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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 JOHN FREITAS, SR., et al.,  
15 Defendants.

Case No.: 18-cv-01259-GPC (JLB)

**ORDER:**

**(1) DENYING PLAINTIFF'S  
MOTION TO REOPEN DISCOVERY  
[ECF NO. 42];**

**(2) GRANTING IN PART THE  
FREITAS DEFENDANTS' MOTION  
TO REOPEN DISCOVERY [ECF NO.  
40]; AND**

**(3) DENYING WITHOUT  
PREJUDICE THE FREITAS  
DEFENDANTS' MOTION TO  
AMEND THE SCHEDULING  
ORDER [ECF NO. 41]**

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24 Before the Court is a motion to reopen discovery filed by Plaintiff United States of  
25 America ("Plaintiff") (ECF No. 42), and a motion to reopen discovery and a motion to  
26 amend the Scheduling Order filed by Defendants John Freitas, Sr. and Carolyn Freitas  
27 (collectively, the "Freitas Defendants") (ECF Nos. 40, 41). Defendant Nazary Caboz  
28 ("Caboz") opposes the motions to reopen discovery. (ECF Nos. 43, 44.)

1 For the reasons set forth below, the Court **DENIES** Plaintiff's motion to reopen  
2 discovery (ECF No. 42), **GRANTS IN PART** the Freitas Defendants' motion to reopen  
3 discovery (ECF No. 40), and **DENIES WITHOUT PREJUDICE** the Freitas Defendants'  
4 motion to amend the Scheduling Order (ECF No. 41).

## 5 **I. BACKGROUND**

### 6 **A. Factual Background**

7 Plaintiff commenced this action against Defendants on February 14, 2018 by filing  
8 a Complaint for Deficiency on Preferred Ship Mortgage in the Western District of  
9 Washington. (ECF No. 1.) The following facts are taken from the Complaint:

10 On or about November 25, 2009, Vasco Enterprises, Inc. ("Vasco") was the owner  
11 of the F/V CAROL LINDA, Official Number 62497 ("the Vessel"). (*Id.* at ¶¶ 3, 7.) At  
12 the direction of and on approval of Defendants, Vasco executed and delivered to Plaintiff  
13 a promissory note in the amount of \$3,000,000, bearing interest at 5.785% per year, and a  
14 Preferred Ship Mortgage. (*Id.* at ¶¶ 7-8.) At the same time, Defendants, as officers and  
15 directors of Vasco, guaranteed all obligations owed under the promissory note in a  
16 Guaranty Agreement. (*Id.* at ¶¶ 7, 9.)

17 In or about August 2015, Plaintiff learned that a third-party, WH Fisheries, Inc., had  
18 filed a complaint in the High Court of American Samoa (the "Samoa Action") to foreclose  
19 on a second mortgage it held on the Vessel, and obtained an order for the arrest of the  
20 Vessel. (*Id.* at ¶ 10.) Vasco did not provide Plaintiff with notice of the arrest of the Vessel,  
21 as required by the Preferred Ship Mortgage. (*Id.* at ¶ 11.) Such action constituted a default  
22 under the terms and provisions of the Preferred Ship Mortgage, and Plaintiff thereafter  
23 notified Vasco and Defendants of the default. (*Id.* at ¶¶ 11-13.)

24 Following the arrest of the Vessel, Vasco stopped making payments to Plaintiff, as  
25 required by the promissory note and the Preferred Ship Mortgage. (*Id.* at ¶ 14.) By letter  
26 dated October 8, 2015, Plaintiff notified Vasco that its failure to make payments constituted  
27 a breach of the promissory note and the Preferred Ship Mortgage. (*Id.* at ¶ 15.) As a result  
28 of the breach, Plaintiff made a demand for full payment of the remaining indebtedness of

1 \$2,460,587.46, including interest then owing. (*Id.*) Plaintiff also informed Vasco that  
2 interest on the total indebtedness would accrue on the principal balance at a rate of  
3 \$1,213.44 per diem until fully paid. (*Id.*) In addition to notifying Vasco, Plaintiff notified  
4 and made a demand for full payment on Defendants under the Guaranty Agreement. (*Id.*  
5 at ¶¶ 16-17.)

