

1 WAUKEEN Q. MCCOY, ESQ. (SBN: 168228)
McCOY LAW FIRM
2 555 Montgomery Street, Suite 1100
3 San Francisco, California 94111
Telephone: (415) 675-7705
4 Facsimile: (415) 675-2530
5 E-mail: mail@mccoyslaw.com

6 Attorney for Plaintiff,
Tanya Solesbee
7

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 TANYA SOLESBEE, an individual,
12 Plaintiff,

13 vs.

14 COUNTY OF INYO, a governmental entity,
15 INYO COUNTY INTEGRATED WASTE
16 MANAGEMENT, a government entity,
17 ROBERT MAYHUGH, an individual, and
DOES 1 through 10, inclusive;

18 Defendants.
19

Case No. 1:13-cv-01548-AWI-JLT

**JOINT STIPULATION TO MODIFY THE
SCHEDULING ORDER FOR AN
EXTENSION OF TIME TO COMPLETE
DISCOVERY ; DECLARATION OF
WAUKEEN MCCOY IN SUPPORT
THEREOF; [PROPOSED]**

**ORDER GRANTING THE REQUEST IN
PART**

(Doc. 63)

20
21 **JOINT STIPULATION**

22 Plaintiff TANYA SOLESBEE and Defendants, COUNTY OF INYO and ROBERT
23 MAYHUGH, by and through their respective counsel of record, hereby stipulate that the
24 deadlines in the May 13, 2015 Scheduling Order be extended to allow the parties to adequately
25 complete the discovery needed to present all the issues to the Court.

26 WHEREAS, the operative complaint in this action was filed on August 25, 2014 in the
27 United States District Court, Eastern District of California, by Plaintiff;
28

1 WHEREAS, on May 13, 2015, the Honorable Jennifer L. Thurston issued a Scheduling
2 Order setting forth the discovery deadlines, non-dispositive motion deadlines, and dispositive
3 motion deadlines;

4 WHEREAS, the Scheduling Order required non-expert discovery to be completed by
5 February 15, 2016; expert discovery to be completed by April 25, 2016; non-dispositive motions
6 to be filed by May 9, 2016 and a hearing by June 6, 2016; and dispositive motions to be filed by
7 June 20, 2016 and a hearing by August 1, 2016;

8 WHEREAS the parties have engaged in written discovery, but meet and confer efforts to
9 resolve discovery disputes have delayed production of responsive documents and the taking of
10 depositions;

11 WHEREAS, the parties are engaging in a good faith settlement effort, but need further
12 discovery in order to engage in meaningful settlement discussion;

13 WHEREAS, the parties have been meeting and conferring on an appropriate protective order
14 to allow a full production of documents, which is necessary for Plaintiff to conduct the
15 depositions of the Defendants;

16 WHEREAS, the parties believe they require a limited extension of time to complete
17 discovery and file motions, without affecting the pretrial conference or trial dates established by
18 the Court;

19 WHEREAS, the parties have not made any previous requests to extend any discovery
20 deadlines in this action:

21 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff and
22 Defendants, through their respective counsel, that the deadlines in the May 13, 2015 Scheduling
23 Order be extended as follows:

- 24 1. The Non-Expert Discovery Deadline, which is currently set for February 15, 2016, shall
25 be extended to **April 30, 2016**.
- 26 2. The Expert Discovery Deadline, which is currently set for April 25, 2016, shall be
27 extended to **June 9, 2016**.

- 1 3. The deadline for parties to file any non-dispositive pre-trial motions shall be extended
2 from May 9, 2016 to **June 23, 2016**, and the deadline for non-dispositive pre-trial
3 motions to be heard shall be extended from June 6, 2016 to **July 21, 2016**.
- 4 4. The deadline for parties to file any dispositive pre-trial motions shall be extended from
5 June 20, 2016 to **August 4, 2016**, and the deadline for dispositive pre-trial motions to be
6 heard shall be extended from August 1, 2016 to **September 15, 2016**.

7
8 IT IS SO STIPULATED.

