UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE DOMESTIC AIRLINE TRAVEL ANTITRUST LITIGATION
This Document Relates To:
ALL CASES

MDL Docket No. 2656
Misc. No. 15-1404 (CKK)

MEMORANDUM OPINION
(September 13, 2018)

Presently before the Court is Plaintiffs' [270] Notice of Motion and Motion for an Extension of Fact Discovery Deadlines pursuant to Federal Rule of Civil Procedure 16(b)(4). Defendants Delta Air Lines and United Airlines, Inc. oppose Plaintiffs' Motion, and assert that the discovery schedule set forth in this Court's February 14, 2018 Amended Scheduling Order Regarding Discovery and Class Certification, ECF No. 207, should not be altered. The Court acknowledges that it has set a strict schedule for discovery and exhorted the parties to comply with the deadlines therein; however, upon careful consideration of the pleadings,[1] the relevant legal authorities, and the entire record, the Court finds warranted an extension of the deadlines in the Amended Scheduling Order. Accordingly, the Court GRANTS Plaintiffs' [270] Motion for an Extension of Fact Discovery Deadlines, for the reasons described in more detail herein.

[1] Plaintiffs' Notice of Motion and Motion for an Extension of Fact Discovery Deadlines ("Pls.' Mot."), ECF No. 270; Plaintiffs' Memorandum of Law in support of its Motion ("Pls.' Mem."), ECF No. 270-1; Defendant Delta Air Lines, Inc.'s Opposition to Plaintiffs' Motion ("Delta Opp'n"), ECF No. 274; Defendant United Airlines, Inc.'s Opposition to Plaintiffs' Motion ("United Opp'n"), ECF No. 276; and Plaintiffs' Reply Memorandum of Law in support of Plaintiffs' Motion ("Pls.' Reply"), ECF No. 279. The motion is fully briefed and ripe for adjudication.

I. BACKGROUND

This case involves a multidistrict class action litigation brought by Plaintiffs, who are purchasers of air passenger transportation for domestic travel, against [remaining] Defendants, Delta Air Lines, Inc. ("Delta") and United Airlines, Inc. ("United"), two of the four largest commercial air passenger carriers in the United States, based on allegations that Defendant airlines willingly conspired to engage in unlawful restraint of trade. *See generally* Corrected Consolidated Amended Class Action Complaint, ECF 184.[2]

On January 30, 2017, this Court set a [152] Scheduling Order Regarding Discovery and Briefing on Motion for Class Certification. On February 22, 2017, the Court entered a Minute Order noting that there was a joint request by the parties to extend a discovery deadline set forth in this Court's [152] Scheduling Order, and the Court granted this request. *See* February 22, 2017 Minute Order. On February 5, 2018, the parties filed a [204] Joint Status Report setting out a proposed amended schedule for discovery. The Court held a status conference on February 12, 2018, to discuss scheduling issues, and on February 13, 2018, the Court issued an [207] Amended Scheduling Order Regarding Discovery and Class Certification, whereby the close of fact discovery is set for January 31, 2019, and a class certification motion is to be filed by February 7, 2019.[3] On April 26, 2018, Plaintiffs filed an [231] Unopposed Motion for Extension of Time to Complete Discovery, solely regarding third party discovery, and this request was granted by the Court.

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[2] Defendants Southwest Airlines Co. and American Airlines, Inc. have entered into settlement agreements with the Plaintiffs.

3 The Court held several status conferences in this case where discovery and scheduling issues were discussed. (May 11, 2017; September 19, 2017; November 16, 2017; February 12, 2018; June 6, 2018). Prior to each status conference, the parties filed a joint status report.

On August 24, 2018, Plaintiffs filed the instant Motion for Extension of Time to Complete Discovery, ECF No. 270, wherein Plaintiffs request that this Court "extend the fact discovery deadline and certain other interim discovery deadlines, as well as the deadlines for the submission and briefing of Plaintiffs' motion for class certification, the deadline for depositions, the deadline for serving requests for admissions, and the deadlines for motions to compel by six months." Pls.' Mem. at 5.[4] Plaintiffs assert that this request for an extension of discovery is predicated on a recent "issue with United's "core" document production," which constitutes good cause to extend the discovery deadlines. Pls.' Mem. at 5-6. More specifically, Plaintiffs assert that United produced more than 3.5 million [core] documents to the Plaintiffs, but "due to United's technology assisted review process ("TAR"), only approximately 17%, or 600,000, of the documents produced are responsive to Plaintiffs' requests," and Plaintiffs must sort through them to determine which ones are responsive, which requires additional time. *Id.*

Defendants Delta and United oppose Plaintiffs' request for an extension, but for the reasons set forth herein, this Court shall GRANT Plaintiffs' Motion for an Extension of Fact Discovery Deadlines, with the proviso that no further extensions of discovery will be considered by this Court.

II. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 16(b)(4): "A schedule may be modified only for good cause and with the judge's consent." Similarly, Local Civil Rule 16.4 provides that the Court "may modify the scheduling order at any time upon a showing of good cause." In evaluating

[4]Page references are to the page numbers assigned by the electronic case filing (ECF) system.

good cause, the Court considers the following factors:

> (1) whether trial is imminent; (2) whether the request is opposed; (3) whether the non-moving party would be prejudiced; (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court; (5) the foreseeability of the need for additional discovery in light of the time allotted by the district court; and (6) the likelihood that discovery will lead to relevant evidence.

Rae v. Children's Nat'l Med Ctr., Civil Action No. 15-736, 2017 WL 1750255, at *2-3 (D.D.C. May 4, 2017) (citing *Childers v. Slater*, 197 F.R.D. 185, 188 (D.D.C. 2000)). "The primary consideration in the "good cause" analysis is whether the party seeking the amendment was diligent in obtaining the discovery sought during the discovery period [and] [a]n additional, yet secondary, consideration is the existence or degree of prejudice to the party opposing the modification." *See Equal Rights Ctr. v. Post Properties, Inc.*, No. 06-cv-1991, 2008 WL 11391642, at *1-2 (D.D.C. May 27, 2008) (internal quotation marks and citations omitted).

These factors relevant to showing "good cause" will be analyzed by the Court in the discussion set forth below, beginning with Plaintiffs' diligence and whether there is any prejudice to the Defendants.

III. DISCUSSION

A. Plaintiffs' Diligence

Plaintiffs contend that a showing of diligence involves three factors — (1) whether the moving party diligently assisted the Court in developing a workable scheduling order; (2) that despite the diligence, the moving party cannot comply with the order due to unforeseen or unanticipated matters; and (3) that the party diligently sought an amendment of the schedule once it became apparent that it could not comply without some modification of the schedule. *See Dag Enters., Inc. v. Exxon Mobil Corp.*, 226 F.R.D. 95, 106 (D.D.C. 2005) (Kollar-Kotelly, J.)

First, there is no dispute that the parties diligently assisted the Court in developing workable scheduling orders through their preparation of Joint Status Reports prior to the status conferences in which discovery issues and scheduling were discussed, and in their meetings with the Special Master, who is handling discovery matters in this case. The parties were able to agree upon various deadlines and have been working diligently to meet those deadlines, particularly concerning the February 14, 2018 Amended Scheduling Order. Accordingly, the first factor necessary for a demonstration of Plaintiffs' diligence has been met.

Second, Plaintiffs assert that, subsequent to the commencement of fact discovery in late January 2017, they served their core document requests in a timely manner and, as reflected in the Status Reports filed by the parties, they negotiated Defendants' objections to their requests, the scope of production, search methodologies, and protocols. Pls.' Mem. at 15 (citing the Kenney Declaration and various Joint Status Reports). Completion of core document production was set for April 30, 2018, and by that date, Defendants American, United and Delta produced approximately 6 million documents to the Plaintiffs.[5] Despite having staffed their discovery review with 70 attorneys, who began their review "as soon as the [documents] could be processed into Plaintiff's review platform following production on April 30," Plaintiffs indicate that they will be unable to complete the review in time to use these documents for depositions and other purposes, if certain scheduling deadlines are not extended. Pls.' Mem. at 10. Accordingly, Plaintiffs seek an extension of certain scheduling order deadlines so that they are afforded "a

[5] Approximately 5.1 million documents were produced on April 30, 2018. Kenney Decl. ¶ 16. Jeannine M. Kenney is an attorney admitted to practice law in the District of Columbia and Pennsylvania, and a partner at Hausfeld, LLP, one of the Court-appointed Co-Lead Counsel for Plaintiffs in this case. Kenney Decl. ¶ 1.

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