

1 month later (on June 15, 2023), the Court granted Defendant County of Kern’s renewed
2 application (later joined by Plaintiff) for additional discovery extensions based on the belatedly
3 discovered cassette tapes. (Doc. 96). Relevant here, the Court granted a 90-day extension of the
4 deadline to make rebuttal expert witness disclosures – from July 12, 2023, to October 12, 2023.
5 *Id.* at 5.

6 Pending before the Court is (1) the parties’ joint motion to extend case management dates
7 due to the unexpected unavailability of Plaintiff’s expert witness to appear for deposition (Doc.
8 102), (2) the request to vacate the scheduling conference by all parties except Defendant City of
9 Delano (*id.*), and (3) Defendant County of Kern’s motion to extend the deadline for making
10 rebuttal expert witness disclosures (Doc. 100), to which Plaintiff filed an opposition (Doc. 105).
11 On November 9, 2023, the Court convened the parties for a status conference to address the two
12 requests. (Doc. 106).

13 Based on the Plaintiff’s representations in the joint motion,¹ the Court finds good cause to
14 adopt the proposed amendments to the scheduling order (as modified) and shall order the case
15 management dates be amended accordingly. The Court also finds based on Plaintiff’s
16 representations in the motion (Doc. 102 at 8 & n.2) and the parties’ statements during the status
17 conference that the settlement conference should be vacated. However, for the reasons preserved
18 on the record during the status conference and further explained below, the Court shall deny
19 Defendant County of Kern’s request for relief from the expired deadline to make its rebuttal
20 expert witness disclosures.

21 **Governing Legal Standard and Analysis**

22 District courts enter scheduling orders in actions to “limit the time to join other parties,
23 amend the pleadings, complete discovery, and file motions.” Fed. R. Civ. P. 16(b)(3). Once
24 entered, a scheduling order “controls the course of the action unless the court modifies it.” Fed. R.
25 Civ. P. 16(d). Scheduling orders are intended to alleviate case management problems. *Johnson v.*
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27 ¹ Plaintiff represented in his motion that the proposed modifications to the scheduling
28 order were made “with the concurrence of all Defendants” (Doc. 102 at 2) and counsel for
Defendants affirmed their support for the modifications during the status conference.

1 *Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). “A scheduling order is not a
2 frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without
3 peril.” *Id.* (quotation and citation omitted). Under Federal Rule of Civil Procedure 16(b), a
4 scheduling order “may be modified only for good cause and with the judge’s consent.” Fed. R.
5 Civ. P. 16(b)(4). Accord, *Wong v. Regents of Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005)
6 (“Parties must understand that they will pay a price for failure to comply strictly with scheduling
7 and other orders”).

8 “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party
9 seeking the amendment.” *Johnson*, 975 F.2d at 609. If the moving party is unable to reasonably
10 meet a deadline despite acting diligently, the scheduling order may be modified. *Id.* If,
11 however, the moving party “‘was not diligent, the inquiry should end’ and the motion to modify
12 should not be granted.” *Zivkovic v. So. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002)
13 (quoting *Johnson*, 975 F.2d at 609).

14 Here, Defendant County of Kern argues that a *nunc pro tunc* extension of the expired
15 deadline for disclosing rebuttal expert witnesses is warranted because (1) counsel has been
16 unable to locate a forensic pathology rebuttal expert, (2) counsel only recently has been able to
17 locate a biomechanical rebuttal expert and that expert’s drafting of his report is ongoing, and (3)
18 counsel has had limited time to timely complete rebuttal expert tasks due to a busy trial schedule.
19 (*See* Doc. 100, 100-1).

20 The Court acknowledges the challenges presented to timely completing rebuttal expert
21 disclosures due to counsel’s impacted trial schedule and the limited availability of experts
22 qualified in the referenced subject matters. However, counsel was not diligent in presenting the
23 challenge to either opposing counsel or the Court for timely resolution. Thus, despite that
24 disclosure of rebuttal experts was due on October 12, 2023, counsel for Defendant County of
25 Kern first sought an extension of this deadline by email to opposing counsel *one week after* the
26 date had passed and did not seek relief from Court until more than *ten days later*. (Doc. 100 at 1-
27 2). Delaying a request for extension until after the case management date has expired is
28 inconsistent with the Court’s Local Rules and contrary to the party’s obligation to exercise due

1 diligence. See Local Rule 144(d) (“Counsel shall seek to obtain a necessary extension from the
2 Court or from other counsel or parties in an action as soon as the need for an extension becomes
3 apparent.”); *Zivkovic*, 302 F.3d at 1087.

4 **Conclusion and Order**

5 For the forgoing reasons, it is HEREBY ORDERED that Defendant County of Kern’s
6 motion for an extension *nunc pro tunc* of the deadline to disclose rebuttal expert witnesses (Doc.
7 100) is DENIED.

8 It is FURTHER ORDERED that the scheduling order is amended as follows:

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Expert discovery deadline	January 18, 2024
Dispositive motion deadline	February 14, 2024
Dispositive motion hearing	April 1, 2024 (ADA)
Pretrial Conference	June 10, 2024 (ADA)
Trial	August 6, 2024 (ADA)

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16 It is FURTHER ORDERED that the settlement conference scheduled for November 27, 203
17 (Doc. 80) is VACATED. The parties may jointly propose resetting a settlement conference before
18 the undersigned by contacting the Courtroom Deputy Clerk.

19 IT IS SO ORDERED.

20 Dated: November 13, 2023

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23 UNITED STATES MAGISTRATE JUDGE
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