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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

RIGOBERTO FLORES et. al.,)	CASE NO. 1:09-cv-01618 AWI JLT
Plaintiffs,)	
v.)	ORDER DENYING REQUEST TO MODIFY
)	SCHEDULING ORDER
EDWIN GENASCI, et. al,)	(Doc. 18)
Defendants.)	

I. Current stipulation

On December 8, 2010, the parties filed a stipulation to modify the scheduling order. (Doc. 18) In essence, the parties seek to suspend all dates set forth in the scheduling order for an undisclosed period of time. Id. In addition, the parties caution the Court that they may wish to seek a continuance of the trial date at some unspecified date in the future. Id.

The parties explain that they have entered into this stipulation because they wish to engage in mediation, though a mediator has not been selected, a date for mediation has not been identified and, in fact, neither party is prepared to settle given their admission that they “need time to update their respective exposure calculations and case evaluations . . .” (Doc. 18)

Because the parties fail to make a good cause showing, the request to amend the Scheduling Order is **DENIED**.

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1 **II. Analysis**

2 Pursuant to Fed. R. Civ. P. 16(b)(3), district courts must enter scheduling orders to establish
3 deadlines for, among other things, “to file motions” and “to complete discovery.” A schedule may be
4 modified only for good cause and only with the judge’s consent. Fed. R. Civ. P. 16(b). A “scheduling
5 conference order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded
6 without peril.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992).

7 In Johnson, 975 F.2d at 609, the Ninth Circuit Court of Appeals explained,

8 . . . Rule 16(b)’s “good cause” standard primarily concerns the diligence of the party
9 seeking the amendment. The district court may modify the pretrial schedule “if it cannot
10 reasonably be met despite the diligence of the party seeking the extension.” Fed.R.Civ.P.
11 16 advisory committee’s notes (1983 amendment) . . . Moreover, carelessness is not
compatible with a finding of diligence and offers no reason for a grant of relief. . . . [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.

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

18 This case is already 15 months old. (Doc. 1) The Court issued the Scheduling Order in this case
19 11 months ago. (Doc. 15) At that time, the parties assisted the Court in selecting dates that would move
20 the case to completion in an efficient manner. Id. Now, with the non expert discovery deadline looming,
21 the parties seek to be excused from all discovery dates due to their desire to settle the matter but have
22 offered no explanation for their delay in taking steps to do so earlier.¹ Though the Court compliments
23 the parties’ willingness to work cooperatively to resolve their dispute, settlement discussions are not an
24 “unanticipated” development that the parties could not have envisioned at the time the Scheduling Order
25 was drafted.

26
27 ¹ Perhaps most disturbing is the parties’ apparent belief that the Court would be willing to suspend all discovery dates
28 and place the matter into a state of legal limbo, which would certainly imperil their trial date, without any showing that they
have diligently attempted to handle their case within the deadlines they assisted in selecting.

1 For these reasons, the Court finds that good cause has not been demonstrated. Therefore, the
2 request to modify the scheduling order is **DENIED**.

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4 IT IS SO ORDERED.

5 Dated: December 9, 2010

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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