

1 filed this putative class action in this Court. (Doc. 1.) The complaint was amended to clarify some of
2 their factual allegations and added Defendant Garza Contracting, Inc. as a named defendant. (Doc. 6.)
3 On December 23, 2019, Defendants filed their answer to Plaintiffs' complaint (Doc. 7), as well a
4 motion to stay this action (Doc. 10.)

5 On December 23, 2019, the parties filed a joint scheduling report proposing November 30,
6 2020 as the non-expert discovery cutoff. (Doc. 16.) At the time, the scheduling conference was set to
7 take place on December 30, 2019; however, the conference was continued to February 19, 2020 due to
8 the then-pending motion to stay. (Doc. 18.) On January 29, 2020, the Court denied Defendants'
9 motion to stay (Doc. 25), and on February 21, 2020, the Court issued the scheduling order (Doc. 30).

10 Shortly after the Court denied Defendants' motion to stay, Plaintiffs served a first set of
11 requests for production and first set of interrogatories on February 11, 2020. (Doc. 38-2, Trabucco
12 Decl. at ¶ 7.) Defendants responded to this discovery on March 27, 2020. (Id.) Plaintiff then served a
13 second set of interrogatories and requests for documents on or about April 28, 2020, and Defendants
14 responded on June 1, 2020. (Id. at ¶ 13.) Plaintiffs subsequently served a third set of requests for
15 production and a first set of requests for admission on or about October 22, 2020, and served a fourth
16 set of requests for production, third set of interrogatories, and second set of requests for admission on
17 or about October 28, 2020, responses to which are still pending. (Id.)

18 Plaintiffs report that during the course of discovery, after confirming the databases and
19 software used by Defendants for purposes of payroll, timekeeping, and farm management, Plaintiffs
20 met and conferred with Defendants to identify the ESI that might be available, and Plaintiffs came up
21 with the idea to seek direct access to Defendants' databases rather than production of certain data and
22 reports. (Trabucco Decl., ¶ 8.) Plaintiffs have negotiated and obtained direct access to databases used
23 by Defendants for timekeeping, payroll, and farm management purposes. (Id. at ¶¶ 9, 14, 16.) On or
24 about August 28, 2020, Defendants provided electronic access to their Famous payroll database and on
25 October 30, 2020, they provided direct access to their Pet Tiger database used for timekeeping and
26 other field operations. (Id. at ¶ 16.) The parties negotiated access to these databases, including the
27 scope of access, the terms on which access would be provided, and certain safeguards relating to
28 Defendants' interests as well as work product protections of Plaintiffs' counsel. (Id. at ¶ 14.) Plaintiffs

1 report that the negotiations to gain access were lengthy and protracted and took place over the course
2 of several months. (Id.)

3 On July 2, 2020, the parties filed a joint status report. (Doc. 32.) According to Plaintiffs, they
4 requested a status conference to assist the parties in resolving certain differences and assisting the
5 parties to reach an agreement for database access. (Trabucco Decl., ¶ 15.) On July 6, 2020, the Court
6 declined the request to set a status conference. (Doc. 33.)

7 On or about August 21, 2020, the parties reached agreement on stipulations to provide database
8 access and enter into a protective order and filed them with the Court. (Docs. 34, 35.) Once the
9 stipulated protective order was entered, Defendants granted Plaintiffs access to the Famous database
10 on August 28, 2020 by providing username and password information. (Trabucco Decl., ¶ 16.)
11 Plaintiffs report that they began reviewing data and extracting information, including a class list
12 showing more than 10,000 class members, and payroll information of class members. (Id. at ¶ 17.)
13 Plaintiffs report that access to the Pet Tiger database was delayed due to technical difficulties that
14 Defendants encountered in setting up remote access for Plaintiffs. (Id. at ¶ 16.) Plaintiffs did not
15 receive access to this database until around October 30, 2020. (Id.)

16 According to Plaintiffs, after gaining access to these databases used by Defendants to manage
17 field operations and maintain timekeeping and payroll data of class members, Plaintiffs have been able
18 to conduct depositions on class certification issues that Plaintiffs completed on November 19 and 20,
19 2020. (Trabucco Decl., ¶ 18; Doc. 38-1 at 5.) Plaintiffs also anticipate receiving responses to written
20 discovery before the present non-expert discovery cutoff. (Doc. 38-1 at 5.) Plaintiffs report that while
21 Plaintiffs' counsel has worked to produce the named Plaintiffs for deposition, one deposition has been
22 delayed due to medical procedures undergone by one of the named Plaintiffs. (Trabucco Decl., ¶ 18.)
23 According to Plaintiffs, due to his present medical condition, Plaintiff Eugenio Cruz will not be able to
24 appear for deposition within the cutoff but will do so as soon as his health permits, likely in late
25 December 2020 depending on recommendations of doctors. (Id.; Doc. 38-1 at 5.)

