

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARIA G. PENA,	§	
	§	
Plaintiff,	§	
	§	C.A. No. 07-179
v.	§	
	§	
MARINER HEALTH CARE, INC.,	§	
et al.,	§	
	§	
Defendants.	§	

ORDER

Plaintiff initially filed an "Application for Arbitration" in the above-styled action, seeking arbitration of (1) a personal injury claim related to a fall in a nursing facility; and (2) a purported class action claim regarding the admission agreement certain residents sign to enter a particular nursing facility. (D.E. 10, Attachments to Second Amended Notice of Removal). On June 15, 2007, the Court SEVERED Plaintiff's personal injury claim from her purported class action claim, and sent the personal injury claim to arbitration (D.E. 16).

Of note, Plaintiff Maria G. Pena initially filed the above-styled action against only one Defendant, Mariner Health Care, Inc. Plaintiff, however, only served SavaSeniorCare Administrative Services, LLC, not the named Defendant Mariner Health Care, Inc.

In an apparent response to the Court's Order to address this service issue (D.E. 20)¹, Plaintiff has since amended her complaint

¹The Court's July 18, 2007 Order noted that "Ms. Pena [could not] continue to proceed against SavaSeniorCare while not naming

to name certain additional Defendants. Specifically, Plaintiff's "Amended Class Complaint" names the following Defendants: Mariner Health Care, Inc.; National Senior Care, Inc.; SSC Alice Operating Company LP; SSC Alice Operating Company LLC; SSC Submaster Holdings LLC; SSC Equity Holdings LLC; SavaSeniorCare Administrative Services LLC; SavaSeniorCare LLC; SVCare Holdings LLC; Canyon Sudar Partners LLC; Leonard Grunstein; Murray Forman and Harry Grunstein. (D.E. 21, Plaintiff's "Amended Class Complaint").

The Court originally held an initial pretrial and scheduling conference in this case on June 15, 2007. However, since Plaintiff has added several new Defendants to the case, **the Court hereby ORDERS that a second pretrial and scheduling conference is hereby set in this case for Monday, September 10, 2007, at 1:00 PM, before The Honorable Janis Graham Jack, United States Courthouse, 1133 North Shoreline Blvd., Corpus Christi, Texas 78401.**² Plaintiff

SavaSeniorCare as a Defendant in this case, nor [could] Ms. Pena proceed against Mariner [Health Care, Inc.] without serving Mariner [Health Care, Inc.] with service of process in this matter." (D.E. 20). Accordingly, the Court ORDERED Ms. Pena to either (1) serve the named Defendant Mariner Health Care, Inc.; or (2) to file an amended pleading changing the named Defendant in the case from Mariner Health Care, Inc. to SavaSeniorCare Administrative Services, LLC (the served entity). Ms. Pena was ordered to take these actions by July 27, 2007. In apparent response to the Court's July 18, 2007 Order, Plaintiff filed her "Amended Class Complaint" on July 20, 2007, naming numerous additional Defendants in the case. A summons was issued as to these new Defendants on July 20, 2007 (D.E. 22).

²The Court notes that on this date, a hearing was already scheduled in the above-styled case to discuss the issue of discovery (per D.E. 16). The issue of discovery will be addressed at the second pretrial and scheduling conference in

Maria G. Pena is hereby ORDERED to serve a copy of this Order on all named Defendants in this case.³

The Court previously entered a scheduling order in this case (D.E. 17). In light of Plaintiff's "Amended Class Complaint" naming numerous new Defendants, the Court hereby VACATES the scheduling order entered on June 15, 2007 (D.E. 17). A proposed new scheduling order is attached to the instant Order, and the proposed new scheduling order will be discussed at the September 10, 2007 conference. Plaintiff Maria G. Pena is also hereby ORDERED to serve a copy of the attached proposed scheduling order on each named Defendant in this case.

SIGNED and ENTERED this 24th day of July, 2007.



Janis Graham Jack
United States District Judge

this case scheduled for September 10, 2007.

³These named Defendants include all Defendants named in the caption of Maria G. Pena's "Amended Class Complaint" (D.E. 21). These named Defendants include: Mariner Health Care, Inc.; National Senior Care, Inc.; SSC Alice Operating Company LP; SSC Alice Operating Company LLC; SSC Submaster Holdings LLC; SSC Equity Holdings LLC; SavaSeniorCare Administrative Services LLC; SavaSeniorCare LLC; SVCare Holdings LLC; Canyon Sudar Partners LLC; Leonard Grunstein; Murray Forman and Harry Grunstein.
Plaintiff Maria G. Pena must serve a copy of this Order on each of the named Defendants listed above.

