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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RAFAEL DAVID SHERMAN and SU-  
SAN PATHMAN, individually and on  
behalf of all others similarly situated,  
  
Plaintiffs,  
  
v.  
  
YAHOO! INC., a Delaware  
Corporation,  
  
Defendant.

Case No. 13-cv-00041-GPC-WVG

**ORDER GRANTING IN PART THE  
JOINT EX PARTE MOTION TO (1)  
CONTINUE THE DEPOSITIONS  
OF YAHOO! INC. AND  
PLAINTIFF RAFAEL SHERMAN  
AND SUSAN PATHMAN, AND (2)  
MODIFY THE  
CONFIDENTIALITY  
PROTECTIVE ORDER (Doc. No.  
91).**

Before the Court is the Joint Ex Parte Motion to (1) Continue the  
Depositions of Yahoo! Inc. and Plaintiff Rafael Sherman and Susan Pathman, and  
(2) Modify the Confidentiality Protective Order (“Motion”), filed by Mr. Sherman  
and Ms. Pathman (“Plaintiffs”) as well as Yahoo! Inc. (“Yahoo” or “Defendant”)  
(collectively, “Parties”) on January 21, 2015. (Doc. No. 91.) “[I]n an effort to  
accommodate the parties’ desire to coordinate discovery with the plaintiffs in  
parallel actions concurrently pending in the United States District Court for the  
Northern District of Illinois” (“Illinois proceedings”) and for the sake of greater  
perceived “efficiency,” the Parties have agreed to take a consolidated Federal Rule  
of Civil Procedure 30(b)(6) (“Rule 30(b)(6)”) deposition of Defendant and partly

1 modify the protective orders entered in both this case and the Illinois proceeding<sup>1/</sup>  
2 (Id. at 2–3.) Additionally, due to outstanding discovery disputes, for which no detail  
3 has been provided in the Motion, the Parties have already decided to continue the  
4 deposition of Ms. Pathman to a date after the present fact discovery cutoff date. (Id.  
5 at 3.) They hasten to emphasize their consistent meet-and-confer efforts. (Id.) For  
6 these reasons, they propose the following new dates: a deadline of (1) March 20,  
7 2015, for conducting the Rule 30(b)(6) deposition of Defendant and the deposition  
8 of Ms. Pathman; (2) 21 days within which the Honorable Gonzalo P. Curiel of the  
9 United States District Court for the Southern District of California (“District Court”)  
10 rules on Plaintiff Rafael Sherman’s motion to dismiss (“MTD”) (Doc. No. 71) for  
11 the deposition of Mr. Sherman; (3) of the same number of days as the Parties  
12 eventually choose to continue the depositions of Yahoo, Ms. Pathman, and Mr.  
13 Pathman for the completion of class-related discovery; and (4) of 34 days from the  
14 last deposition of Yahoo for the filing of Plaintiff’ Motion for Class Certification.  
15 (Id. at 4–5.)

16 While the Court does not question the Parties’ good faith efforts, it finds  
17 the dates and time lines proposed to be problematic for two reasons. First, as the  
18 previous awkward encapsulation makes clear, several of these dates are presently  
19 indeterminate and self-evidently ambiguous; they may come to pass in days, weeks,  
20 or month in a case already more than two years old. Relatedly, moreover, the  
21 variable windows suggested and the two month extension sought will only further  
22 delay this proceeding and prevent its efficient adjudication. By explicit rule, a  
23 scheduling order “controls the course of action unless the court modifies it[],” FED.  
24 R. CIV. P. 16(d) (“Rule 16(d)”), and the mandate of Rule 16(d) must always “be  
25 taken seriously,” Janicki Logging Co. v. Mateer, 42 F.3d 561, 566 (9th Cir. 1994).  
26 Otherwise, “efficient case management,” this procedural precept’s animating  
27 purpose, would be needlessly endangered, the very problems it was designed to

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28 <sup>1/</sup> The modified protective order will be granted by this Court in a separate document.

1 minimize effectively unmitigated. Stanley v. Huntington Nat'l Bank, 492 F. App'x  
2 456, 461 (4th Cir. 2012); Fujita v. United States, 416 F. App'x 400, 402 n.6 (5th  
3 Cir. 2011) (“[S]uch [scheduling] orders and their enforcement are regarded as the  
4 essential mechanism for cases becoming trial-ready in an efficient, just, and certain  
5 manner.” (quoting Rouse v. Farmers State Bank of Jewell, Iowa, 866 F. Supp. 1191,  
6 1198 (N.D. Iowa 1994))); cf. Pavelic & LeFlore v. Marvel Entm't Grp., 493 U.S.  
7 120, 123–26, 110 S. Ct. 456, 458–60, 107 L. Ed. 2d 438 (1989) (interpreting Rule  
8 11 in light of its plain meaning and obvious purposes). Indeed, as the United States  
9 Court of Appeals for the Ninth Circuit has said, modification of deadlines threatens  
10 a “court’s ability to control its own docket” and both “disrupt[s] the agreed-upon  
11 course of litigation[] and [may] reward[s] the indolent and cavalier.” Johnson v.  
12 Mammoth Recreations, 975 F.2d 604, 610 (9th Cir. 1992) (citation omitted). All  
13 these concerns weigh heavily here, for on December 19, 2014, this Court expressly  
14 reminded the Parties of the very deadlines they now seek to amend. (Doc. No. 89.)

15           Nonetheless, in light of the Parties’ arguments and the apparent need for  
16 some temporal tinkering, some deadlines’ modification is merited. As such, this  
17 Court will grant the Motion only in part. It thus modifies any prior scheduling orders  
18 and sets forth the following schedule for the Parties to follow:

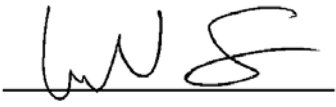
- 19           (1) The Fed. R. Civ. P. 30(b)(6) deposition of Yahoo is continued from  
20 January 24, 2015, to any date agreed upon by the parties and the parties  
21 to the parallel actions pending in the Northern District of Illinois  
22 (*Johnson v. Yahoo! Inc.*, No. 14-cv-2028 (N.D. Ill.) and *Calderin v.*  
23 *Yahoo! Inc.*, 14-cv-2753 (N.D. Ill.)), but in no event later than  
24 **February 27, 2015**;
- 25           (2) The deposition of Ms. Pathman is continued from January 17, 2015, to a  
26 date agreed upon by the parties, but in no event later than **February 27,**  
27 **2015**;
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- (3) The deposition of Mr. Sherman will take place **no later than February 27, 2015**, unless the District Court has granted the MTD before that date;
- (4) The class discovery deadline of January 30, 2015, is continued to **February 27, 2015**, whether or not the District Court has rendered a decision on the MTD; and
- (5) The deadline for plaintiffs to file their Motion for Class Certification is continued from February 27, 2015, to **March 27, 2015**.

IT IS SO ORDERED.

DATED: January 23, 2015



Hon. William V. Gallo  
U.S. Magistrate Judge