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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

PACIFIC MARINE CENTER, INC., A  
California Corporation, and SONA  
VARTANIAN, an individual,

Plaintiffs,

v.

Case No. 1:13-cv-00992-AWI-SKO

**ORDER FOR SUPPLEMENTAL  
STATEMENT RE SCHEDULE  
MODIFICATION**

(Doc. Nos. 61, 62)

PHILADELPHIA INDEMNITY INSURANCE  
COMPANY, a Pennsylvanian Corporation, and  
DOES 1 through 10, inclusive,

Defendants.

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**I. INTRODUCTION**

On November 13, 2015, the parties filed a stipulated request to extend the expert discovery deadlines. (Doc. 59.) The request was not supported by good cause, and it was denied on November 16, 2015. (Doc. 60.) On November 19, 2015, both parties filed ex parte applications for an extension of the expert deadlines. (Docs. 61, 62.)

1 For the reasons set forth below, before a sixth extension of time will be granted under the  
2 circumstances of this case, the parties shall provide the supplemental information set forth below  
3 on or before November 25, 2015.

## 4 II. PROCEDURAL HISTORY

5 The original schedule in this matter was set on November 27, 2013. The deadlines,  
6 including the trial, were extended on October 2, 2014. (Doc. 17.) On March 9, 2015, the entire  
7 schedule was again modified at the parties' request. On April 29, 2015, again citing discovery  
8 disputes and difficulty scheduling depositions, the parties requested a schedule modification,  
9 including a continuation of the trial date. This request was granted on May 8, 2015.

10 On July 30, 2015, the parties again stipulated for a wholesale change to the schedule  
11 because Plaintiff had broken her ankle and her deposition needed to be continued. This request  
12 was also granted. (Doc. 45.) On September 30, 2015, the parties once again filed a stipulated  
13 request for a schedule change due to the discovery of two new witnesses, and the parties sought  
14 additional time to designate supplemental experts:

15 WHEREAS, the current schedule of disclosure of expert testimony allows only  
16 four days from the date of the initial disclosure for the parties to provide  
17 supplemental disclosure of experts based upon the initial disclosure and Plaintiffs  
18 and Philadelphia would like more time to obtain and designate supplemental  
experts based upon the initial disclosure of experts of the opposing party;

19 WHEREAS, Plaintiffs and Philadelphia desire to extend the time for non-expert  
20 discovery and to continue the dates of the deadlines for disclosure of experts,  
dispositive and non-dispositive motions;

21 (Doc. 48.) To maintain the trial date, the pre-trial deadlines were extended, but not to the extent  
22 requested by the parties. (Doc. 53.) Twenty-one days later, the parties filed another request for a  
23 schedule modification, stating the schedule was simply too aggressive:

24 WHEREAS, under the current schedule, the parties must provide expert reports on  
25 October 30, 2015, attend the settlement conference on November 2, 2015, counter-  
26 designate experts on November 5, 2015, complete expert deposition discovery by  
27 November 12, 2015[,] and file non-dispositive and dispositive motions by  
28 November 16, 2015, and counsel do not believe that they will be able to  
accomplish those tasks in that limited time period;

1 (Doc. 55.) The Court modified the deadlines as proposed by the parties, but because of the  
2 additional time requested, the trial could not be accommodated until October 2016. (Doc. 56.)

3 On November 13, 2015, the parties again sought to extend their expert discovery deadlines  
4 indicating they were having difficulty scheduling expert depositions, particularly due to the  
5 holidays. This request was denied for lack of good cause. (Doc. 60.)

6 On November 19, 2015, both parties filed ex parte applications seeking additional time.  
7 They explained expert reports were served on November 13, 2015, that were far more extensive  
8 than anticipated. Philadelphia maintains it is clear from the reports that it will not be able to serve  
9 requests for depositions and documents, prepare for the deposition of expert witnesses on  
10 extremely complicated and complex topics in the expert reports, obtain and designate  
11 supplemental experts and defend the depositions designated by Philadelphia by the current  
12 December 3, 2015, deadline and also be able to file dispositive and non-dispositive motions by the  
13 December 7, 2015, deadline. Plaintiffs joined Philadelphia's request, asserting that it "will take  
14 substantial time, measured in weeks, not days to properly review [the forensic accountant expert's]  
15 work in order to be ready for his deposition." (Doc. 62.) Further, Plaintiffs state that they will "in  
16 all likelihood designate a supplemental expert to address his opinions, . . . "[o]ur supplemental  
17 expert will need some time to prepare for a meaningful deposition, . . . [and a]nother expert by  
18 defendant will also probably require a supplemental expert by plaintiffs. That will take time."  
19 (Doc. 62, 2:9-12.)

