

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

LOGANTREE LP,

Plaintiff,

v.

GARMIN INTERNATIONAL, INC. AND
GARMIN USA, INC.,

Defendants.

Case No. 17-1217-EFM-ADM

ORDER

This matter comes before the court on Defendants Garmin International, Inc. and Garmin USA, Inc.'s (collectively "Garmin") Notice to the Court and Motion to Vacate Deadlines. (ECF 140.) Garmin asks the court to vacate deadlines imposed in the court's August 5 order because of the recent death of Plaintiff LoganTree LP's ("LoganTree") principal and because the parties were making progress during their meet-and-confer efforts. LoganTree does not oppose the motion. For the reasons explained below, the parties have not shown good cause for any particular extension, let alone what amounts to wholesale and undefined extension of nearly all remaining deadlines. For this reason, the court denies Garmin's motion and reimposes scheduling order deadlines as set forth below.

I. BACKGROUND

On August 5, the court issued a memorandum and order ruling on the parties' competing motions regarding additional source code printouts and LoganTree's motion to amend the scheduling order to allow additional time for LoganTree to serve its infringement expert disclosure. *See LoganTree LP v. Garmin Int'l, Inc.*, --- F.R.D. ---, 2021 WL 3421577, at *1 (D.

Kan. 2021). As explained in the order, LoganTree's noncompliance with previous orders to meet and confer and filing deadlines caused a domino effect of delays that have plagued the case schedule for months now. To avoid further delays, the August 5 order issued additional directives, imposed deadlines, and set a live hearing—all to facilitate a prompt and final resolution of the source code printouts dispute and to get this case back on track.

Because the court granted Garmin's motion for a protective order, it gave Garmin until September 3 to file a motion seeking its reasonable expenses after first meeting and conferring with LoganTree to attempt to resolve the issue. *Id.* at *11. And the court, in denying LoganTree's motion for leave to file its motion to compel out of time, gave LoganTree one last chance to renew and properly support its motion. Specifically, the court ordered that if LoganTree wanted to bring a renewed motion to compel:

[I]t must first meet and confer with Garmin to narrow the scope of requested source code printouts to that reasonably necessary to prepare LoganTree's expert report. Specifically, LoganTree and/or its expert must identify the specific additional lines/blocks of source code (not entire modules or files) that LoganTree contends it needs and explain how those blocks correlate to specific claim limitations. To do this, the court expects LoganTree to take Garmin up on its offer for LoganTree's expert to go back into the source code environment and take notes, if necessary, so that he can identify the additional source code printouts he thinks he needs. In return, Garmin should be prepared to distinguish the claim limitations for which Garmin contends that LoganTree must identify pinpoint citations to source code in order to prove the claim limitation is met versus those claim limitations for which Garmin would concede that the other materials cited in LoganTree's final infringement contentions (*e.g.*, product manuals, marketing and promotional materials, etc.) sufficiently demonstrate that the claim limitation is met.

Id. at *12. The court directed that, if the parties were unable to resolve any remaining areas of disagreement, LoganTree could renew its motion to compel orally at an in-person hearing on September 14, 2021. The court outlined its expectations of the parties in meeting and conferring

with specificity so that if a live hearing became necessary, both sides would be prepared to go beyond broad generalities and “address the extent to which LoganTree’s expert needs printouts of specific source code to show that specific claim limitations are met for any anticipated expert report.” *Id.* The court expected the parties to be prepared so that both their time and the court’s time could be meaningfully utilized during the live hearing that was to continue from day-to-day until complete. The August 5 order also put the parties on notice that, at the hearing, the court would reset LoganTree’s deadline for service of its infringement expert’s report and reset all remaining scheduling order deadlines. *Id.* at *14.

Garmin’s current motion now seeks to vacate these deadlines and the September 14 hearing. LoganTree’s response joins in requesting the same relief.

