery cut-off date. (Mot. to Extend, Dkt. No. 94-1.) Defendant Hillstone Restaurant Group, Inc. ("Hillstone") filed an opposition. (Opp'n to Mot. to Extend, Dkt. No. 107.) Herman replied. (Mot. to Extend Reply, Dkt. No. 120.)

Second, Hillstone moves to review a decision of the Magistrate Judge and modify the case's scheduling order. (Mot. to Review/Modify, Dkt. No. 105.) Herman filed an opposition. (Opp'n to Mot. to Review/Modify, Dkt. No. 131.) Hillstone replied. (Mot. to Review/Modify Reply, Dkt. No. 121.)

For the following reasons, the Court **GRANTS** Plaintiff's Motion to Extend Discovery. In addition, it **GRANTS-in-part** and **DENIES-in-part** Defendant's Motion to Review the Magistrate Judge's Decision and Modify the Scheduling Order.

I. BACKGROUND

The parties and Court are familiar with the facts of this case, so the Court recites only facts necessary to resolve these motions.

On February 11, 2026, the Court granted Herman leave to amend to file a Third Amended Complaint ("TAC") to allege new facts and seek punitive damages "based on her survival cause of action." (Dkt. No. 80 at 2.) The same day, Herman filed her TAC. (TAC, Dkt. No. 81.)

On February 23, 2026, Hillstone conducted an interview of Amy Carlson, the sister of decedent Steven Herman ("Decedent"). (Declaration of Joshua Park ["Park Decl."], Dkt. No. 105-1 ¶ 12.) In this interview, Hillstone discovered for

the first time that Herman "has suffered from brain tumors and seizures, has undergone brain surgery, and undergoes annual brain scans related to those conditions." (Id.) Two days later, Hillstone corroborated this discovery in a deposition of Decedent's mother Rita Herman. (Id.) Hillstone characterizes this information as a major discovery. (See, e.g., Mot. to Review/Modify at 1; Opp'n to Mot. to Extend at 1.)

Pursuant to the initial Scheduling Order, discovery closed on March 2, 2026. (See Scheduling Order, Dkt. No. 22.) Both parties seek to amend this order to allow them to accomplish specific discovery tasks, which the Court discusses in greater detail below.

II. LEGAL STANDARD

A. Motion to Modify the Scheduling Order or Extend Discovery

"A district court has wide latitude in controlling discovery." Lane v. Dep't of Interior, 523 F.3d 1128, 1134 (9th Cir. 2008). Pursuant to Federal Rule of Civil Procedure 16(b), a district court must issue a scheduling order that limits the time to, among other things, complete discovery. FED. R. CIV. P. 16(b)(1), (3). A party seeking to modify a scheduling order must satisfy the "good cause" standard for modifying the scheduling order under Rule 16(b) of the Federal Rules of Civil Procedure. FED. R. CIV. P. 16(b)(4); Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607–08 (9th Cir. 1992). The good cause standard "primarily considers the diligence of the party seeking the amendment." Johnson, 975 F.2d at 609. The court may grant relief from a scheduling deadline if the deadline could not "reasonably be met despite the diligence of the party seeking the extension." Id. While a court may consider prejudice to the opposing party, "the focus of the inquiry is upon the moving party's reasons for seeking modification." Id.

B. Motion to Review a Magistrate Judge Decision

A Magistrate Judge may issue non-dispositive rulings on pre-trial discovery matters. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); L.R. 72-2.1. "A party may serve and file objections to the order within 14 days after being served with a copy." Fed. R. Civ. P. 72(a). On a motion to review, a district court may set aside or modify these rulings only when the rulings are "clearly erroneous or contrary to

law." 28 U.S.C. § 636(b)(1)(A). The "clearly erroneous" standard applies to a Magistrate Judge's factual findings, and the "contrary to law" standard applies to the judge's legal conclusions. See Crispin v. Christian Audigier, Inc., 717 F. Supp. 2d 965, 970–71 (C.D. Cal. 2010). The clearly erroneous standard is "significantly deferential, requiring a definite and firm conviction that a mistake has been committed." Id. at 971 (quoting Concrete Pipe & Prods. v. Constr. Laborers Pension Tr. for S. Cal., 508 U.S. 602, 623 (1993)). "By contrast, [t]he contrary to law standard . . . permits independent review of purely legal determinations by the magistrate judge." Id. (quoting another case). Courts have interpreted this standard "to provide for de novo review by the district court on issues of law." Med. Imaging Ctrs. of Am., Inc. v. Lichtenstein, 917 F. Supp. 717, 719 (S.D. Cal. 1996). "A decision is contrary to law if it applies an incorrect legal standard or fails to consider an element of the applicable standard." Forouhar v. Asa, 2011 WL 4080862, at *1 (N.D. Cal. Sept. 13, 2011) (quoting another case).

