

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
NORTHERN DISTRICT OF CALIFORNIA

PAUL F. SOARES,
Plaintiff,
v.
JEFFREY LORONO, et al.,
Defendants.

Case No. [12-cv-05979-WHO](#)

**ORDER DENYING PLAINTIFF'S
MOTION TO EXTEND DEADLINES**

Re: Dkt. No. 233

On August 10, 2014, Plaintiff Paul Soares filed a motion to extend deadlines requesting an extension of the cutoff dates for discovery, expert disclosure, expert rebuttal, and motion practice, and a delay of the scheduled dates for the pretrial conference and trial. Dkt. No. 33. Granting the motion would result in the reopening of discovery, which closed on July 31, 2014, and an approximately three-month delay in the scheduled trial date, from November 2014 to February 2015. *Id.*

Soares asserts the following in support of the motion: (1) Because counsel for defendants, David Hollingsworth, was sick with pneumonia in April 2014, Soares abstained from scheduling depositions to avoid being accused of insensitivity with regard to Hollingsworth’s illness. Mot. 2; Soares Decl. ¶¶ 3-5. (2) Despite the discovery cutoff date of July 31, 2014, Soares chose not to propound discovery around that time because a settlement conference was scheduled for August 5, 2014, and Soares did not wish to “stir or antagonize defendants” with a chance of settlement approaching. Mot. 2; Soares Decl. ¶ 4. (3) On August 4, 2014, Soares reached a settlement agreement with defendant Tegola Canadese, S.p.A. (“Tegola”), and on August 8, 2014, Soares voluntarily dismissed defendant All Roofing Company, Inc. Mot. 2-3; Soares Decl. ¶ 7. (4) Soares has been unable to depose a representative of Tegola. Mot. 2; Soares Decl. ¶ 5-6. Defendants filed an opposition to Soares’s motion on September 8, 2014. Dkt. No. 239.

A scheduling order “may be modified only for good cause.” FED. R. CIV. P. 16(b)(4).

1 Good cause requires a showing of diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
2 604, 609 (9th Cir. 1992). Lack of prejudice to the party opposing the modification does not
3 establish good cause. “Although the existence or degree of prejudice to the party opposing the
4 modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the
5 moving party’s reasons for seeking modification.” *Id.* If the party seeking modification has not
6 been diligent, “the inquiry should end.” *Id.*

7 Soares has not demonstrated good cause. Soares’s desire to avoid being accused of
8 insensitivity is understandable, but it is not sufficient to excuse his failure to propound any
9 discovery in this case for more than a year leading up to the discovery cutoff date. Defendants
10 assert, and Soares does not dispute, that in the more than two years that this case has been
11 pending, Soares has propounded only three discovery requests: one request for the production of
12 documents, one set of interrogatories, and one deposition notice. Dkt. No. 240 at 2. Soares
13 issued all three documents in early June 2013, and defendants responded shortly thereafter. *Id.*
14 Since then, Soares has not requested any discovery from defendants. *Id.* This near-total failure to
15 conduct discovery does not indicate diligence, and it is not excused by the illness of Soares’s
16 opposing counsel. Likewise, Soares’s concerns about antagonizing defendants by propounding
17 discovery prior to a settlement conference does not excuse his lack of diligence.

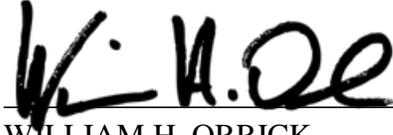
18 Soares’s third and fourth reasons for modification also fail to demonstrate good cause.
19 Soares’s settlement with Tegola and voluntary dismissal of All Roofing Company, Inc. are not
20 relevant to the good cause inquiry. Neither is his inability to depose a representative of Tegola, in
21 particular given that Soares has settled with Tegola and voluntarily dismissed Tegola from this
22 case. *See* Dkt. No. 237 (“Order Granting Request for Dismissal of Defendant Tegola Canadese,
23 S.p.A. with Prejudice”).

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

The motion for extension of deadlines is DENIED. The schedule listed in the Civil Pretrial Order remains in place, with the pretrial conference set for October 7, 2014. *See* Dkt. No. 217.

IT IS SO ORDERED.

Dated: September 17, 2014



WILLIAM H. ORRICK
United States District Judge