9
10
11
12 By: _____ /s/ _____
13 Waukeen Q. McCoy, Esq.,
14 Attorney for Plaintiff, Tanya Solesbee

12 By: _____ /s/ _____
13 John Kirby, Esq.,
14 Attorney for Defendant County of Inyo

15 Dated: January 11, 2016

15 Dated: January 11, 2016

16
17
18 By: _____ /s/ Charles Taylor _____
19 Charles Taylor, Esq.,
20 Attorney for Defendant, Robert Mayhugh

21 Dated: January 11, 2016

1 **ORDER**

2 Before the Court is the stipulation of counsel to extend the deadlines set forth in the
3 scheduling order. (Doc. 66) The stipulation fails to set forth the reasons why they have not
4 completed written discovery and indicates only that counsel have engaged in meet-and-confer
5 efforts related to a discovery dispute. *Id.* at 2. They state further that this dispute has delayed
6 them in taking depositions. *Id.* They say also that a dispute over drafting a protective order has
7 also arisen and they are working on this.¹ *Id.*

8 They do not explain why they waited until so late in the process to complete their
9 discovery. As of November 2015, when they filed the mid-discovery status conference, it was
10 apparent that counsel had made only a modest effort toward completing discovery. (Doc. 63 at
11 2) Though Plaintiff had propounded written discovery, responses were due in early November,
12 suggesting that the discovery had not been propounded until late September or early October.
13 County had propounded written discovery and had received responses. *Id.* Mayhugh had
14 propounded no written discovery. *Id.* Despite this, no party suggested that they could not
15 comply with the February 15, 2016 discovery deadline. *Id.* (As an aside, the Court notes that the
16 February deadline was one *they* proposed at the time the Court developed the case schedule.
17 (Doc. 54 at 6)) As a result, the Court admonished, “Counsel are reminded of their obligation to
18 complete all discovery within the time frames set forth in the Scheduling Order.” (Doc. 64)

19 Stipulations to amend the case schedule must demonstrate good cause and a
20 determination whether this has been shown is informed by the diligence of the parties in
21 conducting this discovery; unfortunately, this latter information has not been detailed in the
22 stipulation. The case schedule informed counsel,

23 **The dates set in this Order are considered to be firm and will not be modified**
24 **absent a showing of good cause even if the request to modify is made by**
25 **stipulation. Stipulations extending the deadlines contained herein will not be**
26 **considered unless they are accompanied by affidavits or declarations, and**
27 **where appropriate attached exhibits, which establish good cause for granting**
28 **the relief requested.**

¹ They say also that they are having settlement discussions also. However, settlement discussions often are part of litigation and should have been anticipated and taken into account proposing dates for the scheduling order. This does not constitute good cause to amend the case schedule.

1 Failure to comply with this order may result in the imposition of sanctions.
2 (Doc. 57 at 8, emphasis in the original)

3 Scheduling orders are intended to alleviate case management problems. Johnson v.
4 Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992). As such, a scheduling order is
5 “the heart of case management.” Koplove v. Ford Motor Co., 795 F.2d 15, 18 (3rd Cir. 1986).
6 Further, scheduling orders are “not a frivolous piece of paper, idly entered, which can be
7 cavalierly disregarded by counsel without peril.” Johnson, 975 F.2d at 610 (quoting Gestetner
8 Corp. v. Case Equip. Co., 108 F.R.D. 138, 141 (D. Maine 1985)). The parties must “diligently
9 attempt to adhere to the schedule throughout the course of the litigation.” Jackson v. Laureate,
10 Inc., 186 F.R.D. 605, 607 (E.D. Cal. 1999).

11 Finally, the parties suggests significant changes to the case schedule while ignoring that
12 the proposed amendments fail to provide Judge Ishii sufficient time to consider and decide any
13 dispositive motions before the pretrial conference. As it stands the proposed hearing date for
14 dispositive motions is a mere four days before the pretrial conference; this is insufficient. Judge
15 Ishii needs *eight weeks* between the hearing on the motion and the pretrial conference. Thus, the
16 proposed amended schedule is unworkable for the Court and cannot be granted. However, the
17 Court will provide some assistance because there is a very minimal showing of good cause,
18 though no showing of diligence. Thus, the Court **ORDERS:**

19 1. The Non-Expert Discovery Deadline is extended to **April 25, 2016.**
20 **Absolutely no other amendments to the case schedule are authorized. Absolutely no**
21 **further stipulations or motions to amend the case schedule will be entertained absent a**
22 **showing of exceptional good cause and a showing of diligence.**

23
24 IT IS SO ORDERED.

25 Dated: **January 14, 2016**

26 **/s/ Jennifer L. Thurston**
27 UNITED STATES MAGISTRATE JUDGE
28