II. DISCUSSION

Federal Rule of Civil Procedure 6(b) provides that the court may extend deadlines for good cause. Likewise, Federal Rule of Civil Procedure 16(b)(4) provides that a scheduling order “may be modified only for good cause and with the judge’s consent.” The good-cause standard requires the movant to show that it cannot meet existing deadlines despite diligent efforts. *Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 988–89 (10th Cir. 2019) (applying the Rule 16(b)(4) good-cause standard to affirm the district court’s denial of an extension of time to designate an expert witness); *Utah Republican Party v. Herbert*, 678 F. App’x 697, 700–01 (10th Cir. 2017) (applying Rule 16(b)(4)’s good-case standard to Rule 6(b)); *Gorsuch, Ltd., B.C. v. Wells Fargo Nat. Bank Ass’n*, 771 F.3d 1230, 1241 (10th Cir. 2014) (applying the standard to a motion to amend filed after the scheduling order deadline); *see also* FED. R. CIV. P. 16(b)(4) advisory committee’s note to the 1983 amendment (stating good cause exists when a schedule cannot be reasonably met despite the diligence of the party seeking the extension). This standard

generally requires the moving party to provide an adequate explanation for the delay. *Testone*, 942 F.3d at 988. The court is “afforded broad discretion in managing the pretrial schedule.” *Rimbert v. Eli Lilly & Co.*, 647 F.3d 1247, 1254 (10th Cir. 2011).

Neither Garmin’s motion nor LoganTree’s response brief show that they could not meet existing deadlines despite diligent efforts. Garmin argues the extensions are warranted because LoganTree’s principal officer, Theodore Brann, died on August 31. Garmin states that, before Brann’s death, the parties were making good progress on their efforts to meet and confer to resolve the issues of attorneys’ fees, source code printouts, and expert report deadlines but that Brann’s death stalled the process. Because of this, Garmin requests that the court vacate or extend all remaining deadlines to allow LoganTree time to appoint a new principal officer. Recognizing that Garmin is not the party in the best position to make a record regarding Brann, the court directed LoganTree to file an expedited response to the motion. LoganTree’s response largely restates what Garmin already said and provides no additional information.

The parties’ conclusory explanations do not establish good cause for the requested extensions. To begin with, LoganTree is not Brann. It is a legal entity that exists independently of Brann and must, by its very nature, have some structure for decision-making authority in place. The parties have known about Brann’s health issues for months, so LoganTree should have had a plan in place to continue to prosecute the case that it brought regardless of Brann’s status. But even separate and apart from LoganTree being its own independent legal entity, the parties do not explain why Brann’s death affects the deadlines at issue. The court’s August 5 order gave Garmin until September 3 to file a motion seeking its reasonable expenses after first meeting and conferring with LoganTree to attempt to resolve the issue. By the time Brann’s passed away on August 31, the parties should have already completed the meet-and-confer

process. As to the issue involving source code printouts, Brann's death should have no impact on resolution of that issue because he is not even authorized to view source code under the terms of the protective order.

Furthermore, the August 5 order provided the parties with ample time to meet and confer to attempt to narrow or resolve their dispute regarding source code before the September 14 hearing and in plenty of time for Garmin to file its motion for attorney fees by September 3. The parties conclusory statements that they have been meeting and conferring are insufficient to establish that they were diligent in attempting to meet the deadlines at issue, and are unpersuasive given LoganTree's established pattern of dragging its heels in this case well before Brann passed away. Indeed, LoganTree's failure to meet and confer on the source code printout issue not only stalled resolution of that discovery dispute but has now stalled the entire case for months. Therefore, the lack of specific detail regarding the parties' meet-and-confer efforts leaves the court with no way to determine whether the parties did in fact act with diligence in attempting to meet the existing deadlines. Accordingly, the court denies Garmin's motion for failure to demonstrate good cause for the requested extensions.

That said, the court recognizes that it is possible that the parties truly acted with diligence in trying to meet the deadlines but that their current briefing is simply devoid of the necessary details to make this showing. For that reason only, the court will deny the motion without prejudice. If and when Garmin decides to file a motion for attorneys' fees, it must do so by first filing a motion for leave to file out of time that explains with specificity all efforts made to meet and confer, including the dates and substance of all communications, and it must attach its proposed motion for attorneys' fees as an exhibit. The page limits previously imposed still apply. Likewise, if and when LoganTree decides to renew its motion to compel, it must file a

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