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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ALFRED T. GIULIANO, Chapter 7  
Trustee of the Ritz Estate; CPM  
ELECTRONICS INC.; E.S.E.  
ELECTRONICS, INC.; and MFLASH, INC.,  
on Behalf of Themselves and All Others  
Similarly Situated,

Plaintiffs,

vs.

SANDISK CORPORATION,  
Defendant.

Case No: C 10-02787 SBA

**ORDER**

Docket 245

Plaintiffs bring the instant putative class action against SanDisk Corporation (“SanDisk”), alleging claims for relief under § 2 of the Sherman Antitrust Act (“Sherman Act”), 15 U.S.C. § 2. The parties are presently before the Court on Plaintiffs’ motion to stay discovery and other case deadlines pending resolution of their motion for class certification. SanDisk opposes the motion. Having read and considered the papers filed in connection with this matter and being fully informed, the Court hereby DENIES Plaintiffs’ motion, for the reasons stated below. The Court, in its discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

**I. DISCUSSION**

Plaintiffs move for an order staying merits-based discovery and other case deadlines established by the Court<sup>1</sup> until 60 days after the Court resolves their motion for class certification, or, in the alternative, an order extending case deadlines until 60 days after the

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<sup>1</sup> Plaintiffs move to extend all pretrial deadlines, except the deadline for joinder of parties and the deadline to amend the pleadings.

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1 Court resolves their motion for class certification. The fact discovery deadline is  
2 November 14, 2014, while the hearing on Plaintiffs’ motion for class certification is  
3 scheduled for December 1, 2014. In light of the deadlines established by the Court in the  
4 Pretrial Scheduling Order (“Scheduling Order”) and the relief requested by Plaintiffs, the  
5 Court views Plaintiffs’ motion as a motion to modify the Scheduling Order. Indeed, if the  
6 stay requested by Plaintiffs is granted, the pretrial deadlines will be modified. As such, the  
7 Court finds that Rule 16 of the Federal Rules of Civil Procedure governs the instant motion.

8 Rule 16 provides that deadlines established in a case management order may “be  
9 modified only for good cause[.]” Fed.R.Civ.P. 16(b)(4). “Rule 16(b)’s ‘good cause’  
10 standard primarily considers the diligence of the party seeking the amendment.” Johnson v.  
11 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992); Coleman v. Quaker Oats  
12 Co., 232 F.3d 1271, 1294 (9th Cir. 2000). “The district court may modify the pretrial  
13 schedule ‘if it cannot reasonably be met despite the diligence of the party seeking the  
14 extension.’ ” Johnson, 975 F.2d at 609. Where the moving party has not been diligent, the  
15 inquiry ends and the motion should be denied. Zivkovic v. S. Cal. Edison Co., 302 F.3d  
16 1080, 1087 (9th Cir. 2002). “[C]arelessness is not compatible with a finding of diligence  
17 and offers no reason for a grant of relief.” Johnson, 975 F.2d at 609.

18 In the instant motion, Plaintiffs contend that an extension of the pretrial deadlines is  
19 warranted because merits discovery and other pretrial work might be unnecessary and a  
20 waste of resources if the Court denies their motion for class certification given that the  
21 Plaintiffs’ individual claims “may not justify proceeding with this litigation.” Further,  
22 Plaintiffs argue that an extension of the pretrial deadlines is warranted because certain  
23 merits discovery and other pretrial work might be unnecessary if the Court certifies a class  
24 with fewer members than their proposed class or alters the “contours” of their proposed  
25 class. According to Plaintiffs, such a ruling could “potentially” affect the issues and proof  
26 they must establish. For the reasons that follow, the Court finds that Plaintiffs have failed  
27 to show good cause to modify the Scheduling Order.

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1 On October 18, 2013, the Court issued a Scheduling Order establishing various  
2 pretrial deadlines. Specifically, the Court established September 16, 2014 as the deadline  
3 to complete fact discovery.<sup>2</sup> In doing so, the Court allocated almost a year for the parties to  
4 complete fact discovery, which was in addition to the nearly ten months the parties had to  
5 conduct fact discovery following the mandate issued by the Federal Circuit on December  
6 31, 2012.<sup>3</sup> Based on the parties' joint request, the fact discovery deadline was extended to  
7 November 14, 2014. Now, less than six weeks before the fact discovery deadline, Plaintiffs  
8 request an extension of this deadline and other pretrial deadlines to "potentially" avoid the  
9 expenditure of unnecessary costs, including costs associated with merits-based discovery.  
10 However, Plaintiffs have not argued, let alone shown, that they cannot meet the fact  
11 discovery deadline or any other pretrial deadline despite the exercise of reasonable  
12 diligence. In their moving papers, Plaintiffs represent that they intend to conduct numerous  
13 depositions and that they may conduct additional document discovery related to the merits.  
14 In response, SanDisk asserts that fact discovery is complete except for a "handful" of  
15 depositions that can "easily and efficiently" be completed by the discovery deadline. In  
16 reply, Plaintiffs provide evidence showing that the parties have each recently noticed four  
17 depositions. Plaintiffs, however, did not identify any other discovery that they intend to  
18 conduct before the discovery deadline. Nor do they contend that the recently noticed

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19  
20 <sup>2</sup> Discovery was not bifurcated in this case, with class discovery occurring first  
21 followed by discovery on the merits. As SanDisk points out, Plaintiffs have consistently  
22 taken the position that class and merits discovery should not be bifurcated. Indeed, on  
23 September 3, 2010 and again on February 20, 2013, Plaintiff Ritz Camera & Image, LLC  
represented to the Court that bifurcation of discovery would be inefficient and would  
prevent discovery needed to meet class certification prerequisites.

24 <sup>3</sup> As the parties are well aware, this case was filed in 2010 and assigned to the  
25 Honorable Jeremy Fogel. In December 2010, Judge Fogel issued an order staying all  
26 discovery, including initial disclosures, pending a decision on Defendants' motion to  
27 dismiss. In February 2011, Judge Fogel granted in part and denied in part Defendants'  
28 motion to dismiss. In September 2011, Judge Fogel granted Defendants' request to certify  
his order for interlocutory appeal to the Federal Circuit. In addition, Judge Fogel granted  
Defendants' request to stay discovery pending resolution of the appeal. The case was  
subsequently reassigned to the undersigned and administratively closed in October 2011  
pending SanDisk's appeal. In November 2012, the Federal Circuit affirmed Judge Fogel's  
order. The mandate issued on December 31, 2012.

1 depositions cannot be completed by the discovery deadline. Accordingly, Plaintiffs' have  
2 not shown good cause to modify the Scheduling Order.

3 Finally, the Court rejects Plaintiffs contention that a stay (i.e., an extension) of the  
4 pretrial deadlines is appropriate because it will promote judicial economy<sup>4</sup> and efficiency,  
5 avoid unnecessary costs, and not cause any prejudice to SanDisk. Even assuming for the  
6 sake of discussion that these factors are relevant to determining whether the Scheduling  
7 Order should be modified, Plaintiffs have failed to demonstrate that an extension of the  
8 pretrial deadlines will promote judicial economy or efficiency, or avoid unnecessary costs.  
9 Plaintiffs' arguments in this regard are predicated on future events that may not materialize,  
10 including the Court's denial of their motion for class certification. Further, Plaintiffs have  
11 not shown that the delay which would result from the relief they seek would not prejudice  
12 SanDisk. See Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002) ("Unnecessary  
13 delay inherently increases the risk that witnesses' memories will fade and evidence will  
14 become stale."); Southwest Marine Inc. v. Danzig, 217 F.3d 1128, 1138 (9th Cir. 2000)  
15 ("Unreasonable delay is the foundation upon which a court may presume prejudice.").

16 **II. CONCLUSION**

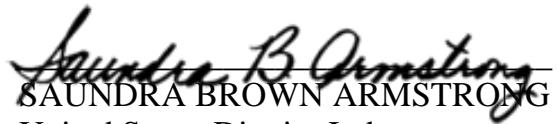
17 For the reasons stated above, IT IS HEREBY ORDERED THAT:

18 1. Plaintiffs' motion to stay discovery and other case deadlines pending  
19 resolution of their motion for class certification is DENIED.

20 2. This Order terminates Docket 245.

21 IT IS SO ORDERED.

22 Dated: November 3, 2014

23   
24 SAUNDRA BROWN ARMSTRONG  
25 United States District Judge  
26

27 <sup>4</sup> According to Plaintiffs, an extension of the fact discovery deadline will promote  
28 judicial economy by avoiding "potential" motion practice related to merits-based discovery  
disputes.