

1 STAN S. MALLISON (Bar No. 184191)  
StanM@TheMMLawFirm.com  
2 HECTOR R. MARTINEZ (Bar No. 206336)  
HectorM@TheMMLawFirm.com  
3 MARCO A. PALAU (Bar No. 242340)  
MPalau@TheMMLawFirm.com  
4 MALLISON & MARTINEZ  
1939 Harrison Street, Suite 730  
5 Oakland, California 94612-3547  
Telephone: (510) 832-9999  
6 Facsimile: (510) 832-1101

7 WEINBERG, ROGER & ROSENFELD  
A Professional Corporation  
8 DAVID A. ROSENFELD (SBN 058163)  
drosenfeld@unioncounsel.net  
9 WILLIAM A. SOKOL (SBN 72740)  
bsokol@unioncounsel.net  
10 1001 Marina Village Parkway, Suite 200  
Alameda, CA 94501-1091  
11 Telephone: (510) 337-1001  
Facsimile: (510) 337-1023

MILBERG LLP  
JEFF S. WESTERMAN (SBN 94559)  
jwesterman@milberg.com  
SABRINA S. KIM (SBN 186242)  
skim@milberg.com  
NICOLE M. DUCKETT (SBN 198168)  
nduckett@milberg.com  
One California Plaza  
300 South Grand Ave., Suite 3900  
Los Angeles, CA 90071  
Telephone: (213) 617-1200  
Facsimile: (213) 617-1975

14 MARGARITA ROSALES and ANGELICA  
15 ROSALES, on behalf of themselves and all  
others similarly situated,

17 Plaintiffs,

18 vs.

19 EL RANCHO FARMS, and DOES 1-20,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

CASE NO. 1:09-CV-0707-AWI-SMS

**STIPULATION AND ORDER TO  
EXTEND CASE DEADLINES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I. INTRODUCTION**

This action is one of six cases against grape growers in the Southern Central Valley assigned to Judge Ishii. The six cases were originally filed as one action but severed and filed individually by order of Judge Ishii. The scheduling orders for the six cases were set by Magistrate Judge Snyder, to whom these cases were formerly assigned until approximately March 14, 2011, and Judge Snyder treated the cases in a somewhat coordinated fashion.

During a discovery conference for a related case, Judge Snyder indicated that the Court was not opposed to providing reasonable extensions in any of the grapes cases. Judge Snyder indicated that the cases would likely not go to trial as scheduled given Judge Ishii’s extremely busy calendar, and that Judge Ishii was not opposed to extending case deadlines. Judge Snyder advised us that she would entertain requests for extensions and has stayed pertinent class certification and expert deadlines in *Soto v. Castlerock*, 1:09-cv-701 pending the resolution of discovery disputes among the parties in that case. According to Judge Snyder, the Castlerock action was meant to serve as a test case of sorts for the others with respect to scheduling. Based on Judge Snyder’s guidance it is plaintiffs’ counsel’s understanding that deadlines in this case would be extended, particularly given the circumstances of this case.

**II. GOOD CAUSE FOR EXTENDING DEADLINES**

The parties are currently engaged in exchange and review of documents that are being produced in response to discovery. However, certain issues have arisen over which the parties, through their counsel, are meeting and conferring. In particular, some of the information that has been produced and some information that has not yet been produced may be designated confidential. As such, the parties are working on a draft of a stipulated and proposed protective order which they intend to finalize as soon as possible and present to the Court for approval. In addition, the parties are meeting and conferring over issues that pertain to the scope of the class and scope of discovery. The parties have agreed to resolve the documentary discovery issues prior to completing party depositions, and have also agreed that the production of documents should



1 Non-Dispositive Motion Filing: 3/11/11 11/11/11  
2 Dispositive Motion Filing: 8/19/11 4/16/12  
3  
4 Merits Discovery: 7/1/11 4/6/12  
5 Settlement Conference Date: None  
6  
7 Pre-Trial Conference: 10/21/11, 8:30am 6/18/12  
8 Trial Date: 12/6/11, 8:30am 8/20/12

9 DATED: March 22, 2011

**MALLISON & MARTINEZ**

11 By: /s/ Marco A. Palau  
12 STAN S. MALLISON  
13 HECTOR R. MARTINEZ  
14 MARCO A. PALAU  
15 JESSICA JUAREZ  
16 Attorneys for Plaintiffs