III. DISCUSSION

A. Meet and Confer Requirement, Local Rule 7-3

In its order granting leave to file a TAC, the Court noted the following:

> In the event that the parties are concerned that the March 2, 2026, discovery deadline will not provide enough time for proper discovery related to this amendment, the Court will entertain a joint stipulation to extend the discovery cut-off.

(Dkt. No. 80 at 6.) The Court expressly sought a joint stipulation to facilitate efficiency, but the parties were not able to deliver and instead *both* brought motions to extend discovery for different reasons. Each side blames the other for this outcome.

As has repeatedly occurred in this case, the parties do not appear to have met and conferred on these issues in good faith. To start, it appears Hillstone forced Herman to file a Motion to Extend Discovery that it had no intention of opposing. (See Opp'n to Mot. to Extend at 1.) In addition, Hillstone did not comply with Local Rule 7-3 before filing its own motion, which alone would be

sufficient grounds to deny it.[1] The Court sees no reason why at least some of the subject matter of these motions could not have been resolved by a good faith meet-and-confer process. In general, the Court admonishes both parties to behave with more civility. Further gamesmanship in upcoming motion practice will be strongly disfavored. Where conduct warrants monetary sanctions, the Court is not reluctant to impose them. To be direct, it is time for strict compliance.

B. Herman's Motion to Extend Discovery

Herman seeks "a limited extension of the written discovery cut-off" so that she can obtain responses to several Requests for Production ("RFPs") related to her newly-added punitive damage claims. (Mot. to Extend at 3.) In addition, she seeks room to "bring any motion to compel compliance with those requests" and "disclose a financial expert following Defendant's production of financial documents . . . ." (Id.) Herman does not wish to change the June 9, 2026 trial date. (Id. at 10.)

Although Hillstone filed an opposition, it does not actually oppose Herman's request. (Opp'n to Mot. to Extend at 2.) Instead, it emphasizes that the Court should "permit both parties to conduct discovery concerning those newly asserted allegations." (Id.) Hillstone's only arguments appear to support the

[1] Herman's counsel contends that he "never met and conferred on [Hillstone's] motion for review or reconsideration. [He] only met and conferred on its MSJ and request to modify the scheduling order." (Dkt. No. 121-2 ¶ 4.) Hillstone responds that this call *did* satisfy Local Rule 7-3. (Park Decl. ¶¶ 16–17.) Mr. Park states that the parties discussed "the newly discovered information arising from the deposition of Rita Herman" and "the implications of that information for discovery relating to Plaintiff's life expectancy." (Id. ¶ 17.) Thus, in Hillstone's view, "those discussions concerned the substance of the relief Hillstone now seeks from this motion . . . ." (Id.) Hillstone is incorrect—this does not satisfy this District's meet and confer requirement. Local Rule 7-3 requires that the parties discuss the substance of the potential motion "and any potential resolution." L.R. 7-3. In addition, it requires counsel to submit a declaration setting forth "the position of each party with respect to each disputed issue that will be the subject of the motion." Id. Hillstone's counsel did neither of these things. In fact, Herman appeared entirely surprised that Hillstone's chosen path would be seek to move for "reconsideration" of the MJ Order. (See Opp'n to Mot. to Review/Modify at 14.) This does not fulfill Local Rule 7-3. The Court admonishes Mr. Park for failing to comply with this rule, which serves important purposes and, given the parties' somewhat aligned incentives here, could have prevented this motion entirely.

scheduling order modifications it seeks in the *other* motion at issue, Dkt. No. 105. (See Opp'n to Mot. to Extend at 5–9.) These do not undermine Herman's request.

Accordingly, the Court finds good cause and **GRANTS** Herman's request for a limited extension of discovery. The scheduling order is modified as outlined infra, Section III.E.

