





1 discovery demands in this and other cases. Id. Likewise, Defendant notes that it stipulated several  
2 times to modify the scheduling order to accommodate Plaintiff and the unavailability of witness  
3 Sharon Zimmer, but has never before sought a modification of the scheduling order for itself. Id.

4 Plaintiff argues that Defendant does not demonstrate why it “failed to properly meet and  
5 confer, which would justify the extension in time in which to file a motion for summary judgment.”  
6 (Doc. 164 at 6) Plaintiff argues that because Defendant failed to demonstrate good cause for its  
7 failure to meet and confer before filing the motion for summary judgment that there is a similar lack  
8 of good cause to amend the scheduling order to allow the filing of an amended dispositive motion.  
9 However, the factors the Court may consider differ.

10 Here, the “good cause” standard requires the Court to examine Defendant’s diligence.  
11 Johnson v. Mammoth Recreations, 975 F.2d 604, 609 (9th Cir. 1992) To do this, the Court may  
12 consider 1.) the party’s explanation for the failure to complete the scheduled activity on time, 2.) the  
13 importance of the activity, 3.) the potential prejudice in allowing the activity to occur out-of-time,  
14 and 4.) the availability of a extension of time to cure any prejudice. Id.; Robert Half Int’l, Inc. v.  
15 Murray, 2008 U.S. Dist. LEXIS 89291 at \*5-6 (E.D. Cal. Oct. 22, 2008).

16 The evidence supplied demonstrates that Defendant conducted and completed its non-expert  
17 depositions expeditiously and cooperated in making its employees available for deposition. (Doc.  
18 136, Ex 1 at 2-3) Except for failing to meet and confer before the filing of its motion for summary  
19 judgment, there is no evidence that Defendant failed to comply with any other requirement of the  
20 scheduling order. Importantly, the Court has found already that, though Defendant failed to comply  
21 with the scheduling order relative to its dispositive motion, Defendant did not act in bad faith. (Doc.  
22 148 at 3) Instead, it appears that Defendant failed to appreciate the time needed to satisfy the “meet-  
23 and-confer” requirement substantively and, as a result, stipulated to allow the scheduling order to be  
24 modified to such an extent that counsel’s time constraints, relative to its dispositive motion, were  
25 severe. Id. at 3-6. Once again, the Court does not find that these stipulations occurred due to any  
26 bad faith on Defendant’s part but, instead, due to an attempt to cooperate with Plaintiff’s counsel and  
27 the needs of the litigation. Bateman v. United States Postal Serv., 231 F.3d 1220, 1223 (9th Cir. Cal.  
28 2000)(“[W]e lament the decline of collegiality and fair-dealing in the legal profession today, and

1 believe courts should do what they can to emphasize these values.”)

2           Additionally, the role of summary judgment in modern litigation is important. The United  
3 States Supreme Court has equated the motion for summary judgment as the principal tool “by which  
4 factually insufficient claims or defenses could be isolated and prevented from going to trial with the  
5 attendant unwarranted consumption of public and private resources . . .” Celotex Corp. v. Catrett,  
6 477 US 317, 327 (1986). The Court cautioned, “Rule 56 must be construed with due regard not only  
7 for the rights of persons asserting claims and defenses that are adequately based in fact to have those  
8 claims and defenses tried to a jury, but also for the rights of persons opposing such claims and  
9 defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and  
10 defenses have no factual basis.” Id.

11           If Defendant’s motion here is denied, it will be deprived of its right to seek pretrial  
12 disposition of the case. Notably, the Ninth Circuit has encouraged thoughtful consideration before  
13 depriving a party of his ability to participate in dispositive motions. In Ahanchian v. Xenon Pictures,  
14 Inc., 2010 U.S. App. LEXIS 22910 at \* 7-9 (9th Cir. Cal. Nov. 3, 2010), the plaintiff sought a one-  
15 week extension of time in which to file his opposition to the defendants’ motion for summary  
16 judgment. The defendants opposed the request and argued that the plaintiff had failed to establish  
17 “good cause” to deviate from the scheduling order. Id. at \*8-9. The district court denied the request,  
18 refused to consider the late-filed opposition and granted the motion for summary judgment. Id. at  
19 \*10-12.

