

1 On June 15, 2023, defendant filed a motion to reopen discovery to reopen expert
2 disclosure or, in the alternative, allow defendant to supplement expert disclosures.¹ (ECF No.
3 87.) Per defendant’s motion, defendant’s previous attorney became overwhelmed around the
4 time that expert designations were due, as she was in trial in a different case on the date that
5 expert disclosures were due and her firm, Ericksen Arbuthnot (EA) was in the process of
6 dissolving. (*Id.* at 4.) Consequently, that attorney failed to designate Lewis Grill, who had
7 already been hired as a trucking industry liability expert. (*Id.* at 4, “[t]he senior partner disclosed
8 the expert information in the file she could identify, and this consisted solely of a certified public
9 accountant and an orthopedic doctor.”) Plaintiff opposes reopening discovery. (ECF No. 92.)
10 Third-party defendant Jomar Investments and plaintiff-in-intervention Accident Fund Insurance
11 do not oppose the motion. (ECF Nos. 91 and 93.)

12 On June 16, 2023, plaintiff filed a motion to set for trial. (ECF No. 88.) In plaintiff’s
13 motion, plaintiff certifies readiness for trial, but requests a pre-trial conference and trial date be
14 set far enough to accommodate prospective mediation. (*Id.* at ¶ 4.) According to the reply filed
15 by plaintiff-in-intervention Accident Fund Insurance, the mediation was set to occur on August
16 30, 2023. (ECF No. 93 at 2.) To date, the parties have not informed the court of the outcome of
17 the mediation, if any. Defendant opposes the motion to set for trial due to the instant motion to
18 reopen discovery. (ECF No. 89.)

19 II. Legal Standard

20 A scheduling order “may be modified only for good cause and with the judge’s consent.”
21 Fed. R. Civ. P. 16(b)(4). The “good cause” standard of Rule 16(b) focuses on whether the
22 movant was diligent or careless. As stated by the Ninth Circuit:

23 Rule 16(b)’s “good cause” standard primarily considers the diligence of the party
24 seeking the amendment. The district court may modify the pretrial schedule if it
25 cannot reasonably be met despite the diligence of the party seeking the extension.
26 Moreover, carelessness is not compatible with a finding of diligence and offers no
reason for a grant of relief. Although existence of a degree of prejudice to the party

27 ¹ Defendant set a motion hearing for July 25, 2023. (ECF No. 87.) On July 18, 2023, the court
28 vacated the hearing and directed the parties to submit further briefing. (ECF No. 90.)

1 opposing the modification might supply additional reasons to deny a motion, the
2 focus of the inquiry is upon the moving party's reasons for modification.

3 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir 1992) (citations omitted).

4 In addition to focusing on the good cause standard of Rule 16, the district court must also
5 consider the following factors when ruling on a motion to amend the scheduling order:

6 1) whether trial is imminent, 2) whether the request is opposed, 3) whether the non-
7 moving party would be prejudiced, 4) whether the moving party was diligent in
8 obtaining discovery within the guidelines established by the court, 5) the
9 foreseeability of the need for additional discovery in light of the time allowed for
10 discovery by the district court, and 6) the likelihood that the discovery will lead to
11 relevant evidence.

12 City of Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017).

13 “While no one factor is necessarily dispositive, the Ninth Circuit has instructed that the
14 primary focus should be on whether the party seeking to reopen discovery has acted diligently.”

15 De Paz v. Wells Fargo Bank, N.A., 2020 WL 2404897, at *2 (C.D. Cal. Feb. 18, 2020) (citing
16 Johnson, 975 F.2d at 609).

17 Where no good cause for amendment to the schedule exists, there is no reason to consider
18 whether defendant is entitled to relief from the Rule 37(c) exclusion sanction. See Zone Sports
19 Ctr., LLC v. Rodriguez, No. 1:11-CV-00622-SKO, at *2–3 (E.D. Cal. Jan. 19, 2016) (Rule 16
20 analysis is dispositive).

