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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT TERRY, et al.,

Plaintiffs,

v.

REGISTER TAPES UNLIMITED, et al.,

Defendants.

No. 2:16-cv-00806 WBS AC

ORDER

Before the court is defendants' motion to allow designation of rebuttal expert witnesses. ECF No. 138. The motion was referred to the undersigned pursuant to Local Rule 302(c)(1) and taken under submission. Upon review of the papers, the motion is GRANTED, for the following reasons.

**I. Relevant Background**

This matter was removed from California state court on the basis of diversity and federal question jurisdiction on April 19, 2016. ECF No. 1. The scheduling order has been amended several times in this case, often by stipulation. The current close of discovery is July 3, 2020. ECF No. 147. Trial is set for November 3, 2020. ECF No. 127. The deadline to for defendants to depose plaintiffs' experts is August 25, 2020. Id. The expert disclosure deadline was most recently re-set to October 31, 2019 and the rebuttal expert discovery deadline re-set to November 15, 2019. ECF No. 111.

1 **II. Motion**

2 Defendants ask the court to allow them to designate rebuttal expert witnesses by April 4,  
3 2020, with rebuttal expert reports due by May 29, 2020. ECF No. 138 at 6.

4 **III. Analysis**

5 Defendants' motion will be granted. A pretrial scheduling order "may be modified only  
6 for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good  
7 cause' standard primarily considers the diligence of the party seeking the amendment. The  
8 district court may modify the pretrial schedule 'if it cannot reasonably be met despite the  
9 diligence of the party seeking the extension.' Fed. R. Civ. P. 16 advisory committee's notes  
10 (1983 amendment)." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)  
11 (additional citations omitted). If the moving party acted diligently, "district courts should  
12 generally allow amendments of pre-trial orders provided three criteria are met: (1) no substantial  
13 injury will be occasioned to the opposing party, (2) refusal to allow the amendment might result  
14 in injustice to the movant, and (3) the inconvenience to the court is slight." Amarel v. Connell,  
15 102 F.3d 1494, 1515 (9th Cir. 1996) (citation and internal quotation marks omitted).

16 Defendants assert that counsel was diagnosed with a brain tumor in December of 2019.  
17 ECF No. 138-1 at 2. Counsel asserts that leading up to his diagnosis, his illness likely prevented  
18 him from diligently participating in the discovery/expert disclosure process. Id. In mid-January  
19 of 2020, the decision was made that additional counsel would represent defendants in this action.  
20 Id. The undersigned finds counsel's illness "good cause" to extend the rebuttal expert deadline,  
21 particularly in light of the fact that additional counsel has now been retained. Further, because  
22 other relevant deadlines have already been extended, prejudice to the plaintiffs will be minimal.  
23 Although the court acknowledges that discovery in this case has been quite drawn out, in light of  
24 the circumstances, fairness dictates this result.

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**III. Conclusion**

For the foregoing reasons, the court hereby ORDERS that defendants' motion (ECF No. 138) is GRANTED.

DATED: February 25, 2020

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE