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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PATRICIA CROUSE,  
Plaintiff,  
v.  
LOWE’S HOME IMPROVEMENT  
WAREHOUSE, INC., *et al.*,  
Defendants.

Civil No. 13-CV-1274-JM (WVG)  
ORDER DENYING JOINT MOTION  
TO EXTEND DATE FOR  
COMPLETION OF DEPOSITIONS  
OF DEFENDANT’S EXPERTS  
[DOC. NO. 27]

Pending before the Court is the parties’ Joint Motion to Extend the Date for Completion of Depositions of Defendant’s Experts. (Doc. No. 27.) Finding no good cause to grant the extension request, the Court hereby DENIES the parties’ Joint Motion.

**I. BACKGROUND**

On June 9, 2014, the parties filed a Joint Motion to Continue the Mandatory Settlement Conference (“MSC”) and Expert Disclosure Date. (Doc. No. 25.) In their June 9, 2014, Joint Motion, the parties requested that the Court continue the MSC so that they could complete the depositions of Plaintiff’s non-retained and treating surgeon, Dr. Eric Stark, and Defendant’s retained expert, Dr. Christopher Behr. *Id.* at 2. The parties noted that the “testimony of Dr. Stark and Dr. Behr are crucial to the parties’ abilities to evaluate and

1 understand the causal connection between Plaintiff’s knee replacement surgery and the  
2 injuries sustained as a result of the subject incident. Completion of the depositions of Dr.  
3 Stark and Dr. Behr will allow the parties to determine their respective positions pertaining  
4 to the disputed knee replacement surgery, which will promote more meaningful settlement  
5 discussions at the settlement conference.” Id. at 2-3. The Court granted the parties’ request  
6 to continue the MSC. (Doc. No. 26 at 1-2.)

7 The Court also stated that, because it granted the parties’ request to continue the MSC,  
8 they would have ample time to complete the depositions of their experts prior to the MSC.  
9 (Doc. No. 26 at 2.) Therefore, the Court denied the parties’ request to continue the deadline  
10 to exchange expert reports. Id.

## 11 **II. RELEVANT LAW**

12 Pursuant to Federal Rule of Civil Procedure (“Rule”) 16(b)(3), a district court is  
13 required to enter a pretrial scheduling order that “must limit the time to join other parties,  
14 amend the pleadings, complete discovery, and file motions.” Fed.R.Civ.P. 16(b)(3)(A). The  
15 scheduling order “controls the course of the action unless the court modifies it[ ]” and Rule  
16 “16 is to be taken seriously.” Rule 16(d); Janicki Logging Co. v. Mateer, 42 F.3d 561, 566  
17 (9th Cir.1994). As the Eastern District of California has stated, parties must “diligently  
18 attempt to adhere to [the court’s] schedule throughout the subsequent course of the  
19 litigation.” Jackson v. Laureate, Inc., 186 F.R.D. 605, 607 (E.D.Cal.1999). “A scheduling  
20 order ‘is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded  
21 without peril.’” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir.1992)  
22 (quoting Gestetner Corp. v. Case Equip. Co., 108 F.R.D. 138, 141 (D.Me.1985)).

23 Rule 16(b)(4) “provides that a district court’s scheduling order may be modified upon  
24 a showing of ‘good cause,’ an inquiry which focuses on the reasonable diligence of the  
25 moving party.” Noyes v. Kelly Servs., 488 F.3d 1163, 1174 n. 6 (9th Cir.2007); citing  
26 Johnson, 975 F.2d at 609. In Johnson, the Ninth circuit explained,

27 ... Rule 16(b)’s “good cause” standard primarily concerns the diligence of the  
28 party seeking the amendment. The district court may modify the pretrial  
schedule “if it cannot reasonably be met despite the diligence of the party  
seeking the extension.” Fed .R.Civ.P. 16 advisory committee’s notes (1983

1 amendment) ... [T]he focus of the inquiry is upon the moving party's reasons  
2 for seeking modification.... If that party was not diligent, the inquiry should  
3 end.

4 Johnson, 975 F.2d at 609.

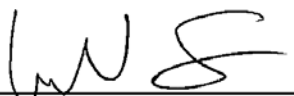
5 In part, the "good cause" standard requires the parties to demonstrate that "noncom-  
6 pliance with a Rule 16 deadline occurred or will occur, notwithstanding her diligent efforts  
7 to comply, because of the development of matters which could not have been reasonably  
8 foreseen or anticipated at the time of the Rule 16 Scheduling conference ..." Jackson, 186  
9 F.R.D. at 608, emphasis added.

### 10 **III. RULING**

11 The Court finds that the parties' Joint Motion fails to demonstrate any good cause for  
12 granting an extension of the expert discovery cutoff date. The only reason provided to the  
13 Court in support of the extension request is that Plaintiff would like to defer the costs  
14 associated with deposing all defense experts prior to the MSC. (Doc. No. 27 at 2.) As this  
15 Court stated in its June 10, 2014, Order, the Court appreciates that the parties seek to avoid  
16 certain litigation costs. (Doc. No. 26 at 2.) However, the Court granted the parties' June 9,  
17 2014, Joint Motion, in an effort to assist the parties in avoiding the costs associated with  
18 attending the MSC without a full assessment of the connection between Plaintiff's injuries  
19 and her knee replacement surgery. (Doc. No. 26 at 2; citing Doc. No. 25 at 3.) Plaintiff filed  
20 this lawsuit and must be prepared to fully litigate her case, and to adhere to the Court's  
21 scheduling order. Therefore, because the parties have not demonstrated good cause to grant  
22 the extension request, the Court hereby DENIES the parties' Joint Motion.

23 IT IS SO ORDERED.

24 DATED: August 14, 2014

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