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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

NO. CIV S-09-2445 KJM-EFB

v.

SIERRA PACIFIC INDUSTRIES; et al.,

Defendants.

ORDER

_____ /
This matter comes before the court upon the parties’ stipulation to extend the expert discovery deadline for the fifth time. (ECF 325.) Federal Rule of Civil Procedure 16(b)(4) states that “[a] schedule may be modified only for good cause and with the judge’s consent.” “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking 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.’” *Johnson v Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (quoting FED. R. CIV. P. 16 advisory committee’s notes (1983 amendment)). “Although the existence or 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 seeking modification. [citation omitted] If the party was not diligent, the inquiry should end.” *Id.*

1 Here, the parties simply contend that “the parties have collectively disclosed more
2 than 70 experts and have conducted approximately 40 expert depositions” and “[m]ore than 30
3 expert depositions remain.” (Stip. at 2.) At the same time, they represent they will now be able
4 to complete the remaining depositions by December 9, 2011. (*Id.*) The parties have had more
5 than a year, since at least February 11, 2010 – the date on which the status (pretrial scheduling)
6 order was issued –, to conduct expert discovery. Given the short extension of time requested by
7 parties, the number of depositions remaining, and the course of conduct of this litigation thus far,
8 the court is not persuaded the current request will in fact be the last such request.

9 For the foregoing reasons, the parties’ request is DENIED without prejudice. The
10 parties may file, within fourteen (14) days of the entry of this order, an updated stipulation
11 setting forth a realistic expert discovery deadline. Thereafter, the court will look with disfavor
12 upon further requests to modify the scheduling order, particularly when they are filed on the last
13 day of the time period for which an extension is sought. Local Rule 144(d).

14 IT IS SO ORDERED.

15 DATED: November 28, 2011.

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17 UNITED STATES DISTRICT JUDGE
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