26 According to Plaintiffs, the recent depositions have revealed certain omissions in the database
27 modules or data sets to which Plaintiffs have been given access, and missing documents, ESI, and
28 things that should have been produced but have not. (Trabucco Decl., ¶ 19.) Plaintiffs report that this

1 includes operating agreement(s) between Anthony Vineyards, Inc. and Sycamore Labor, Inc.;

2 disclosures provided to employees regarding compensation and wage rates that constitute the working

3 arrangement and offer of employment; time stamps relating to class member work time and

4 timekeeping practices; records relating to the transport of product in the fields and which relate to the

5 time that class members start and end work, including potentially showing unpaid time; schedules

6 created by farm and field management personnel; class member work schedules and the time for

7 which workers are paid, as well as worktime that is unrecorded and unpaid; crop inventory and

8 tracking data that contains timestamp information related to when class members are working or may

9 be working without compensation; accounts payable data from the databases relating to purchases of

10 tools used by class members, or the absence thereof; written communications between directors,

11 officers, managers and supervisors using company electronic mail accounts; text communications

12 between directors, officers, managers and supervisors using company cell phones; and training logs

13 and attendance sheets for training conducted of Sycamore managers and supervisors. (Id.)

14 Plaintiffs report that gaining access to the data has permitted Plaintiffs to streamline class

15 certification discovery by allowing them to obtain efficient access to ESI on the one hand and, on the

16 other, allowing them to sample paper records, which Plaintiffs believe is sufficient for class

17 certification purposes, though not necessarily for trial. (Trabucco Decl., ¶ 19; Doc. 38-1 at 6.)

18 Plaintiffs report that this allows the parties to avoid the burden and expense of scanning a massive

19 amount of paper records at this stage of the litigation. (Doc. 38-1 at 6.) The process of scanning,

20 coding, and summarizing all available records of more than 10,000 class members is both burdensome

21 and expensive and, Plaintiffs believe, unnecessary at this pre-certification stage—especially in light of

22 the challenges posed by the pandemic for any task that involves people working together and

23 exchanging things. (Id.) For this reason, Plaintiffs explain that they have opted to scan subsets of the

24 records or samples for class certification purposes, anticipating however that they will have to scan

25 and summarize a broader set of records for trial, including, for example, records containing certain

26 categories of information not contained in the databases, such as Crew Cost Sheets/Dailies with

27 certain data points not contained in the ESI or incomplete in the ESI, such as start and end of work

28 periods, meal periods and rest breaks. (Id.) Plaintiffs state that, nevertheless, the scope of

1 scanning/coding/summarizing of records needed for trial will depend on the scope of the class and
2 subclasses certified, or whether this case proceeds only as a PAGA case. (Id.) Plaintiffs report that
3 they cannot anticipate at this time precisely what will have to be scanned and summarized except they
4 anticipate with substantial certainty that there will be sets of records that will have to be scanned and
5 summarized for dispositive motions and trial, but to undertake this burdensome and expensive project
6 at this time is, in Plaintiffs' estimation, not the best use of resources. (Id.)

7 The Court has not previously modified the schedule in this case. (Trabucco Decl., ¶ 24.) The
8 parties submitted a stipulation to extend the non-expert discovery cutoff, which the Court denied.
9 (Docs. 36, 37.) According to Plaintiffs, on November 16, 2020, Plaintiffs sought to modify the
10 schedule by stipulation. (Trabucco Decl., ¶ 24.) However, on November 17, 2020, Defendants
11 declined to stipulate. (Id.) Plaintiffs filed the instant motion to modify the scheduling order on
12 November 20, 2020. (Doc. 38.) Defendants filed an opposition on December 4, 2020 (Doc. 39), and
13 Plaintiffs filed a reply on December 11, 2020 (Doc. 42).

