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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 TREVOR WEEKS,) Case No.: 1:13-cv-01641 - AWI-JLT
12 Plaintiff,)
13 v.) ORDER DENYING STIPULATION TO AMEND
14 UNION PACIFIC RAILROAD COMPANY,) THE SCHEDULING ORDER
15 Defendant.) (Doc. 77)
16

17 In ruling on the defendant's motion for summary judgment, the Court concluded that
18 "significant events occurred around March 2015, well after the close of discovery" and that the illness
19 of Plaintiff's prior counsel, now deceased, interfered with the attorney's ability to properly discover
20 this case. (Doc. 71 at 19) Thus, the Court amended the case schedule and granted nearly five
21 additional months to conduct non-expert discovery. (Doc. 76) In doing so, the Court warned,

22 **No other amendments to the case schedule are authorized and the Court does not**
23 **anticipate granting further requests to amend the case schedule. The Court**
24 **strongly encourages counsel to complete the additional discovery they need**
expeditiously.

25 Id. at 2, emphasis in the original. Despite this, counsel now submit a stipulation to amend the case
26 schedule to add about two more months of non-expert discovery time while providing only a vague
27 explanation for it. (Doc. 77) They state, "The parties also have held ongoing Conferences of Counsel
28 to resolve discovery disputes involving Defendant's document production and written responses to

1 Plaintiffs discovery. Both parties believe the additional time will permit the parties to lessen and/or
2 resolve discovery disputes.” (Doc. 77 at 2) Notably, they fail to explain the nature of the disputes,
3 when they arose, how they impact the completion of discovery, what they have done to resolve the
4 issues and why they have failed to involve the Court in the dispute resolution process. (Doc. 11 at 4
5 [“A party with a discovery dispute must first confer with the opposing party in a good faith effort to
6 resolve by agreement the issues in dispute. If that good faith effort is unsuccessful, the moving party
7 promptly shall seek a telephonic hearing with all involved parties and the Magistrate Judge.”]; Doc. 76
8 at 2 [“**All of the procedures set forth in the case schedule . . . remain in place and counsel remain**
9 **obligated to comply with the scheduling order except as modified here.**” Emphasis in the original])
10 In addition, in light of the fact that motions related to discovery disputes may be brought as late as
11 December 30, 2016, counsel fail to explain why these current disputes should derail completion of the
12 case.

13 A scheduling order “controls the course of the action unless the court modifies it.” Fed. R.
14 Civ. P. 16(d). Scheduling orders are intended to alleviate case management problems. Johnson v.
15 Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992). As such, a scheduling order is “the
16 heart of case management.” Koplove v. Ford Motor Co., 795 F.2d 15, 18 (3rd Cir. 1986).

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

21 Rule 16(b)’s “good cause” standard primarily considers the diligence of the party
22 seeking the amendment. The district court may modify the pretrial schedule if it cannot
23 reasonably be met despite the diligence of the party seeking the extension. Moreover,
24 carelessness is not compatible with a finding of diligence and offers no reason for a
25 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.

26 Johnson, 975 F.2d at 609 (internal quotation marks and citations omitted).

27 As noted above, counsel have made no showing to support their conclusion they have acted
28 diligently. To show diligence, counsel were obligated to detail the discovery each side has completed

1 and the discovery yet to complete. They should have explained why they did not complete the needed
2 discovery earlier and why they could not have done so. Finally, they should have explained why they
3 cannot complete the discovery within the deadlines set by the Court. Thus, they have failed to make a
4 sufficient showing to justify amendment of the case schedule. Johnson, 975 F.2d at 609.

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6 IT IS SO ORDERED.

7 Dated: September 20, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE