



1 604, 610 (9th Cir. 1992). The scheduling order “controls the course of the action unless the court  
2 modifies it.” Fed. R. Civ. P. 16(d). As such, a scheduling order is “the heart of case management.”  
3 *Koplove v. Ford Motor Co.*, 795 F.2d 15, 18 (3rd Cir. 1986).

4 Scheduling orders are “not a frivolous piece of paper, idly entered, which can be cavalierly  
5 disregarded by counsel without peril.” *Johnson*, 975 F.2d at 610 (quoting *Gestetner Corp. v. Case*  
6 *Equip. Co.*, 108 F.R.D. 138, 141 (D. Maine 1985)). Good cause must be shown for modification of  
7 the scheduling order. Fed. R. Civ. P. 16(b)(4). The Ninth Circuit explained:

8 Rule 16(b)’s “good cause” standard primarily considers 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. Moreover,  
11 carelessness is not compatible with a finding of diligence and offers no reason for a  
12 grant of relief. Although the existence of a degree of prejudice to the party opposing  
the modification might supply additional reasons to deny a motion, the focus of the  
inquiry is upon the moving party’s reasons for modification. If that party was not  
diligent, the inquiry should end.

13 *Johnson*, 975 F.2d at 609 (internal quotation marks and citations omitted). Therefore, parties must  
14 “diligently attempt to adhere to the schedule throughout the course of the litigation.” *Jackson v.*  
15 *Laureate, Inc.*, 186 F.R.D. 605, 607 (E.D. Cal. 1999). The party requesting modification of a  
16 scheduling order has the burden to demonstrate:

17 (1) that she was diligent in assisting the Court in creating a workable Rule 16 order, (2)  
18 that her noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding  
19 her efforts to comply, because of the development of matters which could not have  
20 been reasonably foreseen or anticipated at the time of the Rule 16 scheduling  
conference, and (3) that she was diligent in seeking amendment of the Rule 16 order,  
once it become apparent that she could not comply with the order.

21 *Id.* at 608 (internal citations omitted).

22 Here, when the Court drafted the scheduling order, it was based upon the dates suggested by  
23 the parties. (*Compare* Doc. 18 at 2; Doc. 16 at 13) In order to ensure discovery moved along  
24 appropriately, the Court set a mid-discovery status conference. Though counsel failed to appear at this  
25 conference, they reported that discovery was, in fact, moving forward appropriately. (Doc. 22 at 2.)  
26 Thus, it appears the problems in completing discovery are recently discovered.

27 Though the Court understands the difficulties facing counsel’s due to busy trial schedules, the  
28 schedule proposed in the stipulation is not workable. Judges in the Eastern District of California carry

1 the heaviest caseload in the nation, and the District Judges are unable to devote inordinate time and  
2 resources to individual cases and matters. The Court encourages parties' counsel to consider, and if  
3 necessary, to reconsider, consent to a U.S. Magistrate Judge to conduct all further proceedings,  
4 including trial. The Magistrate Judges' availability is far more realistic and accommodating to parties  
5 than that of Judge Ishii who must prioritize criminal and older civil cases over more recently filed civil  
6 cases.

7 Moreover, civil trials set before Judge Ishii trail until he becomes available and are subject to  
8 suspension mid-trial to accommodate criminal matters. Civil trials are no longer reset to a later date if  
9 Judge Ishii is unavailable on the original date set for trial. In addition, this Court's Fresno Division  
10 randomly and without advance notice, reassigns civil actions to U.S. District Judges throughout the  
11 nation to serve as visiting judges. Thus, in the absence of Magistrate Judge consent, this action is  
12 subject to reassignment to a U.S. District Judge from outside the Eastern District of California.

13 With this in mind, it is not possible for Judge Ishii to conduct a pretrial conference, receive  
14 review, consider and hear motions in limine and consider trial documents a mere eight days before  
15 trial. Moreover, given the crush of Judge Ishii's caseload, he cannot reasonably consider dispositive  
16 motions more quickly than eight weeks from the date of the hearing on the motion. Thus, in order to  
17 attempt to accommodate the need to complete discovery, the stipulation to amend the scheduling order  
18 is **GRANTED IN PART.**

19 **ORDER**

20 Based upon the foregoing, the scheduling order is amended as follows:

- 21 1. All discovery, including non-expert and expert discovery, SHALL be completed no  
22 later than **October 18, 2013**;
- 23 2. Experts SHALL be disclosed no later than **September 20, 2013** and rebuttal experts  
24 SHALL be disclosed no later than **October 4, 2013**;
- 25 3. The settlement conference, currently set on September 27, 2013, is continued to  
26 **November 19, 2013** at 10:00 a.m.

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