17 DATED: March 22, 2011

**ALEXANDER & ASSOCIATES**

18 By: /s/ Christian Howland  
19 CHRISTIAN HOWLAND  
20 Attorneys for Defendant  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

Pursuant to Fed. R. Civ. P. 16(b)(3), a case schedule may be modified only for good cause and only with the judge’s consent. Fed. R. Civ. P. 16(b). In Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992), the Court explained,

. . . Rule 16(b)’s “good cause” standard primarily concerns the diligence of the party seeking the amendment. The district court may modify the pretrial schedule “if it cannot reasonably be met despite the diligence of the party seeking the extension.” Fed.R.Civ.P. 16 advisory committee’s notes (1983 amendment) . . . [T]he focus of the inquiry is upon the moving party’s reasons for seeking modification. . . . If that party was not diligent, the inquiry should end.

Parties must “diligently attempt to adhere to that schedule throughout the subsequent course of the litigation.” Jackson v. Laureate, Inc., 186 F.R.D. 605, 607 (E.D. Cal. 1999); see Marcum v. Zimmer, 163 F.R.D. 250, 254 (S.D. W.Va. 1995). In part, the “good cause” standard requires the parties demonstrate that “noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding her diligent efforts to comply, because of the development of matters which could not have been reasonably foreseen or anticipated at the time of the Rule 16 Scheduling conference . . .” Jackson, 186 F.R.D. at 608.

The Court notes that several of the dates that the parties seek to modify, have already passed. Notably, the scheduling order issued in this case warned the parties, “If the parties determine at any time that the schedule outlined in this Order cannot be met, counsel are ORDERED to notify the Court *immediately* so that adjustments may be made, either by stipulation or by subsequent status conference.” (Doc. 21 at 12) Nevertheless, the parties offer no explanation why they failed to comply with this order and seek amendment of the deadlines *before* the date had passed.

Importantly, in Hardy v. County of El Dorado, the Court rejected a motion to extend the discovery cut-off, filed three days before the discovery cut-off, finding that this demonstrates a lack of diligence. The Court held, “Indeed, requesting the Court to modify the Scheduling Order to extend the discovery cut-off date three days before the deadline does not constitute diligence.” Id., 2008 U.S. Dist. LEXIS 75925, at \*4 (E.D. Cal. Aug. 29, 2008). Thus, it is unclear why the parties believed that their stipulation to amend these dates in the scheduling order, would be

1 granted. Moreover, though the parties indicate that they have conducted some discovery, exactly  
2 what has been done and when it was done, is not explained. Thus, the Court has insufficient  
3 information to allow it to determine that the parties have diligently pursued discovery in this case.  
4 Finally, the Court is mindful that this case was filed nearly two years ago and it appears that very  
5 little progress has been made in bringing this case to fruition.

6 Despite the lack of good cause shown, the factual information that has been provided in the  
7 stipulation makes clear that counsel has not met, and is unprepared to meet, the future deadlines in  
8 currently set in this case. The Court recognizes, given these circumstances, that requiring  
9 compliance with these dates would work a hardship to the parties and could unfairly disadvantage  
10 plaintiffs' ability to prepare their motion for class certification by the April 1, 2011 deadline. On  
11 the other hand, many of the dates proposed by the parties are unworkable. For example, most  
12 ignore the amount of time that has passed since the filing of this action. Also, the date proposed  
13 for the dispositive motion filing date leaves insufficient time for the Court to hear and decide the  
14 motion before the proposed pretrial conference date.

15 **ORDER**

16 Based upon the foregoing, the Court will **GRANT IN PART** and **DENY IN PART** the  
17 stipulation to amend the scheduling order as follows:

	<b><u>New Deadline</u></b>
18	
19	Class Certification Filing: 9/9/11
20	Class Discovery: 6/3/11
21	Expert Discovery: 7/11/11
22	Merits Discovery: 2/3/12
23	Non-Dispositive Motion Filing: 2/17/12
24	Non-Dispositive Motion Hearing: 3/19/12
25	Dispositive Motion Filing: 4/6/12
26	Dispositive Motion Hearing: 5/21/12
27	Pre-Trial Conference: 7/11/12

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Trial Date: 9/11/12

Counsel is admonished to diligently pursue discovery of this matter and to conscientiously adhere to the amended deadlines. The Court will not again modify case dates that have already passed. Moreover, **no further amendments to the scheduling order will be granted absent a showing of exceptional good cause and only upon a showing that counsel has acted diligently.**

IT IS SO ORDERED.

Dated: March 24, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE