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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CARLOS LOPEZ and ANGEL ALEJO,
individuals, and on behalf of all others
similarly situated,

Plaintiffs,

v.

MANAGEMENT & TRAINING
CORPORATION, a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 3:17-cv-01624-JM-RBM

**ORDER DENYING MOTION TO
MODIFY SCHEDULING ORDER**

[Doc. 29.]

I. INTRODUCTION

Plaintiffs CARLOS LOPEZ and ANGEL ALEJO and Defendant MANAGEMENT & TRAINING CORPORATION (collectively, the “Parties”) have moved the Court to modify its Scheduling Order of November 16, 2018, seeking to extend all dates by approximately 180 days. (Doc. 29.) The grounds of the motion are, in essence, that: additional attorneys have associated in on this matter; Plaintiffs have been unable to conduct previously noticed depositions due to scheduling difficulties; the Parties have not been able to agree to an additional site inspection; Plaintiffs intend to seek leave of Court

1 to file a Second Amended Complaint; and, the Parties have scheduled a mediation in
2 approximately four months. (Doc. 29, at 3-4.) After careful consideration of the Parties’
3 motion, the Court **DENIES** the Parties’ request to modify the Scheduling Order.

4 **II. LEGAL STANDARD**

5 “A schedule may be modified only for good cause and with the judge’s consent.”
6 Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good cause’ standard primarily considers the
7 diligence of the party seeking the amendment.” *Johnson v. Mammoth Recreations, Inc.*,
8 975 F.2d 604, 609 (9th Cir.1992). If the moving party fails to demonstrate diligence, “the
9 inquiry should end.” *Id.* For example, good cause may be found where the moving party
10 shows it assisted the court with creating a workable scheduling order, that it is unable to
11 comply with the scheduling order’s deadlines due to matters not reasonably foreseeable at
12 the time the scheduling order issued, and that it was diligent in seeking a modification once
13 it became apparent it could not comply with the scheduling order. *Jackson v. Laureate,*
14 *Inc.*, 186 F.R.D. 605, 608 (E.D.Cal.1999) (citations omitted).

15 **III. DISCUSSION**

16 The Court does not find that the parties have shown good cause for the proposed
17 modification because the parties have failed to demonstrate diligence in attempting to
18 comply with the Court’s modified Scheduling Order of November 16, 2018. (Doc. 26.)

19 The parties assert that counsel for Plaintiffs, Cohelan Khoury & Singer “recently
20 associated in on this matter ... and have been familiarizing themselves with the litigation
21 in this matter to date[.]” (Doc. 29, at 13-15.) However, Plaintiffs additional counsel filed
22 a Notice of Appearance in this matter on January 9, 2019, more than four months before
23 the instant motion was filed. The Parties assert that although they have been conducting
24 discovery necessary to move for and defend against class certification, Plaintiffs have
25 requested additional time to conduct noticed depositions due to scheduling difficulties and
26 to respond to recently served requests for admission. (*See* Doc. 29, at 16-20.) However,
27 the Parties moved the Court to modify its Scheduling Order in October, 2018, arguing that
28 they had not been able to obtain necessary discovery, including depositions of Defendant’s

1 witnesses. (Doc. 24, at 3.) Nearly seven months after the Court granted the first request,
2 Plaintiff has yet to conduct depositions of Defendant’s witnesses. The Parties have
3 conducted a site inspection of the Imperial Detention Center on January 29, 2019 but have
4 been unable to agree to a similar inspection of a second correctional facility. (Doc. 29, at
5 3-4.) However, this dispute is not new: when the Parties requested their first Scheduling
6 Order modification, they asserted that they were unable to conduct site inspections due to
7 the unavailability of counsel, witnesses, witnesses, and the facility, and security concerns.
8 (Doc. 24, at 3-4.) The parties assert that they have been diligent in attempting to comply
9 with the Court’s Scheduling Order; but in seeking a second modification, they have
10 repeated the arguments that justified the first modification. Plaintiff’s counsel have been
11 familiarizing themselves with this matter for four months; depositions of Defendant’s
12 witnesses have still not been taken; and, that the Parties have still not conducted their site
13 inspections. (See Doc. 29.) “A scheduling order is not a frivolous piece of paper, idly
14 entered, which can be cavalierly disregarded without peril.” *Johnson v. Mammoth*
15 *Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992) (internal quotations omitted). When
16 the Parties first requested a modification of the Scheduling Order, the Court generously
17 extended all the dates by 140 days. It appears that the Parties have made little progress in
18 resolving the disputes that existed then. This does not demonstrate diligence.

19 Additionally, the Parties assert that they have been meeting and conferring regarding
20 Plaintiff’s filing of a Second Amended Complaint, and that they have sought a stay of the
21 entire matter pending mediation. However, there is no reason why the Parties cannot
22 litigate this case and pursue mediation at the same time.

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1 **IV. CONCLUSION**

2 The Court does not find that the parties diligently attempted to comply with the
3 Court's prior Scheduling Order. As such, the Court does not find good cause to modify it.
4 Accordingly, the Parties' joint request to further modify the Court's scheduling order of
5 November 11, 2018, is **DENIED**.

6 **IT IS SO ORDERED.**

7 DATE: June 10, 2019

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12 HON. RUTH BERMUDEZ MONTENEGRO
13 United States Magistrate Judge
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