### 20 III. DISCUSSION

21 Pursuant to Rule 16, the Court is required to issue a scheduling order as soon as  
22 practicable, and the order "must limit the time to join other parties, amend the pleadings, complete  
23 discovery, and file motions." Fed. R. Civ. P. 16(b)(3)(A). Once a scheduling order has been filed  
24 pursuant to Rule 16, the "schedule may be modified only for good cause and with the judge's  
25 consent." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily considers the  
26 diligence of the party seeking the amendment." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d  
27 604, 609 (9th Cir. 1992). If the moving party fails to demonstrate diligence, "the inquiry should  
28 end." *Id.* Good cause may be found, for example, where the moving party shows it assisted the

1 court with creating a workable scheduling order, that it is unable to comply with the scheduling  
2 order's deadlines due to matters not reasonably foreseeable at the time the scheduling order was  
3 issued, and that it was diligent in seeking modification once it became apparent it could not  
4 comply with the scheduling order. *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal.  
5 1999).

6 What the Court finds most concerning about the parties' renewed requests for a schedule  
7 modification is the parties' pattern of underestimating the time needed to perform tasks in this  
8 litigation. The expert discovery deadlines were modified less than one month ago – exactly as the  
9 parties proposed. The existing deadlines were not arbitrarily selected by the Court – they were set  
10 based on counsel's representation they had met and conferred meaningfully and had chosen dates  
11 that were workable and feasible based on their schedules, their experts' schedules, and counsel's  
12 knowledge about the nature and complexity of the issues in the case. Only counsel are privy to all  
13 the details of their cases, and as such, the Court relies on the parties to make careful assessments  
14 about the time necessary to complete the litigation tasks when requesting a particular schedule be  
15 put into effect.<sup>1</sup>

16 The schedule change requested on October 21, 2015, proposed only a 20-day period  
17 between expert disclosure and the close of expert discovery. The sheer number of experts  
18 expected to be designated – without even knowing the details of their reports – was probably a  
19 good indication this period was too short to complete all the necessary tasks. The Court is not  
20 unsympathetic or unaware of the realities of litigation where the unexpected often occurs. Yet the  
21 volume of schedule modifications requested by the parties – five alone this year – weave a pattern  
22 evidencing a lack of meaningful discussion and consideration of the schedule and the nature of the  
23 case, rather than the occurrence of truly unforeseen events that could not have been reasonably  
24 anticipated.

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25 <sup>1</sup> The Court expended a good deal of time trying to preserve the parties' trial date when they requested a schedule  
26 modification on September 30, 2015, while still extending the parties additional time for discovery, knowing that trial-  
27 date modification is problematic given Judge Ishii's extremely impacted calendar; trial-date modification can lead to  
28 costly delay. When the parties requested another schedule change on October 21, 2015, indicating the most recent  
schedule modification was simply too aggressive, the trial date was continued to October 2016 and all the pre-trial  
deadlines were reset as requested to give the parties the additional time they needed to complete discovery and file  
necessary motions.

1 From the Court's perspective, twenty days to review expert reports, designate rebuttal  
2 experts, prepare for depositions, and complete all expert discovery would be aggressive in nearly  
3 any case. Nonetheless, the parties know their cases best and were the only ones privy to their meet  
4 and confer discussions in proposing the schedule that is now in place. The Court modified the  
5 schedule less than 30 days ago and for the fifth time this year based on the parties' representation  
6 that the proposed dates were feasible and realistic given both the nature of the case and the  
7 proximity of the deadlines to the holidays.

8 Therefore, before a sixth extension of time will be granted under these circumstances,  
9 proof that the parties have created a workable and feasible schedule is required. To establish they  
10 have proposed a feasible expert discovery deadline of January 11, 2016, the parties shall (1)  
11 provide the date when each currently disclosed expert will be deposed,<sup>2</sup> and (2) identify five days  
12 the parties agree will be set aside for the deposition of any rebuttal witnesses. The five days set  
13 aside for rebuttal expert depositions must be selected with sufficient time built in to review any  
14 rebuttal expert reports and prepare for such depositions. The parties' schedule modification  
15 requests will be entertained only when this supplemental information has been provided.

#### 16 IV. CONCLUSION AND ORDER

17 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 18 1. By no later than November 25, 2015, but after meeting and conferring, the parties  
19 shall file a supplemental statement setting forth a precise expert deposition  
20 schedule as discussed above; and
- 21 2. The parties' ex parte applications for a schedule modification will be considered  
22 when this supplemental information is provided.

23  
24 IT IS SO ORDERED.

25 Dated: November 20, 2015

/s/ Sheila K. Oberto  
26 UNITED STATES MAGISTRATE JUDGE

27  
28 <sup>2</sup> These dates should be selected only after counsel confer with each other *and* with the experts regarding their availability.