21 III. Analysis

22 A. Motion to Reopen Discovery

23 The court finds that defendant has not shown good cause for the motion. First, defendant
24 has not shown diligence. Defendant’s prior counsel failed to designate Mr. Grill as a trucking
25 liability expert because EA’s senior partner had a trial on the same date as the deadline for expert
26 designation and EA was in the process of dissolving.² (ECF No. 87 at 5.) What defendant
27 frames as diligence is better described as a mistake that resulted from counsel being overwhelmed

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² The fact that prior counsel, not current counsel, failed to designate Lewis Grill as an expert does not support a good cause finding, as “[m]ere substitution of counsel is insufficient cause to amend a scheduling order.” Cardenas v. Whittemore, No. 13-CV-1720-LAB-KSC, at *2 (S.D. Cal. July 16, 2015). See also Community Dental Servs. v. Tani, 282 F.3d 1164, 1168 (9th Cir. 2002) (“a client is ordinarily chargeable with his [prior] counsel's negligent acts.”)

1 in prior counsel’s law firm and does not support a good cause a finding.³ Johnson, 975 F.2d at
2 609 (“carelessness of party seeking to amend scheduling order is not compatible with finding of
3 diligence and offers no reason for grant of relief”).

4 In addition to diligence, the court has considered whether trial is imminent (it is not)
5 whether the request is opposed (it is), whether the non-moving party would be prejudiced, the
6 foreseeability of the need for additional discovery in light of the time allowed for discovery by
7 the district court, and the likelihood that the discovery will lead to relevant evidence. Plaintiff
8 argues that granting the motion will cause prejudice, as this case has been pending for six years
9 and reopening discovery will cause delay and additional expense. (ECF No. 92 at 4.) The court
10 agrees. The remaining factors do not move the needle. Accordingly, defendant has not shown
11 good cause in support of its motion and defendant’s motion to reopen discovery is DENIED.⁴

12 B. Plaintiff’s Motion to Set for Trial

13 Plaintiff moves to set this matter for a pre-trial conference. (ECF No. 88.) In the
14 certification of pre-trial readiness, plaintiff requests a pre-trial conference and trial date be set far
15 enough to accommodate prospective mediation. (Id. at ¶ 4.) Per the reply filed by plaintiff-in-
16 intervention Accident Fund Insurance, the mediation was set to occur on August 30, 2023. (ECF
17 No. 93 at 2.) In light of this representation, the court DENIES without prejudice plaintiff’s
18 motion to set for trial and orders the parties to submit a report indicating the status of mediation
19 within thirty days of this order.

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22 ³ Parties may be able to satisfy the “good cause” requirement of Rule 16(b)(4) when they can
23 show that prior counsel's actions amounted to “gross negligence or abandonment,” but that is not
24 the situation here. E.g., Matrix Motor Co., Inc. v. Toyota Jidosha Kabushiki Kaisha, 218 F.R.D.
25 667, 674 (C. D. Cal. 2003). To the contrary: defendant’s counsel asserts the “attorneys and staff
didn’t fail to exercise diligence, they were simply overwhelmed with case files over a very short
period of time.” (ECF No. 87 at 5.)

26 ⁴ Because no good cause for amendment to the schedule exists, the court need not address
27 whether defendant’s failure to designate was substantially justified, thereby entitling defendant to
28 relief from the Rule 37(c) exclusion sanction. See, e.g., Zone Sports Ctr., LLC v. Rodriguez, No.
1:11-CV-00622-SKO, at *2–3 (E.D. Cal. Jan. 19, 2016) (Rule 16 analysis is dispositive pursuant
to Johnson.)

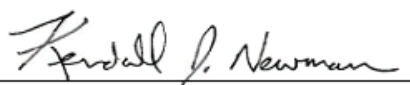
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CONCLUSION AND ORDER

Accordingly, it is HEREBY ORDERED that:

- 1. Defendant’s Motion to Reopen Discovery, ECF No. 87, is DENIED without prejudice;
- 2. Plaintiff’s Motion to Set for Trial, ECF No. 88, is DENIED without prejudice; and
- 3. Within 30 days of this order, the parties shall submit a report indicating the status of the mediation.

Dated: October 6, 2023


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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