UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

David Collinge, *et al.*,	)	
	)	
Plaintiffs,	)	**2:12-cv-824 JWS**
	)	
vs.	)	**ORDER AND OPINION**
	)	
Intelliquick Delivery, Inc., *et al.*,	)	**(Motions at docs. 419 and 424)**
	)	
Defendants.	)	
	)	

I. MOTIONS PRESENTED

At docket 419 Defendants move to extend the time for completing Phase IIB discovery, the time for filing certain motions, and the time for filing a proposed pre-trial order. Plaintiffs' opposition is at docket 421, and Defendants' reply is at docket 423. At docket 424 Plaintiffs file a belated request for oral argument or, in the alternative, to file a sur-reply.

II. DISCUSSION

After reviewing the briefing, the court finds that the principal substantive issue presented is whether Defendants should be granted an extension of time for discovery so that they may depose individual drivers about where their vehicles were at various times in the past. As Defendants put it in their reply memo:

> As previously stated, on June 8, Defendants received Plaintiffs' expert rebuttal report and learned that the experts had conflicting opinions regarding how certain anomalies should be interpreted in the various reports. For example [and this is the only example given], Plaintiffs' expert opined that GPS data from the vehicles driven by class members was unreliable because the data did not present a continuous string of feedback, but instead presented a series of discrete data outputs or "pings." Defendants' expert opined that the intervals between the GPS data "pings" were confirmation of the model used by Defendants' expert. What will otherwise be an unnecessarily hypothetical debate between the parties and [sic] could easily be explained by testimony of absent class members as to such simple things as where their vehicles were located during certain intervals of time.[1]

Defendants insisted on deposing absent class members from June 8[2] until June 28 when Defendants gave Plaintiffs a list of six opt-in plaintiffs who might be deposed in lieu of absent class members. A review of the communications between the parties' lawyers shows that on June 13 Plaintiffs' counsel brought to the attention of defense counsel that a defendant seeking to depose absent class members bears a heavy burden to justify such discovery.[3] Defendants did not directly challenge this proposition, but instead waited until June 28 to effectively abandon the request to depose absent class members by suggesting depositions of certain opt-in plaintiffs.

In the meantime, the court approved the parties' seventh stipulated request to modify the court's scheduling order which they filed on May 12.[4] The approved stipulation modified the scheduling order setting June 30 as the deadline for completion

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[1]Doc. 423 at p. 2.

[2]In the filing at docket 424, Plaintiffs contend that the subject of deposing absent class members came up in late April. Given the court's resolution of the motion at docket 419, it is not necessary to determine when the subject first arose.

[3]Doc. 421-2 citing relevant case law.

[4]Doc. 412.

of Phase IIB discovery. Obviously both sides were well aware that the much extended deadline for discovery was about to close. Defendants did not move for an extension of time for discovery until June 30, the very day discovery closed.

A scheduling order may be modified at the discretion of the court upon a showing of good cause.[5] A primary consideration when examining whether good cause has been shown is whether the requesting party has been diligent.[6] Assuming, without deciding, that Defendants have been adequately diligent given the convoluted circumstances presented here, the court nevertheless will not exercise its discretion to grant the requested extension. Defendants have not actually demonstrated that the requested discovery would resolve anomalies in the data obtained from the discrete data outputs from the CXT system used in the drivers' trucks. There is no reason to believe that individual drivers have a better understanding of how the CXT system works than do Defendants. There is no reason to believe that individual drivers could remember exactly where they were or what they were doing between pings on various past dates. The value of the additional discovery sought is counterintuitive and speculative at best. The court declines to exercise its discretion to modify the scheduling order to allow for such additional discovery.

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[5]Fed. R. Civ. P. 16(b)(4).

[6]*Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

III. CONCLUSION

Based on the preceding discussion, the motion at docket 419 is DENIED, and the motion at docket 424 is DENIED as moot in view of the decision on the motion at docket 419.

DATED this 13th day of July 2017.

/s/ JOHN W. SEDWICK
SENIOR JUDGE, UNITED STATES DISTRICT COURT