

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 16-21199-CIV-ALTONAGA/O'Sullivan

ANDREA ROSSI, et al.,

Plaintiffs,

v.

THOMAS DARDEN, et al.,

Defendants.

ORDER

THIS CAUSE came before the Court upon the six motions [ECF Nos. 183–184, 186–189] filed by the parties on the eve of the dispositive motion deadline established in the Scheduling Order [ECF No. 23]. The Court has set a hearing to address the two appeals of Magistrate Judge O’Sullivan’s rulings [ECF Nos. 183, 184]. (*See* Notice of Hearing [ECF No. 190]). The four remaining motions make requests related to the filing of pretrial motions or *Daubert* motions.

The Scheduling Order states all pre-trial motions and *Daubert* motions are due by March 21, 2017. (*See* Scheduling Order 2). Local Rule 7.1 provides “[a]bsent prior permission of the Court, neither a motion and its incorporated memorandum of law nor the opposing memorandum of law shall exceed twenty (20) pages; a reply memorandum shall not exceed ten (10) pages.” S.D. FLA. L.R. 7.1(c)(2) (alteration added). Regarding summary judgment motions specifically, Local Rule 56.1 adds all motions for summary judgement and oppositions to such motions should be accompanied by a statement of material facts which is “[n]ot to exceed ten (10) pages in length[.]” *Id.* 56.1(a) (alterations added).

In the Motion for Enlargement of Time (“Enlargement Motion”) [ECF No. 186], Plaintiffs request the Court grant a one-day extension of the deadline for such motions. Citing the Scheduling Order’s statement regarding leave to exceed the page limit for *evidentiary* motions, Plaintiffs also seek leave to submit a 35-page summary judgment motion in excess of the 20-page limit for memoranda of law set forth in Local Rule 7.1(c)(2). (*See* Enlargement Mot. 3).

Defendants similarly seek leave to exceed the page limit for an intended summary judgment motion. In the Motion for Leave to Exceed Page Limits [ECF No. 188], Defendants request they be permitted 50 pages for a summary judgment motion, 50 pages for responses to summary judgment motions by opposing parties, and 25 pages for a reply in support of their own summary judgment motion. Then, in the Motion for Leave to Exceed Page Limits for Statement of Material Facts [ECF No. 189], Defendants additionally request 20 pages for their statement of material facts. When combined with their prior request, the Court understands Defendants to be seeking leave to file a summary judgment motion and statement of material facts which, at 70 pages, is more than double the length allowed by the Local Rules. Indeed, 70 pages is almost the exact length of Defendants’ entire Fourth Amended Answer, Additional Defenses, Counterclaims, and Third-Party Claims [ECF No. 132]. Defendants have not shown such an extraordinary departure from the Local Rules is warranted.

Finally, the Court addresses the parties’ Joint Motion for Leave to File Under Temporary Seal (“Joint Motion”) [ECF No. 187]. Pursuant to Local Rule 5.4, a party seeking to make a filing under seal must contemporaneously file a motion to seal “that sets forth the factual and legal basis for departing from the policy that Court filings be public.” S.D. FLA. L.R. 5.4(b). “It is the Court’s general policy that all documents filed with the Court are public absent

extraordinary circumstances.” *Butler v. Oak St. Mortg., LLC*, No. 06-80604-CIV, 2006 WL 5519070, at *5 (S.D. Fla. Dec. 22, 2006); *see also Schojan v. Papa John’s Int’l, Inc.*, No. 8:14-cv-1218-T-33MAP, 2014 WL 4674340, at *2 (M.D. Fla. Sept. 18, 2014) (citing *Brown v. Advantage Eng’g, Inc.*, 960 F.2d 1013 (11th Cir. 1992))). The parties in this case are particularly aware of this policy, having observed the Court deny two previous motions to seal. (*See* [ECF Nos. 163, 176]).

The present Joint Motion seeks a temporary two-week seal in order to give the parties time to “meet and confer in a meaningful manner” about specific items to be sealed for the long term and to “prepare and file sealing motions” as to these items. (Joint Mot. 1). The parties have not filed the underlying motions that would permit the Court to assess whether they contain confidential information warranting a seal. Further, the dispositive motion and discovery deadlines have been in place since July 1, 2016; while the Court appreciates the parties have been working to complete discovery and resolve outstanding discovery disputes, these concurrent litigation duties do not justify a two-week seal to allow for discussion of issues that have long been anticipated.

Although the parties do not address the matter, the Court finds it prudent to discuss the total number of motions and now limits each set of aligned parties to filing one combined motion for summary judgment. That is, each of the following three sets of parties may submit one motion for summary judgment: (1) Plaintiffs/Counter-Defendants, Leonardo Corporation and Andrea Rossi; (2) Defendants/Third-Party Plaintiffs, Thomas Darden; John T. Vaughn; Industrial Heat, LLC; IPH International, B.V.; and Cherokee Investment Partners, LLC; and (3) Third-Party Defendants, Fulvio Fabiani; United States Quantum Leap, LLC; J.M. Products, Inc.; Henry Johnson; and James A. Bass. Limiting the filings in this way allows each set of parties to present its own arguments while eliminating or diminishing the possibility of incongruent facts or repetitive discussion across multiple sets of statements of facts and memoranda of law.

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It is therefore **ORDERED AND ADJUDGED** as follows:

1. Plaintiffs' Motion for Enlargement of Time [ECF No. 186] is **GRANTED in part**.

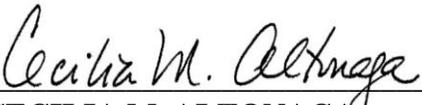
All parties have until **Wednesday, March 22, 2017** to submit any pretrial and *Daubert* motions.

2. Plaintiffs' Motion for Enlargement of Time [ECF No. 186], Defendants' Motion for Leave to Exceed Page Limits [ECF No. 188], and Defendants' Motion for Leave to Exceed Page Limits for Statement of Material Facts [ECF No. 189] are **GRANTED in part** and **DENIED in part**. Summary judgment motions with incorporated memoranda of law shall not exceed **30 pages**. Each party may submit a statement of material facts that shall not exceed **15 pages**. **Responses will be subject to the same page limits as summary judgment motions**. Any reply memoranda shall not exceed **15 pages**.

3. Each set of parties — Plaintiffs, Defendants, and Third-Party Defendants — is limited to filing **one combined** motion for summary judgment complying with the deadlines and page limits set forth above.

4. The Joint Motion for Leave to File Under Temporary Seal [ECF No. 187] is **DENIED**.

DONE AND ORDERED in Miami, Florida this 21st day of March, 2017.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record