

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK EMERSON and MARIA
EMERSON, by her guardian ad litem,
FRANK EMERSON,

No. C 23-02158 WHA

Plaintiffs,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

**ORDER RE JOINT STIPULATED
MOTION TO AMEND THE CASE
SCHEDULE AND TO CONTINUE
THE TRIAL DATE**

Defendant.

Parties jointly stipulate and move to amend the case schedule and to continue the trial date from September 16, 2024 to March 17, 2025 (Br. 2). This is parties’ fourth request to amend the schedule (Stip. ¶ 14). They promise it is their last (*id.* ¶ 16). In sum, parties propose not changing the mediation date, advancing all pretrial dates by up to 104 days, and advancing the trial dates by 182 days (including the final pretrial conference) (*see* Br. 2–3). Good cause is shown to grant parties’ request, but only partway.

“A schedule may be modified” under Rule 16(b)(4) “only for good cause and with the judge’s consent.” “[G]ood cause’ means scheduling deadlines cannot be met despite [requesting parties’] diligence.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “Although . . . 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

1 reasons for seeking modification.” *Ibid.* Here, *both* parties move for modification, putting
2 prejudice beyond the scope of inquiry. “If [requesting parties were] not diligent, the inquiry
3 should end.” *Ibid.* Parties in sum provide two reasons for amending the case schedule:

4 *First*, parties point to new evidence. When a January 2024 test of Maria Emerson
5 showed results that surprised Prudential, parties agreed to two more Rule 35(b)(6) independent
6 medical examinations (Stip. ¶ 1, 4). The reports from those exams were received in April and
7 May 2024 (*id.* ¶¶ 5–6) — prompting new discovery and expert preparation impossible within
8 the case calendar (*id.* ¶¶ 7–15). Sounds good so far.

9 Some of the above developments, however, were not all that new: Parties knew or
10 should have known about the complications flowing from Mrs. Emerson’s results when they
11 previously requested to amend the case schedule. Parties’ third request, for instance, came
12 *after* the surprising test result, *after* both additional examinations, and *after* the first exam
13 report was received (*compare id.* ¶¶ 3–6, *with id.* ¶ 14). Moreover, some of the delays
14 purportedly flowing from those developments do not flow from them at all. “Parties and their
15 witnesses, percipient and expert,” wish to take “various summer holidays” (*id.* ¶ 13). Please
16 do. But parties already should have planned for those summer holidays to meet the existing
17 schedule — which, like a steer through a chute, runs straight through summer.

18 *Second*, parties point to Prudential’s convenience: After accounting for the new discovery
19 and other pretrial needs, “Prudential [then] offered the earliest available date for trial which
20 does not conflict with existing trial obligations (March 17, 2025)” (Br. 2; *see also* Stip. ¶ 15).
21 In short, after proposing a 105-day extension to pretrial dates, Prudential proposed an extra 77-
22 day extension to the trial date. Prudential is a large insurance company. Its outside counsel,
23 Dentons, LLP, is a large law firm with over 1,000 lawyers and professionals in the United
24 States. That none of its diligent lawyers — not even its junior ones (*see* Dkt. No. 25 ¶ 8) —
25 can be found to present its case any sooner strains credulity. Imprudent to swear otherwise.

26 *Finally*, without pointing to *any* reason: Parties propose extending various pretrial dates
27 various amounts: all by *up to* 105 days, but some by 105 days, some by 84 days, and some by
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1 74 days (*see* Br. 2–3). These varied extensions would result in varying the order of scheduled
2 events. Parties provide no cause for doing so.

3 For all the above reasons, good cause is shown to keep the mediation date and to advance
4 all other dates by 63 days, as follows:

Event	Prior	Requested	ORDERED
Deadline to Mediate	July 1	July 1	July 1, 2024
Expert Reports: Opening	May 31	Sept. 13	August 2, 2024
Expert Reports: Reply	June 14	Sept. 27	August 16, 2024
Expert Reports: Rebuttal	June 21	Oct. 4	August 23, 2024
Fact Cutoff	July 1	Sept. 13	September 2, 2024
Expert Cutoff	July 5	Oct. 18	September 6, 2024
Last Day: Dispositive Motions	July 11	Oct. 3	September 12, 2024
Final Pretrial Conference	Sept. 4	Mar. 5 (2025)	November 6, 2024
Trial	Sept. 16	Mar. 17 (2025)	November 18, 2024

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17 If the new dates do not work for counsel, we will stick with the original dates.

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19 **IT IS SO ORDERED.**

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21 Dated: June 5, 2024.

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23 
24 WILLIAM ALSUP
25 UNITED STATES DISTRICT JUDGE