Rev. 9/02

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

MARIA G PENA

§

v.

§

Civil Action No. C-07-179

MARINER HEALTH CARE, INC., et al.

§

SCHEDULING ORDER

1. **TRIAL IS SET FOR Wednesday, July 2, 2008 at 8:00 am**, before Judge Janis Graham Jack at the United States District Court, 1133 N. Shoreline Blvd., Corpus Christi, Texas. If the parties prepare this case for trial sooner than this date, a final pretrial order may be prepared and filed with a joint motion stating that the case is ready for trial and that an earlier trial date is requested.
2. **FINAL PRETRIAL CONFERENCE IS SET FOR Tuesday, July 1, 2008 at 8:30 a.m.**, before Judge Janis Graham Jack at the United States District Court, 1133 N. Shoreline Blvd., Corpus Christi, Texas. The attorney-in-charge for each party is required to be present.
3. **THE ORIGINAL AND ONE COPY OF YOUR JOINT PRETRIAL ORDER SHALL BE FILED NO LATER THAN Friday, June 20, 2008 BY 3:00 PM** This satisfies the requirement of FRCP 26 (a)(3). Plaintiff will be responsible for the filing of a joint pretrial order, executed by the attorney-in-charge for each party, and conforming fully with the form set out in Appendix B of the Local Rules of the Southern District of Texas (1994). Plaintiff shall allow all parties at least **fifteen (15) working days** for review and contribution. A motion for leave to file a joint pretrial order without the signature of all counsel must be made, showing good cause, to obtain authority to file a pretrial order without all required signatures. Differences of the parties with respect to any matter relevant to a pretrial order will be set forth in the joint pretrial order at the appropriate place. Willful or indifferent failure to submit a well-prepared joint pretrial order in a timely fashion or to respond to its completion is cause for dismissal in the case of Plaintiff, or in the case of Defendant, is cause for default.

4. **EXCEPT FOR GOOD CAUSE SHOWN, THE DEADLINE FOR FILING DISPOSITIVE MOTIONS IS April 15, 2008**. Failure to respond timely will be considered by the Court as if the motion is unopposed, and the motion may be granted. Legal memoranda greater in length than 25 pages will **NOT** be filed without leave of Court. No reply to the opposition to a motion will be filed by movant without leave of Court on good cause.
5. The provisions of the **JOINT DISCOVERY/CASE MANAGEMENT PLAN** are hereby adopted.
6. **THE DEADLINE FOR JOINDER OF PARTIES IS October 31, 2007. THE DEADLINE FOR AMENDMENT OF PLEADING IS January 15, 2008**. This provision does not relieve the parties from obtaining leave to file pleading or add parties whenever required by the Federal Rules of Civil Procedure.
7. Discovery shall end on **April 30, 2008**. **DESIGNATION OF EXPERTS**, by all parties, are due **40 DAYS** prior to the Discovery deadline. **RESPONSIVE EXPERTS** are due **20 DAYS** prior to the Discovery deadline. Responsive experts will not be limited to rebuttal testimony. **Written Reports** that fully comply with Federal Rules of Civil Procedure 26 (a)(2)(B) shall be due at the time of designation of each expert. Parties are ordered to file only proposed witnesses with Court, pursuant to Federal Rules of Civil Procedure 26, but **NOT** reports or other discovery materials. Hearings on expert testimony and/or qualifications (i.e. Daubert and Markman) shall be requested no later than the deadline for discovery.
8. All pleading, motions, briefs, memoranda, and requests for affirmative relief will be directed to the Court, **IN PLEADING FORM**, not correspondence form, through the United States District Clerk:

United States District Clerk
1133 North Shoreline Blvd.
Corpus Christi, TX 78401

You are requested **NOT** to use the informality of letter briefs, letters citing authorities, or letters requesting continuances or other affirmative relief. Additionally, do not copy the Court on letters between the parties.

ORDERED this _____ day of _____, 20____.

JANIS GRAHAM JACK
UNITED STATES DISTRICT JUDGE