

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

OMAR ENCARNACION, individually  
and on behalf of all others similarly  
situated

Plaintiff,

v.

Case No: 2:17-cv-566-FtM-38CM

FINANCIAL CORPORATION OF  
AMERICA,

Defendant.

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**ORDER**

This matter comes before the Court upon review of the Motion for Leave to Be Excused from ADR Requirement filed on December 12, 2018. Doc. 46. Plaintiff seeks an order excusing the parties from participating in alternative dispute resolution in this case. *Id.* Defendant Financial Corporation of America (“FCA”) has not filed a response as the time to do so has not yet passed, but Plaintiff represents FCA opposes the motion. *See* Doc. 46 at 2-3; *see generally* Docket. For the reasons stated herein, the motion will be denied.

The parties currently have mediation scheduled for December 17, 2018.<sup>1</sup> Doc. 46 at 1. Plaintiff claims he is “fully ready, willing and able to participate in the

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<sup>1</sup> The Court notes the parties’ mediation deadline was December 3, 2018. Doc. 29. The parties did not file a motion for an extension of the deadline as required under the Federal Rules of Civil Procedure and the Case Management and Scheduling Order (“CMSO”) itself. *See* Doc. 29 at 4; Fed. R. Civ. P. 16(b)(4) (“A schedule may be modified only for good cause *and with the judge’s consent.*” (emphasis added)); *see generally* Docket. Indeed, the parties sought an extension of the discovery deadline to depose Plaintiff without

scheduled mediation,” but FCA has indicated it is unwilling to consider class-wide settlement. *Id.*; Doc. 46-1. Plaintiff thus posits there is “nothing to be gained by engaging in a mediation or any other ADR mechanism at this time,” and doing so would only incur costs and attorneys’ fees that would “make any potential future settlement that much more difficult.” *Id.* at 2. Plaintiff also argues that Plaintiff would be forced to “needlessly miss another day of work,” after having missed a full day of work to attend his recent deposition. *Id.*

Plaintiff made the affirmative decision to file this action in this Court. It should be expected that Plaintiff would have to actively participate in the litigation, especially as related to compliance with the rules of the venue he chose for his lawsuit. Those rules include mandatory mediation. Thus, despite Plaintiff’s argument that mediation in this case would have “zero chances of success,” the parties are encouraged and obliged under the federal rules and rules of this Court to set aside any differences and engage in a good faith effort to reach a resolution of this matter. *See* Fed. R. Civ. P. 1, 16(a)(5); M.D. Fla. R. 1.01(b), 9.01(b). Indeed, the CMSO in this case clearly states: “All parties shall participate, in a good faith effort, in Court annexed, mandatory mediation in order to minimize pretrial procedures and secure the just, speedy, and inexpensive determination of this action.” Doc. 29 at 12. The parties already have been warned in this case about the Court’s expectations of

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seeking an extension of any other deadlines. *See* Doc. 42. In this instance, the Court *sua sponte* will extend the mediation deadline to December 17, 2018. But the parties are warned that the deadlines set forth in the CMSO and entered by the Court are not mere suggestions. Therefore, any future failures to adhere to the CMSO deadlines without *timely* seeking an extension—i.e., before the deadline and with sufficient time for the opposing party to respond if the request is opposed—may result in sanctions.

cooperation and civility; in the same vein, the Court fully expects the parties to mediate this case in a good faith effort to resolve or narrow the disputed issues. *See* Doc. 28 at 8.

ACCORDINGLY, it is

**ORDERED:**

1. The Motion for Leave to Be Excused from ADR Requirement (Doc. 46) is **DENIED**.

2. The parties shall have up to and including **December 17, 2018** to conduct mediation. All other deadlines and directives set forth in the Case Management and Scheduling Order (Doc. 29) shall remain the same.

**DONE** and **ORDERED** in Fort Myers, Florida on this 14th day of December, 2018.

  
CAROL MIRANDO  
United States Magistrate Judge

Copies:  
Counsel of record