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

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11 CERTIFIED NUTRACEUTICALS, INC.,  
12 a California Corporation,  
13 **Plaintiff,**  
14 v.  
15 THE CLOROX COMPANY, et al,  
16 **Defendants.**

Case No.: 3:18-cv-744 W (KSC)

**ORDER GRANTING DEFENDANTS’  
MOTION TO AMEND THE  
SCHEDULING ORDER TO SUBMIT  
SUCCESSIVE MOTION FOR  
SUMMARY JUDGMENT [DOC. 156]**

17 Defendants The Clorox Company, Nutranext, and Neocell Holding Company  
18 (collectively, “Defendants”) request a modification of the scheduling order to  
19 accommodate a successive motion for summary judgment with respect to Plaintiff’s  
20 remaining claim for injunctive relief. (*Mot.* [Doc. 156].) Plaintiff Certified  
21 Nutraceu... Inc. opposes the Motion on grounds that Defendants failed to meet their  
22 burden to show “good cause” because they were aware of the facts now presented when  
23 they filed their first summary judgment motion on September 14, 2020—the last day to  
24 file dispositive motions. (*Opp’n* [Doc. 159].)

25 The Court decides the matter without oral argument pursuant to Civil Local Rule  
26 7.1(d)(1). For the reasons discussed below, Defendants’ Motion to Amend the  
27 Scheduling Order [Doc. 156] is **GRANTED**.

1 **I. BACKGROUND**

2 Defendants moved for summary judgment on September 14, 2020—the last day to  
3 file dispositive motions in this case. [Doc. 117]. On September 29, 2021, the Court  
4 granted in part and denied in part Defendants’ Motion, dismissing all of Plaintiff’s claims  
5 except for its claim for injunctive relief. [Doc. 141]. Then on October 28, 2021,  
6 Defendants filed an ex parte application seeking: (1) clarification of certain language in  
7 the Court’s Summary Judgment Order; and (2) modification of the scheduling order to  
8 permit Defendants to file a second motion for summary judgment after the dispositive  
9 motion deadline.

10 On November 3, 2021, the Court clarified the Summary Judgment Order, denied  
11 Defendants’ request to modify the scheduling order without prejudice, and instructed  
12 Defendants to file a noticed motion instead. [Doc. 155]. Defendants did so on November  
13 24, 2021. [Doc. 156]. Plaintiff opposed the noticed motion on December 20, 2021 [Doc.  
14 159], and Defendants filed their reply on December 27, 2021 [Doc. 161].

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16 **II. LEGAL STANDARD**

17 Federal Rule of Civil Procedure 16(b)(4) provides that scheduling orders “may be  
18 modified only for good cause and with the judge’s consent.” The party seeking an  
19 amendment bears the burden of showing good cause. Zivkovic v. S. Cal. Edison Co., 302  
20 F.3d 1080, 1087 (9th Cir. 2002). On the one hand, this “good cause” inquiry “primarily  
21 considers the diligence of the party seeking the amendment,” and “the focus of the  
22 inquiry is upon the moving party’s reasons for seeking modification.” Johnson v.  
23 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). “If that party was not  
24 diligent, the inquiry should end.” Id. On the other hand, the Supreme Court “has long  
25 recognized that a district court possesses inherent powers that are governed not by rule or  
26 statute but by the control necessarily vested in courts to manage their own affairs so as to  
27 achieve the orderly and expeditious disposition of cases.” Dietz v. Bouldin, 579 U.S. 40,  
28 45 (2016) (internal quotations and citation omitted). Indeed, under the Civil Justice

1 Reform Act, 28 U.S.C. Section 471, “[f]ederal trial courts are now required, by statute, to  
2 implement techniques and strategies designed to dispose of cases in an efficient and  
3 inexpensive manner.” Schwarzkopf Techs. Corp. v. Ingersoll Cutting Tool Co., 142  
4 F.R.D. 420, 423 (D. Del. 1992). Additionally, “all of the Federal Rules of Civil  
5 Procedure [] are subject to the injunction of Rule 1 that they be construed to secure the  
6 just, *speedy*, and *inexpensive* determination of every action.” Herbert v. Lando, 441 U.S.  
7 153, 177 (1979) (internal quotations and citation omitted).

### 8 9 **III. DISCUSSION**

10 Defendants argue that good cause exists to modify the scheduling order to allow a  
11 second motion for summary judgment with respect to Plaintiff’s remaining claim for  
12 injunctive relief. (*Mot.* at 3.) They argue that a second motion “would promote  
13 efficiency by resolving this matter without the need for trial,” and that they were diligent  
14 because the issues they “wish to address in a second motion for summary judgment did  
15 not crystalize until the issuance of the Court’s [Summary Judgment] Order and the  
16 subsequent Clarification.” (*Id.* at 3-4, 7.)

17 Plaintiff counters that there is no good cause because Defendants “are solely at  
18 fault for failing to make any arguments regarding injunctive relief in their First [Motion  
19 for Summary Judgment], and cannot now get a second bite at the apple.” (*Opp’n* at 3.)  
20 Moreover, “despite [] Defendants’ argument that the issue did not crystalize, [they]  
21 should have been aware of what the issues were when they filed the First [Motion for  
22 Summary Judgment].” (*Id.* at 6.)

23 It is true that Defendants could have argued the deficiency of Plaintiff’s injunctive  
24 relief claim in their first motion for summary judgment. As Defendants even admit, that  
25 claim is “subject to dismissal based on facts *already identified*.” (*Mot.* at 3; emphasis  
26 added.) But jumping to trial on one claim for injunctive relief without at least attempting  
27 to dispose the issue on the papers is inefficient and a waste of judicial resources. See,  
28 e.g., Thornton v. Ethicon Inc., 2021 WL 2661220, at \*2 (D. Ariz. Apr. 26, 2021)

1 (“Although Defendants did not act diligently to file their supplemental motion for  
2 summary judgment by the deadline ... the Court finds that addressing the punitive  
3 damages claim now, rather than reserving the issue for trial, would best serve the interests  
4 of justice and judicial economy.”) Thus, permitting a successive motion for summary  
5 judgment will further the purposes of the Civil Justice Reform Act and Federal Rule of  
6 Civil Procedure 1 “to secure the just, speedy, and inexpensive determination” of this  
7 matter.

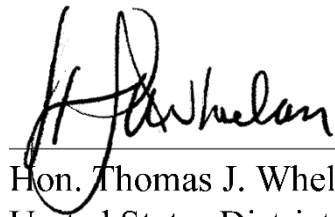
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9 **IV. CONCLUSION**

10 For the foregoing reasons, the Court **GRANTS** Defendants’ Motion to Amend the  
11 Scheduling Order to File a Successive Motion for Summary Judgment [Doc. 156] and  
12 **ORDERS** as follows:

- 13 A. Defendants’ deadline to file a successive motion for summary judgment is  
14 **April 4, 2022;**  
15 B. Defendants shall contact the Court to obtain a hearing date prior to filing  
16 their motion.

17 **IT IS SO ORDERED.**

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19 Dated: March 3, 2022

  
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Hon. Thomas J. Whelan  
United States District Judge