6 In October 2015, Plaintiff filed a Complaint-in-Intervention in the Samoan Action  
7 seeking to foreclose on its first Preferred Ship Mortgage. (*Id.* at ¶ 18.) On  
8 December 9, 2015, the court in the Samoan Action issued an order for the interlocutory  
9 sale of the Vessel. (*Id.* at ¶ 19.) A public auction was held on February 16, 2016, and  
10 Plaintiff purchased the Vessel for a credit bid of \$2,500,000. (*Id.*) The Samoan court  
11 approved the sale on March 7, 2016. (*Id.*)

12 As of the date of filing this action, the total debt owed to Plaintiff under its Preferred  
13 Ship Mortgage was no less than \$2,642,603.52. (*Id.* at ¶ 23.) The Court in the Samoan  
14 Action maintains jurisdiction over the credit bid fund. (*Id.* at ¶ 20.) As of the date of filing,  
15 the total deficiency existing between the amount of the credit bid fund and what is owed to  
16 Plaintiff under its Preferred Ship Mortgage was no less than \$657,064.87. (*Id.* at ¶ 24.)  
17 That amount is subject to increase. (*See id.* at ¶ 25.)

18 Plaintiff brings this action under 46 U.S.C. § 31325(b)(2)(A) in order to recover  
19 against Defendants “the deficiency that exists between the credit bid fund established after  
20 the judicial foreclosure sale of the [Vessel] and the Preferred Ship Mortgage the United  
21 States held on said vessel.” (*Id.* at ¶¶ 3, 26-28.) Plaintiff also asserts claims against  
22 Defendants under the Federal Debt Priority Statute, 31 U.S.C. § 3713, and the Federal Debt  
23 Collections Procedures Act, 28 U.S.C. § 3001 *et seq.* (*Id.* at ¶¶ 29-37.)

## 24 **B. Procedural Background**

25 The United States District Court for the Western District of Washington ordered that  
26 this case be transferred to the Southern District of California on June 8, 2018. (ECF No.  
27 15.) The Court held a telephonic, counsel-only Early Neutral Evaluation Conference  
28 (“ENE”) on August 20, 2018. (ECF No. 27.) The case did not settle. (*Id.*) Accordingly,

1 the Court held a Case Management Conference (“CMC”) immediately following the ENE.  
2 (*Id.*)

3 The Court issued a Scheduling Order on August 20, 2018, which set forth the  
4 following pertinent deadlines:

- 5 • Deadline to amend the pleadings: September 20, 2018
- 6 • Deadline to complete fact discovery: January 31, 2019
- 7 • Deadline to complete expert discovery: March 29, 2019
- 8 • Pretrial motions filing deadline: April 26, 2019
- 9 • Mandatory Settlement Conference: April 10, 2019 (later moved due to  
10 a conflict in the Court’s calendar to April 5, 2019)
- 11 • Final Pretrial Conference: July 26, 2019

12  
13 (ECF Nos. 28, 30.)

14 On March 22, 2019, the parties filed a Joint Motion to Continue the Mandatory  
15 Settlement Conference (“MSC”). (ECF No. 31.) The parties sought to continue the MSC  
16 on the basis that the Freitas Defendants intended to substitute counsel due to serious health  
17 complications experienced by their counsel, Sterling J. Stires. (*Id.*) On March 25, 2019,  
18 the Court vacated the MSC and set a telephonic, counsel-only Status Conference. (ECF  
19 No. 32.)

20 On March 29, 2019, the Freitas Defendants filed substitution of counsel forms to  
21 substitute in Heather A. Rogers and Jason A. Cohen in place of Mr. Stires. (ECF Nos. 34,  
22 35.) In support of their substitutions, an attorney from Mr. Stires’ firm filed a declaration.  
23 In the declaration, he states that ailing counsel “went out on medical disability  
24 approximately December 17, 2018” and his return date is unknown. (ECF No. 34 at 3.)

25 On March 29, 2019, Plaintiff filed a Status Conference Statement. (ECF No. 33.)  
26 In the statement, Plaintiff stated that “[a]s a practical matter, this case is not ripe for  
27 settlement or trial until the conclusion of the Samoan action,” because “the amount of the  
28 deficiency/debt in this case (*i.e.*, damages) cannot be calculated until the amount disbursed

1 to the United States in the Samoan action is finally determined.” (*Id.* at 6-7.) Plaintiff  
2 noted that it is currently litigating five disputed crew wage claims in the amount of  
3 \$852,958.70, which could further reduce the credit bid fund. (*Id.* at 4.)

4 Plaintiff further stated that it “only recently received a copy of the notary page”  
5 bearing Defendant Caboz’s signature and driver’s license number, which purportedly  
6 belies her allegations that one or more family members fraudulently forged and executed  
7 her guarantee. (*Id.* at 7.) Plaintiff therefore requested “a short extension of time to conduct  
8 the deposition of the Notary and the persons who are alleged to have potential knowledge  
9 of the issues surrounding the defendant’s execution of the guarantee.” (*Id.* at 8.) On April  
10 1, 2019, Defendant Caboz filed a Status Conference Statement objecting to Plaintiff’s  
11 request to reopen discovery. (ECF No. 36.)

12 On April 5, 2019, the Court held the Status Conference. (ECF No. 38.) As no  
13 motion to reopen discovery was before the Court, the Court ordered that any motion to  
14 reopen discovery shall be filed no later than April 15, 2019, and any opposition shall be  
15 filed no later than April 22, 2019. (*Id.*) The Court further reset the MSC for May 21, 2019.  
16 (ECF No. 39.)

17 On April 15, 2019, the Freitas Defendants filed a motion to reopen discovery and a  
18 motion to amend the Scheduling Order, and Plaintiff filed a motion to reopen discovery.  
19 (ECF Nos. 40-42.) Defendant Caboz filed oppositions to both motions to reopen discovery.  
20 (ECF Nos. 43, 44.)

## 21 **II LEGAL STANDARD**

22 “District courts have ‘broad discretion to manage discovery and to control the course  
23 of litigation under Federal Rule of Civil Procedure 16.’” *Hunt v. Cnty. of Orange*, 672  
24 F.3d 606, 616 (9th Cir. 2012) (quoting *Avila v. Willits Env’tl. Remediation Trust*, 633 F.3d  
25 828, 833 (9th Cir. 2011)). Good cause must be shown for modification of the scheduling  
26 order regulating discovery. Fed. R. Civ. P. 16(b)(4); *Johnson v. Mammoth Recreations,*  
27 *Inc.*, 975 F.2d 604, 608-09 (9th Cir. 1992). The “good cause” requirement primarily  
28 considers the diligence of the party seeking the amendment. *Johnson*, 975 F.2d at 609.

1 When the motion to extend time is made after time has expired, the court must also consider  
2 excusable neglect. *See* Fed. R. Civ. P. 6(b)(1)(B).

3 In addition, when deciding whether to amend a pretrial scheduling order and reopen  
4 discovery, a court considers the following factors:

- 5 1) whether trial is imminent, 2) whether the request is opposed, 3) whether the  
6 non-moving party would be prejudiced, 4) whether the moving party was  
7 diligent in obtaining discovery within the guidelines established by the court,  
8 5) the foreseeability of the need for additional discovery in light of the time  
9 allowed for discovery by the district court, and 6) the likelihood that the  
discovery will lead to relevant evidence.

10 *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017) (quoting *United*  
11 *States ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1526 (9th Cir. 1995)).