20           On appeal, the Court held that the plaintiff had sufficiently demonstrated “good cause” for  
21 the request and noted that the plaintiff “faced an exceptionally constrained deadline resulting from  
22 the peculiar dictates of the local rules for the Central District of California.” Ahanchian at \*14-15.  
23 The Court continued, “Critically, the record is devoid of any indication either that Ahanchian’s  
24 counsel acted in bad faith or that an extension of time would prejudice defendants. To the contrary,  
25 the record reflects that Ahanchian’s counsel acted conscientiously throughout the litigation, promptly  
26 seeking extensions of time when necessary and stipulating to defendants’ earlier request for an  
27 extension of time to file their answer and to the twelve-week extension due to two defendants’ late  
28 appearances.” Id. at \*17-18.

1 Similarly here, there is no evidence that Defendant acted in bad faith and it appears that  
2 Defendant conformed to the scheduling order in all respects *except* the one at issue. Likewise,  
3 Defendant attempted to cooperate with Plaintiff's discovery schedule by stipulating to the  
4 modifications to the scheduling order that Plaintiff sought. This left scant time for Defendant to  
5 prepare its dispositive motion.<sup>1</sup>

6 Finally, neither party has alerted the Court to any prejudice that would occur if Defendant is  
7 permitted to file an amended motion for summary judgment.<sup>2</sup> Though this would require Plaintiff to  
8 participate in the process by meeting and conferring and filing a substantive opposition as necessary,  
9 this burden is no greater than on any other plaintiff facing a dispositive motion.<sup>3</sup> For all of these  
10 reasons, the Court finds good cause to **GRANT** Defendant's motion to amend the scheduling order.

### 11 ORDER

12 Based on the foregoing and good cause appearing, the motion to modify the scheduling order  
13 (Doc. 165) is **GRANTED**. The scheduling order is modified as follows:

14 1. All Dispositive pretrial Motions shall be filed no later than January 7, 2011 and heard no  
15 later than March 7, 2011 at 1:30 p.m., in Courtroom 2 before the Honorable Anthony W. Ishii,  
16 United States District Court Judge.

17 a. If an amended dispositive motion is filed, Defendant is not required to re-file  
18 previously filed exhibits and lodged transcripts. If Defendant chooses to rely on  
19

---

20  
21 <sup>1</sup>The Court fully agrees with Plaintiff's oral argument that failing to meet and confer as required by the scheduling  
22 order before filing a motion for summary judgment should not be condoned. The Court's position on this failure was  
23 illustrated by Judge Ishii's order striking the motion for summary judgment. The question presented here though, is whether  
the failure to meet and confer should bar an errant defendant from seeking Rule 56 relief. Based upon the unique and specific  
facts of this case, the Court finds that this Defendant should not be precluded.

24 <sup>2</sup>At most, Plaintiff describes that he will be required to incur greater costs than normal because he has already filed  
the objections to the previously filed motion. (Doc. 164 at 6.) However, Plaintiff could have sought his costs of filing his  
25 objections at the time he made them but he did not.

26 <sup>3</sup>It appears that Plaintiff believes that Judge Ishii's order was intended to be bar to Defendant seeking the current  
27 relief. (Doc. 164 at 2, 4, 5) To the contrary, Judge Ishii *specifically* reserved the Court's authority to provide this relief in  
the order which reads, "The Court strikes Defendant's motion for summary judgment without prejudice. Defendant, if it  
28 chooses, may petition the Magistrate Judge to set a new dispositive motions deadline. Although setting a new dispositive  
motions deadline also may require the setting of a new trial date, the Magistrate Judge has the discretion to order such new  
dates and deadlines if she deems it appropriate under the circumstances." (Doc. 148 at 4, n. 4)

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

previously filed exhibits, Defendant MUST cite to this evidence by citing the docket number and the exhibit number for the evidence already on file.

2. The Pretrial Conference will be held on April 27, 2011 at 8:30 a.m. in Courtroom 2.
3. The Trial will be held on July 5, 2011 at 8:30 a.m. in Courtroom 2.
4. The parties are **ORDERED** to comply with all other requirements of the original scheduling order and all amendments thereto.

IT IS SO ORDERED.

Dated: November 19, 2010

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE