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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VINCENT GRANO,

Plaintiff,

v.

SODEXO MANAGEMENT, INC., et al.,

Defendants.

Case No.: 18cv1818-GPC(BLM)

**ORDER DENYING PLAINTIFFS’
MOTION FOR RECONSIDERATION OF
ORDER GRANTING EXTENSION OF
EXPERT DISCLOSURES AND
SCHEDULING ORDER**

[ECF No. 158]

Currently before the Court is Plaintiffs’ July 1, 2020 Motion for Reconsideration [ECF No 158 (“Mot.”)], Defendant US Foods, Inc.’s July 10, 2020 Opposition [ECF No. 164 (“US Oppo.”)], Defendant Sodexo Management Inc.’s July 10, 2020 Opposition [ECF No. 165 (“Sodexo Oppo.”)], Defendant Cargill Meat Solutions Corp.’s July 10, 2020 Opposition [ECF No. 166 (“Cargill Oppo.”)], and Plaintiffs’ July 14, 2020 Reply [ECF No. 167 (“Reply”)]. For the reasons set forth below, Plaintiffs’ motion is **DENIED**.

BACKGROUND

On June 26, 2020, Third Party Defendant US Foods, Inc. filed a Motion to Amend Scheduling Order seeking to “extend[] all current deadlines for a period of six months, or, alternatively, to extend expert disclosures and discovery by 90 days.” ECF No. 150-1 at 2.

On June 26, 2020, Defendant Cargill Meat Solutions Corporation filed a Notice of Joinder to US Food’s Motion to Amend Deadlines and a Motion to Extend the Expert Disclosure Deadline.

1 ECF Nos. 151 and 152. In its Notice, Cargill stated that it “joins in Defendant US FOODS’S
2 Motion to Amend Deadlines [ECF No. 150] in its entirety.” ECF No. 151 at 3. In its Motion to
3 Extend the Expert Disclosure Deadline, Cargill sought to “extend the expert disclosure and
4 rebuttal deadlines by 90 days.” ECF No. 152 at 3.

5 On June 29, 2020, Defendant Sodexo Management Inc. filed a Notice of Joinder to Cargill
6 Meat Solutions Corp.’s Motion to Extend Expert Deadlines and US Foods’ Motion to Amend
7 Scheduling Order. ECF No. 153. Sodexo requested “that the Court grant US Foods and
8 Cargill’s pending motions and that the current Scheduling Order be modified to extend
9 expert discovery deadlines not only as to Cargill and US Foods but for all parties,
10 including Sodexo.” Id. at 3.

11 Plaintiffs did not file an opposition to the motion and on June 30, 2020, the Court issued
12 an Order Granting Third Party Defendant US Foods, Inc.’s Motion to Amend Scheduling Order
13 and Defendant Cargill’s Motion to Extend the Expert Disclosure Deadline. ECF No. 156. That
14 same day, Plaintiffs’ counsel called Judge Major’s Chambers and explained that they had
15 intended to oppose the motion, but were not given the opportunity to do so before the Court
16 issued its ruling. The Court informed counsel that Plaintiffs could file a motion for
17 reconsideration. Plaintiffs filed their motion for reconsideration on July 1, 2020. ECF No. 158.
18 That same day, the Court issued a briefing schedule on the motion. ECF No. 159. The parties
19 timely filed their oppositions and reply. See US Oppo., Sodexo Oppo., Cargill Oppo., and Reply.

20 **LEGAL STANDARDS**

21 **Motion for Reconsideration**

22 Pursuant to Local Rule 7.1(i)(1), a party may apply for reconsideration “[w]henver any
23 motion or any application or petition for any order or other relief has been made to any judge
24 and has been refused in whole or in part” S.D. Cal. Civ.L.R. 7.1(i)(1). The party seeking
25 reconsideration must show “what new or different facts and circumstances are claimed to exist
26 which did not exist, or were not shown, upon such prior application.” Id. Local Rule 7.1(i)(2)
27 permits motions for reconsideration within “twenty-eight (28) days after the entry of the ruling,
28 order or judgment sought to be reconsidered.” Additionally, pursuant to Federal Rule of Civil

1 Procedure (“Fed. R. Civ. P.”) 59(e), a party must file a “motion to alter or amend a judgment .
2 . . . no later than 28 days after the entry of the judgment.” Fed. R. Civ. P. 59(e).

3 Modifying a Scheduling Order

4 Once a Rule 16 scheduling order is issued, dates set forth therein may be modified only
5 “for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). The Rule 16 good
6 cause standard focuses on the “reasonable diligence” of the moving party. Noyes v. Kelly Servs.,
7 488 F.3d 1163, 1174 n.6 (9th Cir. 2007); Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294-95
8 (9th Cir. 2000) (stating Rule 16(b) scheduling order may be modified for “good cause” based
9 primarily on diligence of moving party). Essentially, “the focus of the inquiry is upon the moving
10 party’s reasons for seeking modification.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
11 609 (9th Cir. 1992). However, a court also may consider the “existence or degree of prejudice
12 to the party opposing the modification” Id.

13 PARTIES’ POSITIONS

14 Plaintiffs seek reconsideration of the Court’s June 30, 2020 order [see ECF No. 156]. In
15 support, Plaintiffs argue that they were not provided with the opportunity to oppose the motions
16 despite the fact that both motions [see ECF Nos. 150, 152] noted Plaintiffs’ opposition to the
17 requested relief. Mot. at 2. Plaintiffs state that they did not oppose the motions because they
18 were unaware that the motions were *ex parte*, and they anticipated that the Court would issue
19 a briefing schedule as it has done for previous disputes. Id. Plaintiffs further argue that good
20 cause did not exist for the requested continuances which are unreasonable and “manifestly
21 unjust.” Id. at 3. Specifically, Plaintiffs argue that outstanding FOIA requests do not constitute
22 good cause for a continuance because all of the parties likely have outstanding FOIA requests
23 and there is no guarantee that the parties will receive responses to those requests anytime soon
24 and the outstanding requests (as well as outstanding subpoenas) are not relevant “to the central
25 issues of causation in this case.” Id. Plaintiffs further argue that Cargill’s decision to wait to
26 issue subpoenas until six months after it was sued and on the eve of its deadline to do so does
27 not constitute diligence. Id. at 4.

28 Third-Party Defendant US Foods requests that the Court uphold its order and contends

1 that the order is correct because US Foods “was joined to this complex litigation twenty-two
2 (22) months after its inception and needs the additional time to adequately prepare its defense.”
3 US Oppo. at 2. US Foods notes that there is no newly discovered evidence or change in law
4 and that the Court was aware of Plaintiffs’ opposition when it granted the motion. Id. at 3.
5 Additionally, in granting the motion, the Court found that good cause existed for continuing the
6 dates because US Foods has been diligent in its efforts to comply with the Court’s scheduling
7 order. Id. at 3-4. US Foods contends that “[w]ithout the extension granted by the Court, US
8 Foods would be required to complete nearly two years’ worth of discovery in a period of only a
9 few months in the midst of a global pandemic” which is not possible. Id. at 5.

10 Defendant Sodexo contends that the new scheduling order should remain and opposes
11 Plaintiffs’ “Motion and its understatement of the legitimate need for all of the Defendants to
12 obtain the many crucial documents that relate both to liability and damages issues.” Sodexo
13 Oppo. at 4. Sodexo further contends that despite its diligence, it has not received any responses
14 to its requests for Plaintiffs’ military personnel and medical records which are relevant to
15 Plaintiffs’ economic and medical damages claims and critical for Sodexo’s experts’ opinions and
16 reports. Id.; see also ECF No. 165-1, Declaration of Scott A. Davis in Support of Sodexo
17 Management Inc.’s Response in Opposition to Plaintiffs’ Motion for Reconsideration (“Davis
18 Dec.”) at ¶ 5. Sodexo is also waiting for responses to outstanding document subpoenas to
19 Plaintiffs’ medical providers which are essential for Sodexo’s medical experts to review. Id. at
20 4-5; see also Davis Decl. at ¶ 9. Sodexo contends that it has been diligently pursuing these
21 records which have been delayed due to COVID-19 and not anything Sodexo has or has not
22 done. Id. at 5. Finally, Sodexo notes that is also awaiting discovery response from Defendants
23 Cargill and US Foods. Id. at 6.

24 Defendant Cargill Meat Solutions, Corp. contends that there is good cause to amend the
25 scheduling order and that it has diligently conducted discovery in this case in good faith. Cargill
26 Oppo. at 3-5. Cargill further contends that its outstanding discovery requests are not part of a
27 fishing expedition, but are “directly relevant to causation which must be proved” and that it is
28 waiting to schedule depositions until after it receives additional discovery responses. Id. at 4.

