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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

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12 SARA MONROE,

NO. 2:08-cv-2944 FCD EFB

13 Plaintiff,

14 v.

MEMORANDUM AND ORDER

15 ZIMMER US, INC.; ZIMMER, INC.;  
16 and Does 1 through 25,

Defendants.  
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20 This matter is before the court on plaintiff Sara Monroe's  
21 ("plaintiff" or "Monroe") motion to modify the pretrial  
22 scheduling order, pursuant to Federal Rule of Civil Procedure 16,  
23 to re-open discovery cut-off and expert disclosure dates for at  
24 least thirty (30) days.<sup>1</sup> Defendants Zimmer US, Inc. and Zimmer,

25 <sup>1</sup> The motion is characterized as a motion to extend  
26 discovery dates. However, because the discovery deadlines at  
27 issue have already passed, the court interprets the motion as one  
to reopen discovery.

28 Plaintiff concurrently filed a motion to stay proceedings  
pending ruling by the Judicial Panel on Multidistrict Litigation.  
Because the Panel has denied the motion for centralization, the  
court DENIES the motion to stay as MOOT.

1 Inc. (collectively "defendants") oppose the motion. For the  
2 reasons set forth below,<sup>2</sup> plaintiff's motion is GRANTED.

3 **BACKGROUND**

4 On October 16, 2008, plaintiff filed a complaint in the  
5 Superior Court of the State of California for the County of  
6 Shasta against defendant, alleging state law claims of general  
7 negligence and products liability. Defendant removed the case  
8 from state court on December 3, 2008 on the basis of diversity  
9 jurisdiction. The parties filed a Joint Status Report on  
10 February 2, 2009.

11 On February 3, 2009, the court issued a Pretrial Scheduling  
12 Order, setting a discovery deadline of February 5, 2010. Initial  
13 expert disclosures were due on February 19, 2010 and supplemental  
14 expert disclosures were due on March 11, 2010. On March 6, the  
15 parties stipulated to extend the supplemental expert witness  
16 disclosure deadline to April 5, 2010.

17 Plaintiffs' counsel contends that he was unaware of the  
18 discovery deadline until January 21, 2010 because his assistant  
19 failed to follow the customary practice of noting dates months  
20 ahead of the deadlines to conduct discovery and to retain  
21 experts. (Decl. of Bonnie Prather ("Prather Decl."), filed Feb.  
22 18, 2010, ¶ 3; Decl. of Steward C. Altemus ("Altemus Decl."),  
23 filed Feb. 18, 2010, ¶ 22.) Counsel also contends that because  
24 he practices almost exclusively in state court where discovery is  
25 only cut-off in the two months prior to trial, he did not

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27 <sup>2</sup> Because oral argument will not be of material  
28 assistance, the court orders the matter submitted on the briefs.  
E.D. Cal. L.R. 230(g).

1 contemplate that discovery deadlines were close or had passed.  
2 (Altemus Decl. ¶¶ 16, 19.) Counsel also believed that fact  
3 discovery had been extended to March 8, 2010, based on a  
4 stipulation that had not been filed with the court.<sup>3</sup> (Id. ¶ 34.)

5 Furthermore, plaintiff's counsel asserts that he did not  
6 realize defendants intended to challenge the qualifications of  
7 plaintiff's expert until the deposition taken on February 2,  
8 2010. (Id. ¶¶ 25, 28.) At that point he realized he needed to  
9 retain the testimony of an expert to opine on the relationship  
10 between the medical device used in plaintiff's case and the  
11 damages suffered by plaintiff. (Id. ¶ 29.)

12 On February 18, 2010, plaintiff filed a motion to modify the  
13 pretrial scheduling order to reopen discovery. Plaintiff  
14 contends that such an extension is necessary to complete  
15 discovery, including both factual discovery and expert  
16 disclosures. (See id. ¶ 47.)

#### 17 ANALYSIS

18 A pretrial order "may be modified only for good cause."  
19 Fed. R. Civ. P. 16(b). The district court may modify the  
20 pretrial schedule "if it cannot reasonably be met despite the  
21 diligence of the party seeking the extension." Johnson v.  
22 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)  
23 (quoting Fed. R. Civ. P. 16, advisory committee's notes (1983

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25 <sup>3</sup> Plaintiff filed this stipulation on February 5, 2010.  
26 However, defendants objected to the stipulation on February 8,  
27 2010, because the stipulation was entered into solely in the  
28 event that there was a problem getting the depositions of the  
plaintiff and her treating doctor completed. (Id. ¶ 34.)  
Plaintiff's counsel admits that he should not have filed the  
stipulation without further communication with defense counsel.  
(Id. ¶ 35.)

1 amendment)). The "good cause" standard set forth in Rule 16  
2 primarily focuses upon the diligence of the party requesting the  
3 amendment. "Although the existence or degree of prejudice to the  
4 party opposing the modification might supply additional reasons  
5 to deny a motion, the focus of the inquiry is upon the moving  
6 party's reasons for seeking modification." Id.

7 The moving party may establish good cause by showing "(1)  
8 that [he or she] was diligent in assisting the court in creating  
9 a workable Rule 16 order; (2) that [his or her] noncompliance  
10 with a Rule 16 deadline occurred or will occur, notwithstanding  
11 [his or her] diligent efforts to comply, because of the  
12 development of matters which could not have been reasonably  
13 foreseen or anticipated at the time of the Rule 16 scheduling  
14 conference; and (3) that [he or she] was diligent in seeking  
15 amendment of the Rule 16 order, once it became apparent that [he  
16 or she] could not comply with the order." Jackson v. Laureate,  
17 Inc., 186 F.R.D. 605, 608 (E.D. Cal. 1999)(citations omitted).

18 Plaintiff has demonstrated good cause to modify the Pretrial  
19 Scheduling Order to reopen both fact and expert discovery.  
20 Plaintiff was diligent in assisting the court in creating a  
21 workable scheduling order. Further, the delay in responding to  
22 discovery in this case was caused by calendaring errors by  
23 plaintiff's counsel's assistant as well as counsel's lack of  
24 experience in federal court. Moreover, plaintiff's counsel has  
25 been cooperative in signing stipulations to extend discovery for  
26 almost a month with respect to defendant's supplemental expert  
27 disclosures. Finally, plaintiff filed this motion on February  
28 18, 2010, promptly after it became apparent that she could not

1 comply with the scheduling order. Plaintiff has set forth a  
2 detailed list of the anticipated discovery and estimated time to  
3 complete it. Because plaintiff has demonstrated good cause, her  
4 motion to modify the pretrial scheduling order is GRANTED, and  
5 discovery is reopened.

6 The scheduling order is modified as follows:

7 (1) All discovery shall be completed by May 21, 2010.

8 (2) Experts shall be designated by June 4, 2010.

9 Supplemental experts shall be designated by June 25,  
10 2010. All expert discovery shall be completed by July  
11 23, 2010.

12 (3) All dispositive motions shall be heard no later than  
13 October 8, 2010.

14 (4) The Final Pretrial Conference is set for December 3,  
15 2010 at 1:30 p.m.

16 (5) The trial is set for March 1, 2011 at 9:00 a.m.

17 IT IS SO ORDERED.

18 DATED: April 16, 2010



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21 FRANK C. DAMRELL, JR.  
22 UNITED STATES DISTRICT JUDGE  
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