### 12 **III. DISCUSSION**

#### 13 **A. Plaintiff’s Motion to Reopen Discovery**

14 Plaintiff moves to reopen discovery to address Defendant Caboz’s contention that  
15 the Freitas Defendants and Defendant Caboz’s granddaughter, who notarized the Guaranty  
16 Agreement, “forged her signature” on the document. (ECF No. 42-1 at 3.) Plaintiff does  
17 not specify the scope and type of discovery it wants to pursue<sup>1</sup> but claims that the discovery  
18 is necessary to address Defendant Caboz’s “attempts, if any, to use her fellow guarantors’  
19 and family members’ alleged acts as defenses to her own personal liability under the  
20 guarantee.” (*Id.* at 5, n.3.) Plaintiff appears to claim that it was previously precluded from  
21 conducting any discovery into Defendant Caboz’s defenses because it did not receive a  
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25 <sup>1</sup> Although Plaintiff does not specify the scope and type of discovery it wants  
26 to pursue in its present motion, in a prior Status Conference Statement, Plaintiff indicated  
27 that it wants a “short extension of time to conduct the deposition of the Notary and the  
28 persons who are alleged to have potential knowledge of the issues surrounding the  
defendant’s execution of the guarantee.” (ECF No. 33 at 8.) Nowhere does Plaintiff  
indicate how much time it needs to conduct the additional requested discovery.

1 copy of the notary page bearing Defendant Caboz’s signature until after discovery had  
2 closed. (*Id.* at 5.)

3 Defendant Caboz opposes Plaintiff’s motion. (ECF No. 43.) Defendant Caboz  
4 contends that Plaintiff has not been diligent in pursuing the requested discovery and that  
5 she will be prejudiced by the protraction of this case because it “is a nuisance burden to  
6 [her], not only financially but also to her deteriorating health conditions.” (*Id.* at 6.)  
7 Defendant Caboz recently celebrated her 87th birthday. (*Id.*)

8 For the reasons highlighted by Defendant Caboz in her opposition, the Court finds  
9 that Plaintiff has not been diligent in pursuing the requested discovery. In her Answer,  
10 filed on March 27, 2018, Defendant Caboz denied being “an individual guarantor of the  
11 Preferred Ship Mortgage the United States held on the Vessel.” (*Compare* ECF No. 1 at ¶  
12 6, *with* ECF No. 9 at ¶ 6.) Defendant Caboz also explicitly stated that she “denies that she  
13 guaranteed the purported Preferred Ship Mortgage under the Guaranty Agreement.” (ECF  
14 No. 9 at ¶ 9.) In her Affirmative Defenses, Defendant Caboz further asserted, *inter alia*,  
15 the defenses of forgery and fraud. (ECF No. 9 at 9, 10.)

16 In the Court’s July 3, 2018 Order setting the ENE and CMC, the Court ordered the  
17 parties to complete the Rule 26(f) conference, which requires the parties to meet and confer,  
18 on or before July 18, 2018. (*See* ECF No. 20 at ¶ 7(a).) Following the Rule 26(f)  
19 conference, the parties filed a Joint Discovery Plan on August 13, 2018. (ECF No. 25.)  
20 The Plan states that the parties intended to conduct discovery on the “validity of the  
21 Guarantees that are the basis of the United States’ action against defendants herein.” (ECF  
22 No. 25 at 2.) The Plan also states that the parties anticipated deposing several individuals,  
23 including Defendant Caboz and Nazare Judd. (*Id.* at 7.) Ms. Judd is identified in the Plan  
24 as “the notary public who notarized the Guarantees purportedly signed by defendant Mrs.  
25 Caboz.” (*Id.*) Ms. Judd is also identified as someone who “has discoverable information  
26 regarding the circumstances concerning how the signatures on the Guarantees were  
27 obtained.” (*Id.*) The Plan further lists “[d]ocuments relating to the circumstances  
28 concerning how the signatures on the Guarantees were obtained, including the notary

1 book,” as categories of documents the parties wanted produced during discovery. (*Id.* at  
2 8.)

3 During the telephonic CMC before this Court on August 20, 2018, the Court’s notes  
4 reflect that the parties discussed Defendant Caboz’s contention that she did not sign the  
5 Guaranty Agreement. The Court’s notes also reflect that the Court suggested that one or  
6 more of the parties subpoena the notary page and urged former counsel for the Freitas’  
7 Defendants to look into whether he could *also* obtain access, so as not to delay settlement  
8 discussions. During the conference, Plaintiff’s counsel indicated that he believed the  
9 notary’s deposition should happen right away.