C. Hillstone's Motion to "Reconsider"

Hillstone's motion has two components. The first is a request for "[r]econsideration" of the Magistrate Judge's February 24, 2026 order ("MJ Order") based on "[n]ewly developed evidence" obtained after the matter was briefed before the Magistrate Judge. (Mot. to Review/Modify at 11–12; see MJ Order, Dkt. No. 89.) The MJ Order involved a motion to compel further discovery from Herman regarding her health, including her primary care physicians and ten years of medical records. (MJ Order at 1–2.) The Magistrate Judge held oral argument on this issue on February 24, 2026, one day after the interview with Amy Carlson revealed that Herman suffers from brain tumors. (Id. at 1.) Because this information was discovered too late to be included in the briefing, Hillstone raised it at oral argument. (Id. at 5.) The Magistrate Judge "decline[d] to consider" the "oral representations about Plaintiff's potential brain tumors" because Hillstone had not submitted any evidence of this in the briefing. (Id.) Consequently, Judge Scott declined to include "*non-cancerous* brain tumors" in the list of Herman's discoverable medical information. (Id. (emphasis added).) However, the Magistrate Judge still required Herman to "identify any treatment for or diagnosis of *cancerous* tumors." (Id. (emphasis added).) This is the portion of the MJ Order about which Hillstone seeks "reconsideration." (See Mot. to Review/Modify at 2, 6.) Specifically, Hillstone seeks to propound additional discovery "concerning Plaintiff's brain tumors and seizure disorder . . . ." (Id. at 18.)

Despite Hillstone's framing, this is not a motion to reconsider. In this District, parties may seek reconsideration of a judge's opinion if there is an "emergence of new material facts or a change of law occurring after the Order was entered," among other reasons. L.R. 7-18. This Court cannot "reconsider" an order it did not enter. Instead, this appears to be a motion to review the MJ Order pursuant to Rule 72. See (Mot. to Review/Modify at 10); FED. R. CIV. P. 72(a).

This distinction matters because, as described above, the Court may only review a Magistrate Judge's order if it makes factual findings that are "clearly erroneous" or legal findings that are "contrary to law." See Crispin, 717 F. Supp. 2d at 970–71. Hillstone does not even attempt to meet either of these requirements to show error—it merely contends that this Court should take a second look at the MJ Order based on evidence that the Magistrate Judge did not have. (See Mot. to Review/Modify at 11–13.)

The discovery of new evidence does not mean the Magistrate Judge erred. For example, the MJ Order noted that Hillstone's motion had "no expert declaration addressing how likely non-cancerous brain tumors are to limit life expectancy." (MJ Order at 5.) In the present motion, Hillstone *does* advance an expert with these opinions: Dr. Christopher A. Sarkiss.[2] (See Dkt. No. 105-2.) The fact that Hillstone provided this expert *after* the Magistrate Judge's order does not transform Judge Scott's decision into error. Thus, Hillstone does not show that Magistrate Judge's findings were clearly erroneous or contrary to law, and the Court does not disturb her decision.

In sum, the Court **DENIES** the first component of Hillstone's motion—relief from the MJ Order. To be sure, Hillstone may have grounds to file a motion for reconsideration with Judge Scott based on new evidence under Local Rule 7-18, but that decision is not for this Court to make.

D. Hillstone's Motion to Modify the Scheduling Order

The second component of Hillstone's motion is a requested modification of the scheduling order. Specifically, Hillstone seeks to modify the scheduling order as follows:

- Extend the fact discovery cut-off from March 3, 2026 to March 30, 2026.
- Set the expert disclosure deadline on April 3, 2026.
- Set the rebuttal expert disclosure deadline on April 17, 2026.

[2] Herman filed objections to the declaration of Dr. Sarkiss. (See Dkt. No. 122.) Because the Court does not consider his declaration to resolve this motion, it does not discuss Herman's objections, either.

- Set the close of expert discovery on April 24, 2026.
- Extend the motions in limine deadline from April 27, 2026 to May 1, 2026.

(Mot. to Review/Modify at 9.) Hillstone argues that there is good cause for this modification because of (1) Herman's new punitive damage allegations and (2) the discovery that Herman suffers from tumors and seizures. (See id. at 18–19.)

