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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 NIPPON ZOKI PHARMACEUTICAL  
12 CO., LTD,  
13 Plaintiff,  
14 v.  
15 THE REGENTS OF THE UNIVERSITY  
16 OF CALIFORNIA,  
17 Defendant.

Case No.: 16-CV-779-W-WVG

**ORDER DENYING MOTION TO  
CONTINUE FACT DISCOVERY  
DEADLINE WITHOUT PREJUDICE**

[ECF No. 35]

18 Present before the Court is the parties Joint Motion to continue the fact discovery  
19 deadline by sixty days. (ECF No. 35.) Because the parties have not demonstrated good  
20 cause for such an extension, the Joint Motion is **DENIED** without prejudice.

21 **DISCUSSION**

22 On October 24, 2016, the Court issued a Scheduling Order pursuant to Federal Rule  
23 of Civil Procedure (“FRCP”) 16(b) setting July 21, 2017 as the date by which all discovery  
24 pertaining to facts was to be completed. (ECF No. 24 at 2:22-23.) With more than three  
25 months remaining to conduct fact discovery, on April 17, 2017, the parties filed the present  
26 Joint Motion, requesting the Court continue the fact discovery deadline by sixty days. The  
27 basis for the request is that the collection and exchange of electronically stored information  
28 (“ESI”) is “far more extensive than the parties originally anticipated.” (ECF No. 35 at 2:15-

1 16.)

2 Pursuant to FRCP 16(b)(3), a district court is required to enter a pretrial scheduling  
3 order that “must limit the time to join other parties, amend the pleadings, complete  
4 discovery, and file motions.” Fed. R. Civ. P. 16(b)(3)(A). The scheduling order “controls  
5 the course of the action unless the court modifies it [ ]” and FRCP “16 is to be taken  
6 seriously.” Fed. R. Civ. P. 16(d); *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir.  
7 1994). Indeed, parties must “diligently attempt to adhere to [the Court’s] schedule  
8 throughout the subsequent course of the litigation.” *Jackson v. Laureate, Inc.*, 186 F.R.D.  
9 605, 607 (E.D. Cal. 1999). “A scheduling order ‘is not a frivolous piece of paper, idly  
10 entered, which can be cavalierly disregarded without peril.’” *Johnson v. Mammoth*  
11 *Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) (quoting *Gestetner Corp. v. Case*  
12 *Equip. Co.*, 108 F.R.D. 138, 141 (D. Me. 1985)).

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

17 ...Rule 16(b)’s “good cause” standard primarily concerns the diligence of  
18 the party seeking the amendment. The district court may modify the pretrial  
19 schedule “if it cannot reasonably be met despite the diligence of the party  
20 seeking the extension.” Fed. R. Civ. P. 16 advisory committee’s notes (1983  
21 amendment)...[T]he focus of the inquiry is upon the moving party’s reasons  
22 for seeking modification...If that party was not diligent, the inquiry should  
23 end.

24 *Johnson*, 975 F.2d at 609.

25 In part, the “good cause” standard requires the parties to demonstrate that  
26 “noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding her  
27 diligent efforts to comply, because of the development of matters which could not have  
28 been reasonably foreseen or anticipated at the time of the Rule 16 Scheduling

1 conference...” *Jackson*, 186 F.R.D. at 608.

2 The Court finds the Joint Motion does not adequately demonstrate good cause to  
3 warrant an extension. In the Joint Motion, the parties aver that “Defendant served written  
4 discovery requests on Plaintiff on February 15, 2017,” nearly four months after the opening  
5 of fact discovery. (ECF No. 35 at 2, ¶ 4.) The parties then indicate they are “in the process  
6 of exchanging responsive documents and ESI.” (ECF No. 35 at 2, ¶ 8.) Notably absent  
7 from the Joint Motion is the date by which the parties propounded requests for production  
8 of documents, or other specific requests for the ESI in question. Without this information,  
9 the Court finds it difficult to conclude the parties “diligently attempt[ed] to adhere” to the  
10 Court’s schedule. *Jackson*, 186 F.R.D. at 607. Additionally, the parties simply describe  
11 the volume of ESI as “extensive” or “significant” without going into any detail of the  
12 magnitude of the outstanding ESI, which party is working to retrieve the ESI, and what  
13 processes are involved in obtaining the ESI. Without this key information, the Court is  
14 unable to find good cause exists to amend the Scheduling Order. Most concerning to the  
15 Court is there is no explanation as to why Defendant waited nearly four months to  
16 commence written discovery and what Defendant may have been doing during that time to  
17 litigate this case.

18 For the foregoing reasons, the Court **DENIES** the parties Joint Motion without  
19 prejudice. Should the parties seek another extension, the parties must supply the Court with  
20 the pertinent information described above and justification as to why discovery cannot be  
21 completed in the remaining three months of fact discovery.

22 **IT IS SO ORDERED.**

23 Dated: April 19, 2017

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26 Hon. William V. Gallo  
27 United States Magistrate Judge  
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