

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-CV-21199-CMA

ANDREA ROSSI, *et al.*,

Plaintiffs,

v.

THOMAS DARDEN, *et al.*,

Defendants.

**PLAINTIFFS' MOTION FOR ENLARGEMENT OF TIME
TO COMPLY WITH THE COURT'S JULY 1, 2016 TRIAL ORDER AND MOTION TO
EXCEED THE COURT'S PAGE LIMITATIONS REGARDING EVIDENTIARY
ISSUES**

Plaintiffs, Andrea Rossi and Leonardo Corporation (“Plaintiffs”), by and through their undersigned counsel, hereby move for a one (1) day enlargement of time from Tuesday, March 21, 2017 to Wednesday, March 22, 2017, for all parties to comply with the Court’s July 1, 2016 Order Setting Trial and Pre-Trial Schedule, Requiring Mediation, and Referring certain Matters to Magistrate Judge (the “Trial Order”). Plaintiffs’ further request leave of court to exceed the page limitations imposed in this Court’s July 1, 2016 Trial Order. As grounds therefore, Plaintiffs state as follows:

1. On July 1, 2016, the Court entered an Order Setting Trial and Pre-Trial Schedule, Requiring Mediation, and Referring Certain Matters to Magistrate Judge. [D.E. 23].
2. The Trial Order requires the filing of all pre-trial motions, and *Daubert* motions (which include motions to strike experts) by March 21, 2017.
3. Undersigned counsel has several conflicts, one of which is an upcoming trial in Tavernier, Florida specially set in April, 2017. Counsel has also been forced to attend two unexpected evidentiary hearings on a separate matter this past week, which have taken up a

significant portion of the undersigned's time to properly prepare and finalize the foregoing motions by the Court's set deadline.

4. Accordingly, given the time-frame required to file the motions listed under the Court's July 1, 2016 Trial Order, and so as not to prejudice any party, the Plaintiffs' respectfully request that this Court enter an order granting the parties a one (1) day enlargement of time, up through and including Wednesday, March 22, 2017 to file and serve their pretrial and *Daubert* motions in accordance with the Court's July 1, 2016 Trial Order.

5. Further, Plaintiffs seek leave of court to exceed the page limitations imposed in the court's July 1, 2016 Trial Order from 20-page memorandum to a 35-page memorandum.

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR
ENLARGEMENT OF TIME TO COMPLY WITH THE COURT'S JULY 1, 2016
TRIAL ORDER**

Rule 6(b) of the Federal Rules of Civil Procedure provides in part:

When by these rules or by a notice given thereunder or by order of a Court an act is required or allowed to be done at or within a specified time, the Court for cause shown may, at any time in its discretion (1) with or without motion, or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rule 50(b) and (c)(2), 52(b), and (3) and 60(b), except to the extent and under the conditions stated in them.

The award of the requested enlargement of time for all parties to file all their pre-trial motions and *Daubert* motions constitutes a proper use of this Court's discretion. Plaintiffs have requested the enlargement of time prior to the service deadline specified by the Court's July 1, 2016 Trial Order.

Given counsel's unexpected conflicts and upcoming trial, Plaintiffs require the one (1) day enlargement of time to properly develop and prepare pre-trial and *Daubert* motions.

The Court's July 1, 2016 Trial Order states that "If all evidentiary issues cannot be addressed in a 20-page memorandum, leave to exceed the page limit will be granted." Due to the complex issues and circumstances surrounding these motions, Plaintiffs request leave of court to allow for a 35-page memorandum.

In light of these circumstances, Plaintiffs respectfully submit that the Court's discretion is best utilized by granting the requested enlargement of time and leave to exceed the page limit to allow for a 35-page summary judgment motions.

Dated: March 20, 2017

Respectfully submitted,

/s/ John W. Annesser

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Counsel for Plaintiffs

CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(a)(3)

The undersigned counsel hereby certifies that, in compliance with Rule 7.1(a)(3), Federal Rules of Civil Procedure, that undersigned counsel has conferred with counsel for Defendants in a good faith effort to resolve by agreement the issues raised in this Motion.

/s/Brian W. Chaiken, Esq.

Brian W. Chaiken

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 20, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. Copies of the foregoing document will be served upon interested counsel either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/John W. Annesser _____
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