

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

FRANK CORNEJO, et al.  
  
Plaintiffs,  
  
v.  
  
OCWEN LOAN SERVICING, LLC, et al.,  
  
Defendants.

Case No.: 1:15-cv-00993-JLT  
  
**ORDER GRANTING THE STIPULATION  
TO AMEND THE CASE SCHEDULE**  
  
**(Doc. 22)**

Defendants removed this matter to this Court on June 29, 2015. (Doc. 1) They then answered the complaint on September 1, 2015. (Doc. 6) Nearly two months later, Defendants moved for judgment on the pleadings, which the Court granted in part. (Docs. 11, 16) Plaintiffs filed their first amended complaint several weeks later and the defendants answered, several weeks after that. (Docs. 17, 18)

In the meanwhile, on October 28, 2015, the Court held a scheduling conference and issued the case schedule, which detailed the deadlines by which the parties would complete case activities. (Doc. 10) Despite this, counsel have failed to conduct discovery, choosing instead to expend their efforts toward resolving the matter. (Doc. 22 at 3) While these efforts have resolved one claim and agreed to strike certain allegations made in the complaint, they did not resolve the balance of the matter despite the passage of nearly four months since plaintiffs filed their amended complaint. Now the parties find themselves in the unenviable situation in which they have completely exhausted

1 their non-expert discovery time and are unprepared to move forward.

2 **I. Discussion and Analysis**

3 Scheduling orders are “not a frivolous piece of paper, idly entered, which can be cavalierly  
4 disregarded by counsel without peril.” *Johnson*, 975 F.2d at 610 (quoting *Gestetner Corp. v. Case*  
5 *Equip. Co.*, 108 F.R.D. 138, 141 (D. Maine 1985)). Districts courts must enter scheduling orders in  
6 actions to “limit the time to join other parties, amend the pleadings, complete discovery, and file  
7 motions.” Fed. R. Civ. P. 16(b)(3). In addition, scheduling orders may “modify the timing of  
8 disclosures” and “modify the extent of discovery.” *Id.* Once entered by the Court, a scheduling order  
9 “controls the course of the action unless the court modifies it.” Fed. R. Civ. P. 16(d).

10 The parties must show good cause to modify the scheduling order. Fed. R. Civ. P. 16(b)(4).  
11 The Ninth Circuit explained:

12 Rule 16(b)’s “good cause” standard primarily considers the diligence of the party  
13 seeking the amendment. **The district court may modify the pretrial schedule if it**  
14 **cannot reasonably be met despite the diligence of the party seeking the extension.**  
15 Moreover, carelessness is not compatible with a finding of diligence and offers no  
16 reason for a grant of relief. Although the existence of a degree of prejudice to the  
17 party opposing the modification might supply additional reasons to deny a motion, the  
18 focus of the inquiry is upon the moving party’s reasons for modification. If that party  
19 was not diligent, the inquiry should end.

20 *Johnson*, 975 F.2d at 609 (internal quotation marks and citations omitted), emphasis added.

21 Therefore, parties must “diligently attempt to adhere to the schedule throughout the course of the  
22 litigation.” *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 607 (E.D. Cal. 1999). A party requesting  
23 modification of a scheduling order may be required to show:

24 (1) that she was diligent in assisting the Court in creating a workable Rule 16 order,  
25 (2) that her noncompliance with a Rule 16 deadline occurred or will occur,  
26 notwithstanding her efforts to comply, because of the development of matters which  
27 could not have been reasonably foreseen or anticipated at the time of the Rule 16  
28 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.

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

26 Despite these standards, counsel provide no explanation why they chose to disregard the case  
27 schedule and to ignore their obligations to conduct discovery for their clients. Indeed, settlement  
28 efforts were not an unforeseen circumstance and they should have alerted the Court at the scheduling



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. The pretrial conference is **CONTINUED** to **August 29, 2016**, at 8:30 a.m.

IT IS SO ORDERED.

Dated: **April 28, 2016**

**/s/ Jennifer L. Thurston**  
UNITED STATES MAGISTRATE JUDGE