14 **II. Legal Standard**

15 Districts courts must enter scheduling orders in actions to "limit the time to join other parties,
16 amend the pleadings, complete discovery, and file motions." Fed. R. Civ. P. 16(b)(3). In addition,
17 scheduling orders may "modify the timing of disclosures" and "modify the extent of discovery." *Id.*
18 Once entered by the court, a scheduling order "controls the course of the action unless the court
19 modifies it." Fed. R. Civ. P. 16(d). Scheduling orders are intended to alleviate case management
20 problems. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). As such, a
21 scheduling order is "the heart of case management." *Koplove v. Ford Motor Co.*, 795 F.2d 15, 18 (3rd
22 Cir. 1986).

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

27 Rule 16(b)'s "good cause" standard primarily considers the diligence of the party seeking
28 the amendment. The district court may modify the pretrial schedule if it cannot
reasonably be met despite the diligence of the party seeking the extension. Moreover,
carelessness is not compatible with a finding of diligence and offers no reason for a

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grant of relief. Although 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.

Johnson, 975 F.2d at 609 (internal quotation marks and citations omitted). Therefore, parties must "diligently attempt to adhere to the schedule throughout the course of the litigation." *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 607 (E.D. Cal. 1999). The party requesting modification of a scheduling order has the burden to demonstrate:

- (1) that she was diligent in assisting the Court in creating a workable Rule 16 order;
- (2) that her noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding her diligent efforts to comply, because of the development of matters which could not have been reasonably foreseen or anticipated at the time of the Rule 16 scheduling conference; and
- (3) that she was diligent in seeking amendment of the Rule 16 order, once it became apparent that she could not comply with the order.

Id. at 608 (internal citations omitted).

III. Discussion and Analysis

Plaintiffs contend that there is good cause for modifying the schedule. (Doc. 38-1 at 8.) Plaintiffs report that they have been diligent in assisting the Court to fashion a workable scheduling order, have brought potential noncompliance not anticipated at the time the order was entered to the Court's attention, and have timely requested a modification of the scheduling order. (*Id.*) Plaintiffs assert that at the time the parties submitted a scheduling report and proposed case deadlines, plaintiffs were unaware that the case would involve a potential class of more than 10,000 farmworkers. (*Id.* at 9.) Plaintiffs report that they have streamlined discovery of extensive ESI by obtaining direct access to data. (*Id.*)

Plaintiffs also assert that they have acted diligently in pursuing discovery and meeting case deadlines. (Doc. 38-1 at 9.) However, Plaintiffs allege, the original scheduling conference statement was submitted prior to the development of a global pandemic that has slowed discovery and litigation generally. (*Id.*) According to Plaintiffs, when they drafted the scheduling conference statement, they did not anticipate how many thousands of workers were in the class. (*Id.* at 9-10.) Plaintiffs also state that they also could not anticipate that about nine months of discovery would end up being inadequate, and they did not anticipate that a pandemic would slow litigation. (*Id.* at 10.) Plaintiffs report that

1 despite the pandemic, Plaintiffs initiated written discovery and have since propounded several sets of
2 written discovery to obtain information for certification. (Id.)

3 The parties negotiated access to Defendants' databases, and Plaintiffs report that they have
4 obtained key discovery for class certification. (Doc. 38-1 at 10.) Plaintiffs report that Defendants
5 provided electronic access to their Famous payroll database on August 28, 2020, and their Pet Tiger
6 database used for timekeeping and other field operations on October 30, 2020. (Id.) Plaintiffs report
7 that Defendants had difficulties setting up the Pet Tiger database to provide access to Plaintiffs and
8 this delay could not have been anticipated. (Id.) Defendants contend that the delay in access to the Pet
9 Tiger system was not unanticipatable or outside Plaintiffs' counsel's control; although Plaintiff's
10 counsel knew of Pet Tiger's existence, they did not begin to seriously ask for remote access to it until
11 the Court issued its September 17 order denying the stipulation to modify the scheduling order. (Doc.
12 39 at 3.) Defendants report that it took slightly over a month after that to agree on the scope of access
13 and for Defendants to build and test the access. (Id.)

14 In reply, Plaintiffs dispute Defendants' timelines of events. (Doc. 42 at 5.) Plaintiffs describe
15 that they sought access to the Famous and Pet Tiger databases when they served their first set of
16 discovery requests on February 11, 2020. (Id.) According to Plaintiffs, they followed up this effort by
17 seeking remote access to the database following Defendants' initial discovery responses and limited,
18 single-week for a single crew, document production. (Id.) On April 23, 2020, Plaintiffs report that they
19 sent defense counsel a draft stipulation for the remote access of Defendants' Famous and Pet Tiger
20 databases. (Id.) Plaintiffs contend that the real reason for the delay is that Defendants held up the
21 finalization of that stipulation and the Stipulated Protective Order for several months, until August 21,
22 2020. (Id.) Plaintiffs report that after the proposed protective order was entered and signed by the
23 Court, Defendants reported encountering technological difficulties and obstacles in setting up the
24 remote access. (Id.)

25 Plaintiffs report that after gaining access to two of the key databases used by Defendants,
26 Plaintiffs have been able to conduct depositions on class certification issues that Plaintiffs completed
27 on November 19 and 20, 2020. (Doc. 38-1 at 10.) Plaintiffs also report that they anticipate receiving
28 responses to requests for admissions, a fourth set of requests for production, and further interrogatories

1 before the present cutoff. (Id.) In response to the Plaintiffs' allegation that the recent depositions have
2 revealed certain omissions that should have been produced, Defendants allege that they have produced
3 policy documents, samples of paper records, and documents related to Plaintiffs in April. (Doc. 39 at
4 3-4.) Defendants also allege that they produced a sampling of paper time records in October, one week
5 after Plaintiffs' counsel notified Defendants what pay periods they wanted to copy, and the parties'
6 August 2020 agreement specified which Famous modules Plaintiffs' counsel would be given access to.
7 (Id. at 4.) Plaintiffs maintain that they scheduled depositions after the data was produced, but those
8 depositions of Defendants Anthony Vineyards and Sycamore Labor revealed that the data production,
9 and discovery responses generally, were significantly incomplete. (Doc. 42 at 5-6.)

10 Plaintiffs report that Plaintiffs' counsel has also worked to produce the named plaintiffs for
11 deposition, but these depositions have been delayed due to medical procedures undergone by one of
12 the named Plaintiffs. (Doc. 38-1 at 10.) According to Plaintiffs, due to his present medical condition,
13 Plaintiff Eugenio Cruz will not be able to appear for deposition within the cutoff but will do so as soon
14 as his health permits, likely in December 2020 depending on recommendations of doctors. (Id. at 10-
15 11.)

16 Plaintiffs report that this case relies heavily on records and electronic data. (Doc. 38-1 at 11.)
17 According to Plaintiffs, the electronic data has been produced in the form of ongoing access to
18 Plaintiffs. (Id.) Plaintiffs report that they have engaged an expert who will analyze data for
19 certification and trial. (Id.) According to Plaintiffs, Defendants have also made available voluminous
20 paper records involving class members. (Id.) Plaintiffs believe that scanning only a sample of the
21 available paper records is sufficient for class certification; however, Plaintiffs anticipate that they will
22 likely need to scan, code, and summarize a large set of paper records for trial. (Id.) Plaintiffs believe
23 that having the ability to obtain paper records for scanning outside of the cutoff is necessary, and that
24 doing so will not affect other deadlines. (Id.) Plaintiffs state that they also need additional time to
25 permit the production and scanning of certain food safety/crew documents, as well as to conduct
26 limited follow up depositions of Defendants and party-affiliated witnesses on class certification issues,
27 including food safety procedures and practices as they affect fieldworkers, and field data that may
28 include time stamps. (Id.)

1 Additionally, Plaintiffs also anticipate that post-certification discovery will be necessary to
2 scan and summarize paper records. (Doc. 38-1 at 11.) Plaintiffs assert that the size and scope of the
3 records that Plaintiffs anticipate needing after class certification depend on the scope of the case
4 following the Court’s ruling on certification. (Id.)

5 In response, Defendants argue that Plaintiffs’ counsel has not established diligence or good
6 cause to modify the scheduling order. (Doc. 39 at 2.) Defendants also contend that they have already
7 produced the policies, witnesses, time records, and payroll records Plaintiffs’ counsel sought in
8 discovery. (Id. at 2-3.) Defendants argue that Plaintiffs’ counsel has not identified any pressing need
9 for the additional discovery they want, and have not established why this discovery could not have
10 been completed before the deadline. (Id.) Defendants argue that Plaintiffs’ counsel’s desire to conduct
11 additional discovery regarding food safety and field data that may include time-stamps does not
12 establish good cause. (Id. at 3.)