1 Cargill notes that it began discovery as soon as it was brought into this litigation and that it has
2 proceeded diligently. Id. at 4-5.

3 Plaintiffs reply that while US Foods may need some additional time to prepare its case,
4 its role in this case is not as significant as it portrays, and a six month extension of time is not
5 warranted. Reply at 2. Specifically, US Foods merely distributed the boxed frozen beef patties,
6 but did not manufacture anything or participate in a way that requires “the discovery output
7 that it claims.” Id. at 2-3. Accordingly, providing a sixty to ninety day continuance would provide
8 an appropriate balance. Id. at 3. Plaintiffs argue that this is an attempt by Defendants to delay
9 and extend this case and that the COVID-19 pandemic is something the parties must continue
10 to adapt to as they have done with remote depositions. Id. Plaintiffs also argue that Sodexo
11 has had sufficient time to comply with the case deadlines as it has been a Defendant since the
12 summer of 2018 and that Cargill received demand materials in October 2019 and its liability has
13 remained the same. Id. at 4. Finally, Plaintiffs argue that a sixty – ninety day extension should
14 be granted given US Foods’ role in this litigation and recent addition to this matter, but that no
15 extension should be given based upon good cause by Sodexo and Cargill who “waited too long
16 to take steps necessary to their defense.” Id. at 5.

17 **DISCUSSION**

18 As an initial matter, the Court notes that the motions at issue and the responses or lack
19 thereof were not in strict compliance with this Court’s Chambers Rules. Judge Major’s Chamber’s
20 Rules require that *Ex Parte* motions

21 include a description of the dispute, the relief sought, and a declaration
22 describing the efforts made to resolve the dispute without the Court’s
23 intervention and establishing that reasonable and appropriate notice of the filing
24 of the ex parte application was made to opposing counsel in accordance with
Civil Local Rule 83.3.g.¹

25 Honorable Barbara L. Major U.S. Magistrate Judge Chambers Rules- Civil Cases, Section VIII.²

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27 ¹ Available at [https://www.casd.uscourts.gov/assets/pdf/rules/2020.06.01%20Local%20Rules%20\(edited\).pdf](https://www.casd.uscourts.gov/assets/pdf/rules/2020.06.01%20Local%20Rules%20(edited).pdf)

28 ² Available at <https://www.casd.uscourts.gov/judges/major/docs/Chambers%20Rules%20Civil.pdf>

1 Opposing counsel is then given until 5:00 p.m. the next business day to file an opposition or to
2 contact Judge Major's Law Clerk to request additional time to file an opposition. Id. Judge
3 Major's Rules also require that *ex parte* motions to amend the scheduling order contain a
4 declaration "address[ing] the steps counsel took to meet and confer with opposing counsel to
5 obtain authorization to file a joint motion, as well as the subjects required for the joint motion."
6 Id. at Section III B. Here, US Foods failed to include the required declaration and related
7 information in its Motion to Amend Scheduling Order. ECF No. 150. Cargill filed a declaration
8 in support of its Motion to Extend Expert Deadline, but the declaration did not address the topics
9 required by Judge Major's Chambers Rules. ECF Nos. 152 and 152-1. Plaintiffs did not file an
10 opposition to either motion. See Docket. In light of the noncompliance by the parties with
11 Chambers Rules and confusion surrounding the opposition, the Court elects to decide the issue
12 on the merits.

13 Plaintiffs do not dispute that a continuance of the deadlines was appropriate for US Foods,
14 but argue that they should have only been extended by ninety days at the most and that the
15 Court's decision to extend them by 180 days was incorrect. Mot. at 3-4; see also Reply at 5.
16 Defendants all agree that there was good cause for a six month continuance of the case
17 deadlines. US Foods Oppo., Sodexo Oppo., and Cargill Oppo.

18 The Court finds that there is good cause for a six month continuance of deadlines. First,
19 as all parties acknowledge, US Foods only recently entered the case which has been pending
20 since August 2018. Requiring US Foods to proceed without any extension of dates would be
21 unrealistic and unjust. Plaintiffs' argument that any such extension should be limited to sixty to
22 ninety days because US Foods plays only a small role in this litigation and does not need the
23 level of discovery it represents [see Reply at 3], is unavailing. Plaintiff's view of US Foods' role
24 does not dictate how much discovery US Foods needs or is entitled to. Rather, US Foods must
25 be provided a reasonable amount of time to conduct the discovery it believes it needs and to
26 adequately prepare its case. An additional sixty to ninety days is insufficient.

