

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

11 STEVE CAVNER and BETH CAVNER,  
12 Plaintiff,  
13 v.  
14 AIRBORNE SYSTEMS NORTH  
15 AMERICA OF CA, INC. et al.,  
16 Defendants.

Case No.: 15cv2656 LAB (BGS)

**ORDER DENYING JOINT MOTION  
TO CONTINUE DEADLINE FOR  
FACT DISCOVERY AND LATER  
DEADLINES**

[ECF No. 65]

17  
18 **I. Background**

19 The parties have filed a second Joint Motion to Continue the Deadline for Fact  
20 Discovery and Later Deadlines. (ECF No. 65.) This case was filed on November 25,  
21 2015 and the first scheduling order issued on February 12, 2016. As part of that order,  
22 fact discovery was to be completed by August 12, 2016. However, on June 22, 2016, the  
23 parties filed a Joint Motion to Continue Deadline for Fact Discovery and Later Deadlines  
24 for 180 days. The primary basis for the parties' good cause was the addition of other  
25 parties which necessarily required additional discovery. In that this was the first request  
26 to continue and the stated reasons established good cause, the Court granted the parties'  
27 request for a 180-day extension of all deadlines without having the parties first detail  
28

1 what discovery had been done to date. Now the parties seek another extension of fact  
2 discovery as well as extensions for other deadlines for an additional 90 days.

### 3 **II. Analysis**

4 In general, the dates and times set in the scheduling order will not be modified  
5 except for good cause shown. See Fed. R. Civ. P. 16(b)(4) (stating “A schedule may be  
6 modified only for good cause and with the judge’s consent.”). The Ninth Circuit has  
7 explained that Rule 16(b)’s good cause standard is focused on the diligence of the party  
8 seeking the amendment and has stated the inquiry as follows: “[t]he district court may  
9 modify the pretrial schedule ‘if it cannot reasonably be met despite the diligence of the  
10 party seeking the extension.’” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609  
11 (9th Cir. 1992) (citing Fed. R. Civ. P. advisory committee’s notes (1983 amendment)).

12 In the present case, the parties have had from February 12, 2016 to the present to  
13 conduct discovery. In fact, the current fact discovery deadline is February 8, 2017,  
14 providing the parties almost a full year to complete discovery. The Court has already  
15 granted an extension of 180 days. This second request asking for an additional 90 days,  
16 with the caveat to request more extensions of the schedule, will require a detailed due  
17 diligence proffer before the Court will consider granting a limited extension of fact  
18 discovery. The parties are to provide the Court with a detailed account of what discovery  
19 has been done, giving the dates corresponding to the specific discovery item (i.e., when  
20 the discovery was requested and when was it produced). Further, they are to provide an  
21 account of what remaining discovery has yet to be done, and explain why using due  
22 diligence this remaining discovery could not be accomplished within the one year time  
23 frame.

24 By way of example, in Adam Levine’s declaration, paragraphs 5-9, he summarizes  
25 written discovery propounded on July 18-19, 2016. (ECF No. 65-1.) The declarant fails  
26 to detail why this discovery was not done sooner. Nor does the declarant detail when it  
27 was received, reviewed and how it impacts particular discovery which is outstanding. In  
28 paragraph 12 the declarant states Rule 30(b)(6) depositions have been noticed. The

1 declarant fails to detail the dates of the notices, as well as why, using due diligence, they  
2 were not noticed sooner. Further, for any other outstanding depositions, the parties  
3 should provide the same due diligence analysis.

4 The Court, pursuant to the above stated law, will consider extensions of time for  
5 conducting specific discovery (as opposed to a general extension for all discovery), and  
6 only after the parties have shown that under a due diligence standard they were not able  
7 to complete the specific discovery by the extended deadline of February 8, 2017. The  
8 Court notes that at the Case Management Conference held on February 12, 2016 the  
9 Court refused to bifurcate the discovery as moved by both sides. So any delays for any  
10 discovery must be substantiated with a due diligence proffer.

11 It is ordered that the Joint Motion to Continue is denied without prejudice. The  
12 parties may renew this motion, but only after complying with the requirements of due  
13 diligence as set for in this order.

14 **IT IS SO ORDERED.**

15 Dated: January 10, 2017

16   
17 Hon. Bernard G. Skomal  
18 United States Magistrate Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28