10 Thus, there can be no dispute that by August 2018, the parties were aware of  
11 Defendant Caboz’s contention that she did not sign the Guaranty Agreement, the identity  
12 of the notary public who notarized the Guaranty Agreement purportedly signed by  
13 Defendant Caboz, and the key relevant document.<sup>2</sup> However, between the CMC on  
14 August 20, 2018 and the Government shutdown which began on December 21, 2018,  
15 Plaintiff conducted no discovery in this case. The Government shutdown lasted until  
16 January 25, 2019. Pursuant to General Orders 688 and 688-A, all due dates, deadlines, and  
17 cut-off dates in cases impacted by the Government shutdown were extended for 35 days,  
18 including dates falling after January 25, 2019. Therefore, Plaintiff’s deadline to complete  
19 fact discovery was extended to March 7, 2019. Even with that additional 35 days, Plaintiff  
20 still conducted no discovery through March 7, 2019. The first time Plaintiff raised the  
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24 <sup>2</sup> Defendant Caboz’s counsel has also filed a declaration under penalty of  
25 perjury stating as follows: “Starting immediately after Mrs. Caboz filed her Answer on  
26 March 27, 2018, I had a number of communications (both on the telephone and in writing)  
27 with counsel for Plaintiff in which I explained that there was a long and sordid history  
28 between the defendants, that my client was adamant that she did not sign any document to  
encumber the vessel, and that she believed that the signature on the Guaranty was forged.”  
(ECF No. 43-1 at ¶ 2.)



1 issue of the need to conduct discovery into this area was on March 29, 2019 in its  
2 unsolicited Status Conference Statement. (ECF No. 33.)

3       Based on the foregoing, the Court finds that Plaintiff was not diligent in pursuing  
4 the requested discovery before the Court-ordered deadline. As the Ninth Circuit has stated,  
5 “[i]f [the moving] party was not diligent, the inquiry should end.” *Johnson*, 975 F.2d at  
6 609. However, consideration of the other factors identified by the Ninth Circuit leads the  
7 Court to the same conclusion. The Final Pretrial Conference in this matter is presently set  
8 for July 26, 2019. (ECF No. 28.) The request is opposed by Defendant Caboz and given  
9 her age and deteriorating health condition, Defendant Caboz would be prejudiced by an  
10 unspecified continuation of this matter. In addition, the need for the requested discovery  
11 was not only foreseeable but anticipated, and five months was more than enough time to  
12 conduct the requested discovery.

13       Accordingly, Plaintiff’s motion to reopen discovery is **DENIED**.

14       **B. Freitas Defendants’ Motion to Reopen Discovery**

15       The Freitas Defendants also move to reopen discovery so that they may conduct fact  
16 discovery with respect to Plaintiff’s resale of the Vessel to a third party. (ECF No. 40 at  
17 2.) The Freitas Defendants claim that they recently learned the Vessel has been resold by  
18 Plaintiff to a bona fide purchaser. (*Id.*) They further claim that since no discovery has  
19 been taken in this case, the details of the sale are currently unknown to the Freitas  
20 Defendants and “directly relate to this Action and the amount of deficiency, if any, of which  
21 Defendants may be liable.” (*Id.*)

22       Plaintiff did not file an opposition to the Freitas Defendants’ motion to reopen  
23 discovery. However, Defendant Caboz did file an opposition to the motion. (ECF No. 44.)  
24 As discussed above, Defendant Caboz is an elderly and ailing widow and opposes “the  
25 needless protraction of this litigation based solely on other parties’ failures to conduct any  
26 discovery whatsoever in the past year.” (*Id.* at 2.) Defendant Caboz contends that “the  
27 mere engagement of new counsel” does not suffice as good cause to amend the Scheduling  
28

1 Order “since the Freitas Defendants’ former counsel made the strategic decision not to  
2 propound any discovery before the Court’s discovery cutoff of January 31, 2019.” (*Id.*)

3 Upon review of the docket, the court finds that the Freitas Defendants were on notice  
4 of Plaintiff’s resale of the Vessel at the outset of this case. The Joint Discovery Plan filed  
5 on August 13, 2018 states that the parties intended to conduct discovery “on the issues of  
6 liability and damages,” including, but not limited to: (1) “the expenses incurred by the  
7 United States in an effort to sell the vessel to a third party after its purchase at the judicial  
8 ordered sale”; (2) “the sale of the vessel by the United States to a third party”; (3) “the  
9 value of the vessel at the time it was sold to a third party”; and (4) “the amount received  
10 by the Government in its sale to a third party.” (*Id.* at 2-3.)

11 The Plan further states under the category of individuals the parties wanted to  
12 depose:

13 (8) Party who bought the vessel from plaintiff. The Freitas defendants are  
14 informed and believe the party who purchased the vessel from the  
15 plaintiff has discoverable information regarding how much was paid to  
16 the plaintiff for the vessel, the negotiations of the vessel sale by the  
17 plaintiff, negotiations for the subsequent sale of the vessel, what  
18 amount the party sold the vessel for, and the condition of vessel when  
19 purchased from U.S. and then sold again. This is relevant to the  
20 plaintiff’s alleged damages.

21 (9) Party who currently owns the vessel. The Freitas defendants are  
22 informed and believe the party who currently owns the vessel has  
23 discoverable information regarding the purchase and sale of the vessel  
24 subsequent to the foreclosure sale, and the condition of the vessel  
25 currently. This is relevant to the plaintiff’s alleged damages.

26 (ECF No. 25 at 6-7.) The parties also listed documents related to the sale of the Vessel by  
27 Plaintiff to a third party, and documents related to the value of the Vessel at the time  
28 Plaintiff sold it to a third party as documents they wanted produced in this case. (*Id.* at 7.)

Between August 2018 and December 17, 2018, when Mr. Stires went on medical  
leave, the Freitas Defendants conducted no discovery. They served no discovery and  
conducted no depositions. Defendant Caboz contends that this was a conscious decision

1 on the part of defense counsel resulting from Plaintiff's decision not to conduct any  
2 discovery. (See ECF Nos. 34 at 3; 43-1 at ¶¶ 4-5.)

3 The Court acknowledges that “[a]n eleventh-hour case evaluation by newly retained  
4 counsel finding there is need for [certain discovery] does not demonstrate diligence during  
5 the course of the litigation.” *Zone Sports Ctr., LLC v. Rodriguez*, No. 1:11-cv-00622-SKO,  
6 2016 WL 224093, at \*5 (E.D. Cal. Jan. 19, 2016); see also *DropZoneMS, LLC v. Cockayne*,  
7 No. 3:16-cv-02348-YY, 2019 WL 2070417, at \*5 (D. Or. Feb. 27, 2019) (“To the extent  
8 plaintiff would use his prior counsel’s absence for undisclosed health-related issues as an  
9 excuse to bring this case anew, with new theories and claims that were available long before  
10 prior counsel’s absence, it suffers from a bout of Monday-morning quarterbacking. . . .  
11 Otherwise stated, retaining new counsel does not provide the opportunity to re-strategize a  
12 lawsuit.”). The Court further acknowledges that courts have held that a counsel’s  
13 “conscious choice” not to conduct discovery within the discovery period “does not  
14 constitute excusable neglect for purposes of failure to meet a deadline.” See *Davis v. Cal.*  
15 *Dep’t of Corr. & Rehab.*, No. C 08-4481 SBA, 2013 WL 1208965, at \*3 (N.D. Cal. Mar.  
16 25, 2013).

17 However, the Court also recognizes that despite any representation to Defendant  
18 Caboz’s counsel, Mr. Stires could have changed his mind and still served timely discovery  
19 had it not been for his medical leave. After he went on medical leave, Mr. Stires did not  
20 return to work before new counsel was substituted into this case. (See ECF No. 34.) As  
21 Mr. Stires was the only certified specialist in maritime law employed by his firm, there is  
22 nothing in the record to suggest that he was working with another attorney in his firm who  
23 had knowledge of this case and could have stepped in to handle discovery. (See *id.*)  
24 Accordingly, the Court finds that the Freitas Defendants have minimally demonstrated  
25 excusable neglect for their failure to complete discovery before the deadline and to move  
26 to modify the Scheduling Order in a timely manner.