27 Second, the Court finds that US Foods, the moving party to the motion to amend the
28 scheduling order [ECF No. 150], has been reasonably diligent. US Foods entered the case on

1 May 7, 2020 and already has received and reviewed approximately 28,000 pages of discovery
2 documents, received and reviewed fourteen deposition transcripts and twelve sets of discovery
3 responses, launched a trace back investigation of relevant products, and participated in the
4 depositions of four to six witnesses. ECF No. 150-1 at 2-3. The Court notes that Plaintiffs do
5 not appear to disagree or argue that US Foods has not been diligent since it entered the case.
6 Mot. Additionally, US Foods' reasons for seeking a six month continuance of the deadlines, such
7 as the need to "complete its comprehensive internal investigation, retain liability expert(s), and
8 consider the retention of damages experts to review the cases of the Plaintiffs[,]" and possibly
9 the need to re-depose witnesses who were deposed prior to US Foods joining this case, depose
10 newly identified witnesses, subpoena third-party entities, and depose third-party witnesses,
11 demonstrates good cause. Id. at 3.

12 Third, the Court finds that Cargill, the moving party to the motion to extend the expert
13 disclosure deadline [ECF No. 152], also has been reasonably diligent. Cargill submitted FOIA
14 requests in February 2020 and is still awaiting responses. Id. at 4; see also ECF No. 152-1,
15 Declaration of Elsa Bullard in Support of Defendant Cargill's Motion to Extend Expert Disclosure
16 Deadline ("Bullard Decl.") at ¶ 5. Cargill has followed up on each request weekly, but it remains
17 unclear when the documents will be released.³ Id. at 6.; see also Bullard Decl. at ¶ 5. Also,
18 despite issuing a subpoena on December 2, 2019 to US Foods, Cargill is still awaiting the
19 completion of traceback analysis which has been delayed by US Foods' and Sodexo's inability to
20 identify the relevant lot numbers of its products served on the date at issue. Id. at 4, 7-8.
21 Finally, Plaintiffs have yet to undergo independent medical examinations which have been
22 delayed in part by COVID-19. Id. at 4, 8; see also Bullard Decl. at ¶ 7.

23 Finally, the Court finds that the degree of prejudice to Plaintiffs is outweighed by
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25 ³ Plaintiffs argue that the outstanding FOIA requests do not merit good cause because "[t]here
26 is no guarantee of responses to outstanding requests in 60, 90, or 360 days, and this case
27 cannot be perpetually delayed." Mot. at 3. To be clear, the Court is not saying that discovery
28 will be delayed indefinitely until Defendants receive complete responses to any and all FOIA
requests. The Court merely finds that Cargill's serving of the requests in February 2020 and
repeated attempts to follow-up on those requests demonstrates reasonable diligence.

1 Defendants' diligence. "Because diligence is the primary focus of a Rule 16(b) inquiry, the
2 prejudice to the opposing party must be significant when the moving party has acted diligently
3 in bringing the motion." Woodward v. County of San Diego, 2020 WL 1820265, at *4, (Apr. 10,
4 2020) (citing Genentech, Inc. v. Abbott Labs., 127 F.R.D. 529, 531 (N.D. Cal. 1989)). Plaintiffs
5 do not argue that they will be greatly prejudiced by the delay and acknowledge that a sixty –
6 ninety day continuance is appropriate given US Foods late entry into the case. Mot. a 4; see
7 also Reply at 5. The Court does not find that an additional ninety days on top of that will unjustly
8 prejudice Plaintiffs. While the Court acknowledges that this case has been pending for almost
9 two years and that Plaintiffs are interested in a speedy resolution, the Court cannot ignore the
10 late addition of a new party or deny the new party the appropriate time to prepare its defense
11 where the party has been diligent in conducting discovery. Additionally, while the COVID-19
12 pandemic in and of itself is not a reason to stay discovery, the Court recognizes the very real
13 impact of the pandemic especially as related to the medical community and the need in these
14 cases for medical records and physical examinations.

15 Because the Court finds that US Foods and Cargill have been reasonably diligent and that
16 the degree of prejudice to Plaintiffs is outweighed by that diligence, the Court finds that there
17 was and is good cause for the six month continuance of pretrial deadlines and Plaintiffs' motion
18 for reconsideration is **DENIED**.

19 **IT IS SO ORDERED.**

20 Dated: 7/27/2020

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22 Hon. Barbara L. Major
23 United States Magistrate Judge
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