13 Plaintiffs, in reply, argue that its discovery plans have been stymied by Defendants’ delay and
14 withholding of key categories of information. (Doc. 42 at 3-7.) Plaintiffs allege that they could not
15 have anticipated that Defendants would delay months in producing their data and make incomplete
16 productions when they did. (Id. at 7.) Plaintiffs further allege that COVID-19 has precluded in-person
17 review of documents and in-person site inspections and investigations, and has complicated such
18 things as scanning and taking depositions and added additional delay to the productions and discovery
19 at issue here. (Id. at 9.)

20 Plaintiffs report that despite the pandemic, Plaintiffs initiated written discovery and have since
21 propounded several sets of written discovery to obtain information for certification. (Doc. 38-1 at 10.)
22 Plaintiffs report that Defendants provided electronic access to their Famous payroll database and their
23 Pet Tiger database used for timekeeping and other field operations, but ran into difficulties setting it
24 up to provide access to Plaintiffs. (Id.) The parties negotiated access to these databases, including the
25 scope of access, the terms on which access would be provided, and certain safeguards relating to
26 Defendants’ interests as well as work product protections of Plaintiffs’ counsel, which Plaintiffs report
27 were lengthy and protracted and took place over the course of several months. (Doc. 38-1 at 10;
28 Trabucco Decl. ¶ 14.) Regardless of whether delay could or could not have been anticipated, as

1 previously discussed by this Court, three months had passed after the scheduling conference before
2 Plaintiffs actually propounded the discovery requests and then an additional four months of discovery
3 time was burned up debating the language of a protective order. (Doc. 37 at 1.) After the dispute arose
4 in July regarding the language of the protective order, the Court urged them to “redouble” their efforts
5 to complete discovery within the set deadlines. (*Id.*; Doc. 33.) However, rather than doing this, they
6 used another six weeks drafting the protective order, without conducting any additional discovery.
7 (Doc. 37 at 1.)

8 After the proposed protective order was entered and signed by the Court, according to
9 Plaintiffs, Defendants reported encountering technological difficulties and obstacles in setting up the
10 remote access. (Doc. 42 at 5; Trabucco Decl. ¶ 16.) Plaintiffs report that after finally gaining access to
11 the databases used by Defendants, Plaintiffs have been able to conduct depositions on class
12 certification issues that Plaintiffs completed on November 19 and 20, 2020. (Doc. 38-1 at 10.)
13 Plaintiffs also report that one deposition has been delayed due to medical procedures undergone by
14 one of the named Plaintiffs, Eugenio Cruz, and due to his present medical condition, he will not be
15 able to appear for deposition within the cutoff but will do so as soon as his health permits. (Doc. 38-1
16 at 5; Trabucco Decl., ¶ 18.)

17 According to Plaintiffs, the recent depositions have revealed certain omissions in the database
18 modules or data sets to which Plaintiffs have been given access, and missing documents, ESI, and
19 things that should have been produced but have not. (Doc. 38-1 at 5; Trabucco Decl., ¶ 19.) Plaintiffs
20 contend that what appears to be incomplete access and responses hindered Plaintiffs’ discovery efforts.
21 (Doc. 42 at 7.) Plaintiffs further allege that COVID-19 has added additional delay to the productions
22 and discovery at issue here and has precluded in-person review of documents and in-person site
23 inspections and investigations. (*Id.* at 9.)

24 Plaintiffs appear to have demonstrated more diligence since the Court’s last order. Taking into
25 consideration the circumstances created by COVID-19, the Court finds that Plaintiffs have
26 demonstrated good cause for modification of the scheduling order. *See* Fed. R. Civ. P. 16(b)(4). The
27 Court emphasizes that scheduling orders are “not a frivolous piece of paper, idly entered, which can be
28 cavalierly disregarded by counsel without peril.” *Johnson*, 975 F.2d at 610 (quoting *Gestetner Corp.*,

1 108 F.R.D. at 141). The Court again urges the parties to diligently complete discovery in a timely
2 fashion.

3 **IV. Conclusion and Order**

4 Accordingly, Plaintiff's motion to modify the existing scheduling order (Doc. 38) is
5 GRANTED. The parties SHALL complete all non-expert discovery no later than March 1, 2021.¹ The
6 Court WILL NOT again amend the case schedule absent a showing of extraordinary good cause.

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8 IT IS SO ORDERED.

9 Dated: December 14, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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¹ The Court reserves ruling on any non-expert post certification discovery at this time.