

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DUANE BEECHAM, KIMBERLY BEECHAM, S.Y.B., a minor by and through her co-guardians ad litem DUANE BEECHAM and KIMBERLY BEECHAM, OLIVER VERGARA, JENNIFER VERGARA, E.V., a minor by and through his co-guardians ad litem OLIVER VERGARA and JENNIFER VERGARA,

Plaintiffs,

v.

ROSEVILLE CITY SCHOOL DISTRICT, THERESA VAN WAGNER, GEORGE ROOKS, JERROLD JORGENSEN, and DOES 1-30,

Defendants.

No. 2:15-CV-01022-KJM-EFB

ORDER

Defendant Theresa Van Wagner moves to modify the scheduling order to permit additional discovery. Mot., ECF No. 76. Plaintiffs oppose. Opp'n, ECF No. 87. Van Wagner filed a reply. Reply, ECF No. 89. The court submitted the matter without oral argument. ECF No. 92. For the reasons discussed below, the court DENIES Van Wagner's motion.

/////  
/////  
/////

1 I. BACKGROUND

2 Plaintiffs filed this lawsuit on May 12, 2015, Compl., ECF No. 1, and a first  
3 amended complaint in November 2015, First. Am. Compl. (“FAC”), ECF No. 30. The court’s  
4 pretrial scheduling order set January 23, 2017 as the discovery deadline. Scheduling Order, ECF  
5 No. 27.

6 In December 2016, Van Wagner issued twenty-two pretrial subpoenas for the  
7 employment and medical records of plaintiffs Jennifer and Oliver Vergara. Young Decl. ¶ 8,  
8 ECF No. 87-1. On January 20, 2017, Van Wagner served plaintiffs with four sets of written  
9 discovery requests. *Id.* ¶ 12.

10 In April 2017, the court denied defendants’ joint motion<sup>1</sup> to extend the discovery  
11 deadline. Order, ECF No. 82. On April 10, 2017, Van Wagner filed her current motion to extend  
12 the discovery deadline. Mot.

13 II. AMENDING THE SCHEDULING ORDER

14 The pretrial scheduling order is designed to allow the district court to better  
15 manage its calendar and to facilitate the more efficient disposition of cases by settlement or by  
16 trial. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607–08 (9th Cir. 1992). A  
17 scheduling order may only be changed with the court’s consent and for “good cause.”  
18 Fed. R. Civ. P. 16(b)(4). A scheduling order is not “a frivolous piece of paper, idly entered,  
19 which can be cavalierly disregarded by counsel without peril.” *Johnson*, 975 F.2d at 610 (quoting  
20 *Gestetner Corp. v. Case Equip. Co.*, 108 F.R.D. 138, 141 (D. Me. 1985)). On the other hand, the  
21 “good cause” standard requires less than the “manifest injustice” test used to modify a final  
22 pretrial order. *See* Fed. R. Civ. P. 16(e); *see also* Fed. R. Civ. P. 16, 1983 Advisory Committee  
23 Notes (“Since the scheduling order is entered early in the litigation, this standard seems more  
24 appropriate than a ‘manifest injustice’ or ‘substantial hardship’ test.”). When litigants request  
25 changes to a scheduling order, the court’s inquiry focuses primarily on the diligence of the

---

26 <sup>1</sup> Although Van Wagner was originally precluded from joining defendants’ motion due to  
27 an automatic bankruptcy stay that ran from January 26 through March 22, 2017, ECF Nos. 57, 68,  
28 Van Wagner subsequently joined the motion, ECF No. 75.

1 moving party, *Johnson*, 975 F.2d at 609, and that party's reasons for seeking modification,  
2 *C.F. ex rel. Farnan v. Capistrano Unified Sch. Dist.*, 654 F.3d 975, 984 (9th Cir. 2011). A  
3 district court has "broad discretion" to grant or deny a continuance. *United States v. Flynt*,  
4 756 F.2d 1352, 1358 (9th Cir. 1985).

5 **III. DISCUSSION**

6 Van Wagner moves to extend the discovery cut-off to obtain (1) plaintiffs'  
7 response to recent written discovery requests; (2) Jennifer and Oliver Vergara's therapy records;  
8 and (3) Jennifer Vergara's employment records. Mot. at 1.

9 Van Wagner first requests more time to obtain plaintiffs' responses to written  
10 discovery requests she propounded on January 20, 2017, three days before the discovery cut-off  
11 by which all discovery motions were to have been heard. Mot. at 3. She asserts the written  
12 discovery was based on a deposition taken on January 14, 2017. *Id.* In its prior order denying  
13 defendants' joint motion to extend the discovery cut-off, the court rejected defendants' arguments  
14 that relied on information learned in the January 14, 2017 deposition. Order at 3:19–5:5. As the  
15 court explained, defendants did not explain why they could not have learned the relevant  
16 information much sooner. *Id.* Similarly here, Van Wagner has omitted any explanation of why  
17 she had to wait until three days before the discovery cut-off to propound written discovery  
18 requests. *See* Mot. at 3. Van Wagner has not established good cause to support her first request.

19 Van Wagner's remaining requests fare no better. Van Wagner requests more time  
20 to obtain the Vergaras' medical records and Jennifer Vergara's employment records. *Id.* at 4. As  
21 Van Wagner explains, she issued subpoenas on December 16, 2016, and no records were returned  
22 because Van Wagner did not have the correct information for plaintiffs. *Id.* Exs. E–G, I; Reply at  
23 2–3. But Van Wagner provides no explanation for why she could not have obtained the correct  
24 information, including the Vergaras' therapist's location or Jennifer Vergara's full or maiden  
25 name, much earlier during discovery. As with defendants' prior motion to extend the discovery  
26 period, Van Wagner does not explain why she did not propound written discovery requests to  
27 gather this information much sooner. *See* Order at 3–5 (citing *Chopourian v. Catholic*  
28 *Healthcare W.*, 2011 WL 3816969, at \*4 (E.D. Cal. Aug. 29, 2011), in which this court observed

1 that “counsel has not suggested he was unable to develop the claim through interrogatories and  
2 requests for admission or production; that he may have preferred to conduct depositions is not  
3 sufficient”). Van Wagner has not shown she was diligent in complying with the court’s  
4 scheduling order. Without her diligence, “the inquiry should end.” *Johnson*, 975 F.2d at 609.

5 For these reasons, Van Wagner has not shown good cause exists to support her  
6 second or third request.

7 IV. CONCLUSION

8 The court DENIES Van Wagner’s motion.

9 This order resolves ECF No. 76.

10 IT IS SO ORDERED.

11 DATED: June 16, 2017.

12  
13   
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
UNITED STATES DISTRICT JUDGE