

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JULIO LOPEZ and ELIA PELAYO,

Plaintiffs,

v.

ROBBINS MANUFACTURING, INC.,

Defendant.

ORDER

13-cv-598-jdp

The stipulated extended deadline for dispositive motions was July 9, 2014. Defendant's summary judgment motion was fully briefed and under advisement as of August 20, 2014. Seven weeks later, on October 9, 2014, plaintiffs took the deposition of Janice Robbins, vice president and co-owner of defendant. Now plaintiffs have filed a motion to supplement the summary judgment record with additional findings of fact based on that deposition. Dkt. 43.

Pursuant to the Pretrial Conference Order, "Parties are to undertake discovery in a manner that allows them to make or respond to dispositive motions within the scheduled deadlines." Dkt. 8. Plaintiffs' explanation for the delay is inadequate. Although plaintiffs explain why Robbins's deposition was rescheduled from its original date of July 30, they do not explain why the deposition was delayed more than two months, until October 9. Nor do they explain the delay of another full month between the deposition and their motion to supplement the summary judgment record.

Plaintiffs imply that defendant has consented to the tardy supplementation. Plaintiffs' counsel submits a July 29 email exchange with defense counsel, in which plaintiffs' counsel proposed that rather than seek the court's leave to extend plaintiffs' summary judgment opposition deadline, she would "submit a supplement if that's okay." Defense counsel thought that was "fine," or at least he did on July 29. I doubt that defense counsel would have been "fine"

if plaintiffs' counsel had said that she would submit her supplemental proposed facts well after defendant had filed its reply. If a party submits a motion as one that is uncontested, it ought to get the other party's actual consent, instead of relying on an ambiguous expression of consent as plaintiffs have done here.

But even if the tardy supplementation were fine with the defendant, it is not fine with the court. The parties can stipulate to change deadlines for disclosures that are solely between the parties, but anything that involves a filing deadline requires court approval. The court will not disrupt its consideration of a fully-briefed dispositive motion to consider the plaintiffs' untimely submission. Plaintiffs' motion is DENIED.

Entered this 19th day of November, 2014.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge