

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 SONNY LOW, J.R. EVERETT and
12 JOHN BROWN, on Behalf of Themselves
13 and All Others Similarly Situated,
14 Plaintiffs,

15 v.

16 TRUMP UNIVERSITY, LLC, a New
17 York Limited Liability Company, and
18 DONALD J. TRUMP,
19 Defendants.

Case No.: 3:10-cv-00940-GPC-WVG

**ORDER DENYING DEFENDANTS’
EX PARTE APPLICATION TO
CONTINUE THE NOVEMBER 28,
2016 TRIAL DATE**

[ECF No. 510.]

20 Before the Court is Defendants’ *ex parte* application to continue the November 28,
21 2016 trial date to January 2, 2017. ECF No. 510. Plaintiffs filed an opposition on
22 September 14, 2016. ECF No. 512. Based on the reasoning below, the Court **DENIES**
23 Defendants’ *ex parte* application to continue the November 28, 2016 trial date.

24 **DISCUSSION**

25 “A schedule may be modified only for good cause and with the judge’s consent.”
26 Fed. R. Civ. P. 16(b)(4). The “good cause” standard “primarily considers the diligence of
27 the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
28 604, 609 (9th Cir. 1992). “The pretrial schedule may be modified if it cannot reasonably

1 be met despite the diligence of the party seeking the extension. If the party seeking the
2 modification was not diligent, the inquiry should end and the motion to modify should
3 not be granted.” *Zivkovic v. S. California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.
4 2002) (citation and internal quotation marks omitted).

5 **I. Good Cause**

6 Defendants request that the Court continue the scheduled November 28, 2016 trial
7 date until after the conclusion of the *Flo & Eddie, Inc. v. Sirius XM Radio Inc.*, No. 13-
8 5693-PSG-GJS (C.D. Cal.) (“*Sirius XM*”) trial. The *Sirius XM* trial is scheduled to begin
9 on November 15, 2016. See ECF No. 510-1, Declaration of Daniel M. Petrocelli
10 (“Petrocelli Decl.”) ¶ 3. Mr. Daniel Petrocelli, Esq. is the lead counsel for the *Sirius XM*
11 trial and for the trial in the instant case. *Id.* ¶¶ 2–3. Defendants contend that defense
12 counsel will have inadequate time to prepare for trial in the instant case if a trial
13 continuance is not granted.

14 The instant case has been pending for six and a half years. See ECF No. 1. The
15 Court has repeatedly accommodated Defendants’ requests with respect to scheduling
16 trial. See, e.g., ECF No. 512-2 at 5, 10, 15, 49, 74, 83. Although defense counsel agreed
17 to a November 15, 2016 date for the *Sirius XM* trial in January 2016, defense counsel did
18 not inform the Court about the possibility of a conflict with the November 28, 2016 trial
19 date until August 26, 2016. See *id.* at 254. Defense counsel had multiple opportunities to
20 raise the issue with the Court prior to August 26, 2016 but did not do so. In light of these
21 facts, the Court concludes that Defendants have failed to establish good cause to continue
22 the November 28, 2016 trial date.

23 **II. Actual Conflict**

24 Defendants assert that (1) an actual conflict exists between trial in the *Sirius XM*
25 case and the November 18, 2016 hearing on jury instructions in the instant case, and that
26 (2) a potential conflict exists between the two trials.

27 The Court **VACATES** the November 18, 2016 hearing on jury instructions and
28 **RESETS** the hearing to **November 10, 2016 at 1:30pm**. The hearing will be held

1 concurrently with the scheduled hearing on motions in limine. The parties shall file and
2 email, in WordPerfect or Word format, to the Court's email address at
3 efile_curiel@casd.uscourts.gov joint proposed jury instructions and special verdict forms,
4 including any objections with relevant supporting authorities on or before **October 28,**
5 **2016.**

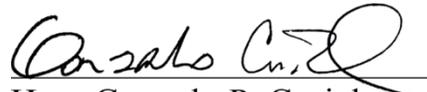
6 With respect to the trial date, Defendants do not establish that an actual conflict
7 exists between trial in the *Sirius XM* case and in the instant case. Defense counsel is
8 directed to prepare for trial as scheduled.

9 CONCLUSION

10 For the foregoing reasons, the Court hereby (1) **DENIES** Defendants' *ex parte*
11 application to continue the November 28, 2016 trial date to January 2, 2017 and (2)
12 **RESETS** the hearing on jury instructions to November 10, 2016 at 1:30pm.

13 **IT IS SO ORDERED.**

14
15 Dated: September 15, 2016

16 
17 Hon. Gonzalo P. Curiel
18 United States District Judge
19
20
21
22
23
24
25
26
27
28