27 The Court further finds that consideration of the relevant factors weighs in favor of  
28 permitting the Freitas Defendants to conduct limited written discovery into the sale of the

1 Vessel by Plaintiff to a third party. The Freitas Defendants represent that they will have  
2 interrogatories and document requests ready to serve on Plaintiff upon the granting of their  
3 motion. (ECF No. 40.) In a telephonic conference on this matter held on May 17, 2019,  
4 Plaintiff represented that it would be able to respond to document requests related to the  
5 sale of the Vessel within fourteen (14) days of receipt of the requests. As the discovery is  
6 directed to Plaintiff, who did not object to this motion, and the permitted discovery should  
7 not require the Court to continue upcoming dates and deadlines, the Court finds that  
8 Defendant Caboz will not be prejudiced.

9 Accordingly, the Court **GRANTS IN PART** the Freitas Defendants' motion to  
10 reopen discovery for the limited purpose of serving requests for production on Plaintiff  
11 directly related to the sale of the Vessel by Plaintiff to a third party. The Freitas Defendants  
12 shall serve their requests for production on Plaintiff within two (2) court days of the date  
13 of this Order. Plaintiff shall respond to the requests for production within fourteen (14)  
14 days of being served with the requests. *See* Fed. R. Civ. P. 34(b)(2)(A).

### 15 **C. Freitas Defendants' Motion to Amend the Scheduling Order**

16 The Freitas Defendants also move to amend the Scheduling Order issued in this case.  
17 (ECF No. 41.) Specifically, the Freitas Defendants seek to extend all dates and deadlines  
18 in the Scheduling Order by a period of 90 to 120 days, including, but not limited to, the  
19 deadline to file pretrial motions and the final Pretrial Conference.<sup>3</sup> Plaintiff does not  
20 oppose the request, and states in its motion to reopen discovery that the requested extension  
21 makes practical sense because a "trial of this case is not ripe due to the \$893,000 in wages  
22 claims asserted by crewmen in the American Samoa action," and "[t]hose claims will in  
23 turn determine the amount of deficiency underlying in this case." (ECF No. 42-1 at 8.)  
24 Defendant Caboz objects for the reasons set forth above. (*See* ECF Nos. 42-1 at 2; 43; 44.)  
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27 <sup>3</sup> To the extent there is an implied motion to continue the Mandatory Settlement  
28 Conference. For failure to set forth good cause, that motion is denied. The Mandatory  
Settlement Conference remains on calendar for May 21, 2019.

1 The Freitas Defendants contend that they will not be able to comply with the deadlines  
2 specified in the Scheduling Order pending the Court’s determination of their motion to  
3 reopen discovery. (*Id.* at 2.) The Freitas Defendants further state that they “agree [with  
4 Plaintiff] that this action is not ripe for resolution or meaningful settlement until further  
5 discovery is conducted and/or the ongoing action in American Samoa has concluded.”

6 For failure to set forth good cause, the Court **DENIES** the motion to amend the  
7 Scheduling Order **WITHOUT PREJUDICE**. The Freitas Defendants do not address what  
8 type of pretrial motion they intend to bring, and why that motion could not have been  
9 brought before the April 26, 2019 deadline. As to the concern that the full measure of  
10 Plaintiff’s damages cannot be determined until the conclusion of Samoan Action, Plaintiff  
11 has not suggested a time frame for the completion of the Samoan Action. In light of  
12 Defendant Caboz’s advanced age and deteriorating health condition, the Court is not  
13 prepared to continue the schedule based upon a variable with no predicted end date.

#### 14 **IV. CONCLUSION**

15 For the foregoing reasons, the Court **DENIES** Plaintiff’s motion to reopen discovery  
16 (ECF No. 42), **GRANTS IN PART** the Freitas Defendants’ motion to reopen discovery  
17 (ECF No. 40), as set forth above, and **DENIES WITHOUT PREJUDICE** the Freitas  
18 Defendants’ motion to amend the Scheduling Order (ECF No. 41).

19 **IT IS SO ORDERED.**

20 Dated: May 22, 2019

21   
22 Hon. Jill L. Burkhardt  
23 United States Magistrate Judge  
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