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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEBORAH MAIORANO,
individually, and as Successor In
Interest to ANTHONY MAIORANO,
Plaintiff,
v.
HOME DEPOT USA, INC., and,
RESIN PARTNERS, INC.,
Defendants.

Case No.: 16cv2862-BEN-MDD

**ORDER ON JOINT MOTION TO
AMEND THE SCHEDULING
ORDER**

[ECF NO. 30]

Before the Court is the Joint Motion of the parties, filed on October 5, 2017, to amend the Scheduling Order. (ECF No. 30). The parties seek a 4 month continuance of the discovery cutoff and the consequent pretrial dates. (*Id.*) As provided herein, the motion is **DENIED**.

LEGAL STANDARD

Rule 16(b)(4), Fed. R. Civ. P., provides that a schedule may be modified “only for good cause.” “Rule 16(b)'s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992); *Sharp v. Covenant Care LLC*, 288 F.R.D. 465, 467 (S.D. Cal. 2012). Rule 1, Fed. R. Civ. P., provides that the Federal Rules of Civil Procedure “should be construed, administered,

1 and employed by the court and the parties to secure the just, speedy, and
2 inexpensive determination of every action and proceeding.”

3 DISCUSSION

4 The Complaint originally was filed in the Superior Court for San Diego
5 County on September 29, 2016, and removed to this Court on November 22,
6 2016. (ECF No. 1). The Complaint alleges that Plaintiff’s decedent, Anthony
7 Maiorano, died as a consequence of injuries suffered when a sawhorse
8 purchased from Defendant Home Depot and manufactured by Defendant
9 Resin Partners, collapsed due to defective design of the sawhorse.

10 The parties conducted their required conference, pursuant to Rule 26(f),
11 Fed. R. Civ. P., on January 24, 2017, and filed their Joint Discovery Plan on
12 February 8, 2017. (ECF No. 12). The Early Neutral Evaluation and Case
13 Management Conference was held telephonically on February 16, 2017.
14 (ECF No. 17). The operative Scheduling Order was filed on February 17,
15 2017. (ECF No. 18). Discovery has been open, therefore, since January 24,
16 2017, following the completion of the Rule 26(f) conference. Since many
17 parties do not conduct discovery until the Case Management Conference is
18 held, the Court will give the parties the benefit of the doubt and say that
19 discovery opened no later than February 16, 2017.

20 The instant motion presents Plaintiff’s request to extend the case
21 management order for 4 months primarily as a consequence of a discovery
22 dispute filed the same date as this motion, October 5, 2017. (ECF No. 29).
23 Defendants join in the request. (ECF No. 30 at 5). The discovery dispute has
24 been resolved by an Order filed this date and does not result in substantial or
25 meaningful additional discovery. (ECF No. 32). The Court finds that the
26 dispute was not so substantial as to justify the instant request for additional
27 time.

1 Of greater consequence, although Plaintiff did not disclose the date that
2 the discovery requests were served upon Defendants, Defendants initial
3 responses were served on Plaintiff on June 30, 2017. (ECF No. 29 at 2-3).
4 Unless relief was provided by Plaintiff, the requests at issue were served on
5 Defendants on or about May 30, 2017. See Rule 34(b)(2)(A), Fed. R. Civ. P.
6 By that point, discovery had been open for at least 3.5 months. Although
7 stating that “several” percipient witness depositions have been taken and
8 premises inspected, Plaintiff has not demonstrated due diligence sufficient
9 for this request to be granted.

10 **CONCLUSION**

11 The instant Joint Motion to Amend the Scheduling Order is **DENIED**.

12 **IT IS SO ORDERED.**

13 Dated: October 24, 2017



14 Hon. Mitchell D. Dembin
15 United States Magistrate Judge
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