Herman opposes most of these requests. Regarding punitive damages, she argues that Hillstone "has been on notice of Plaintiff's intent to seek punitive damages since at least July 2025" and thus should have conducted discovery already. (Opp'n to Mot. to Review/Modify at 22–24.) Regarding the discovery of Herman's tumors, she essentially argues that Hillstone could have figured it out sooner:

> Defendant's claimed need for medical discovery is entirely self-inflicted. If Plaintiff's medical conditions were truly central to damages calculations, as Defendant now urgently claims, Defendant should have pursued that discovery systematically and early. A party cannot manufacture a discovery emergency by declining to use the tools available to it and then pointing to the resulting gap as justification for emergency relief.

(Id. at 27.) In her view, "[a]ny modification should be cabined to punitive damages discovery consistent with the parameters of [Herman's extension request]." (Opp'n to Mot. to Review/Modify at 28.)

The Court finds Hillstone's position more persuasive. True, Hillstone might have been more diligent in its discovery conduct over the last 12 months. (See id. at 8–11 (listing examples of Hillstone's delays in seeking discovery).) However, the Court still concludes that there is good cause for an extension. First, the Court has already indicated it is willing to extend the discovery cut-off in light of Herman's new allegations. (See Dkt. No. 80 at 6.) Herman does not get to reopen discovery exclusively for her own benefit; if there is "[r]eciprocal [d]iscovery" that is relevant, Hillstone should be given the chance to obtain it. (Mot. to Review/Modify Reply at 12.) Second, the notion that the discovery of Herman's tumors is unimportant because Herman *could* have discovered them sooner is entirely unpersuasive. To the extent these conditions impact Herman's life expectancy, they are plainly relevant to this survival action, as Herman herself

concedes. (See TAC ¶¶ 172–77; MJ Order at 3–6); see also Francis v. Suave, 222 Cal. App. 2d 102, 121 (1963) ("[A]mong the circumstances to be considered in awarding [wrongful death] damages are the respective life expectancies of the decedent and the statutory beneficiaries.") The Court does not refuse the opportunity to discover critical information simply because Hillstone might have been more prompt.

Importantly, Hillstone should not construe this Order as an abridgement of the MJ Order. The Court does not hold that previously denied information about Herman's non-cancerous tumors is now discoverable. Rather, the Court's decision is that Hillstone's evidence of Herman's tumors and seizures is significant enough to warrant that it have an opportunity to make its case to the Magistrate Judge.[3] Accordingly, the Court **GRANTS** Hillstone's request to modify the scheduling order. The new timeline is outlined infra, Section III.E.

E. Updated Scheduling Order

For good cause shown, the Court **AMENDS** the scheduling order and sets the following dates:

- Fact Discovery Cut-Off: April 20, 2026
- Expert Disclosure Deadline: April 24, 2026
- Rebuttal Expert Disclosure Deadline: May 1, 2026
- Expert Discovery Closes: May 8, 2026
- Law and Motion Cut-Off: May 26, 2026 at 8:30 a.m.
    - *Motions to be filed and served not later than April 27, 2026.*
- Final Pre-Trial Conference: May 26, 2026 at 8:30 a.m.
    - *Final pre-trial documents due not later than May 18, 2026.*

[3] As the parties are aware, "any motion for reconsideration must be filed no later than 14 days after entry of the Order that is subject of the motion or application." L.R. 7-18. This 14-day window may be extended for "good cause shown." Id. It is up to the Magistrate Judge whether Hillstone shows the requisite "good cause" to file such a motion more than a month after her February 24, 2026 order. If Judge Scott chooses to deny Hillstone's potential motion for reconsideration as untimely, or on the grounds that she already considered and rejected these arguments in Hillstone's first attempt, this Court will *not* be inclined to overturn that decision.

- *Final motions in limine due not later than May 8, 2026.*
- *Oppositions to motions in limine due not later than May 15, 2026.*
- *Replies in support of motions in limine due not later than May 18, 2026.*

- Jury Trial: June 9, 2026 at 8:30 a.m.[4]

IV. CONCLUSION

For the foregoing reasons, the Court the Court **GRANTS** Plaintiff's Motion to Extend Discovery. It **GRANTS-in-part** and **DENIES-in-part** Defendant's Motion to Reconsider the Magistrate Judge's Decision and Modify the Scheduling Order.

IT IS SO ORDERED.

[4] The dates of final pre-trial conference, motions in limine, and jury trial are subject to change depending on the Court's upcoming ruling on Hillstone's Motion to Continue Trial. (See Dkt. No. 135.)