

1 No. 60 (“Opposition” or “Oppo.”). For the reasons set forth below, the Court **GRANTS**
2 **IN PART and DENIES IN PART** Defendants’ ex parte motion.

3 **I. RELEVANT BACKGROUND**

4 On November 8, 2018, Defendants removed this action from state court. ECF No. 1.

5 On October 17, 2019, Plaintiffs filed its First Amended Complaint. ECF No. 31.

6 On August 24, 2020, the district judge granted in part and denied in part Plaintiffs’
7 motion for leave to file a Second Amended Complaint and denied as moot Defendants’
8 motion to dismiss Plaintiffs’ First Amended Complaint, or Strike Portions Thereof. ECF
9 No. 54.

10 On August 31, 2020, Plaintiffs filed a Second Amended Complaint (“SAC”). ECF
11 No. 55.

12 On September 14, 2020, Defendants filed a motion to dismiss Plaintiffs’ SAC. ECF
13 No. 56.

14 On September 28, 2020, Plaintiffs filed an opposition to Defendants’ motion to
15 dismiss the SAC. ECF No. 59.

16 On September 28, 2020, Defendants filed the instant Motion. ECF No. 58.

17 The remaining dates and deadlines in this action are as follows: pretrial motions
18 filing deadline of October 9, 2020; confidential Mandatory Settlement Conference
19 (“MSC”) statements due November 10, 2020; MSC on November 18, 2020; pretrial
20 disclosures deadline of November 30, 2020; Local Rule 16.1(f)(4) meet and confer
21 deadline of December 7, 2020; joint statement regarding willingness to participate in
22 another settlement conference by December 8, 2020; Plaintiffs to provide Defendants with
23 proposed pretrial order by December 14, 2020; lodgment of proposed Final Pretrial
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27 settlement conference, Plaintiffs to provide Defendants with proposed pretrial order,
28 lodgment of proposed Final Pretrial Conference Order, and final Pretrial Conference. ECF
No. 58 at 3–4.

1 Conference Order by December 21, 2020; and final Pretrial Conference on January 11,
2 2021. ECF Nos. 23, 51.

3 **II. LEGAL STANDARD**

4 Once a Rule 16² scheduling order is issued, dates set forth therein may be modified
5 only “for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4); see also
6 ECF No. 23 at 7 (stating that dates and times will not be modified except for good cause
7 shown). The Rule 16 good cause standard focuses on the “reasonable diligence” of the
8 moving party. Noyes v. Kelly Servs., 488 F.3d 1163, 1174 n.6 (9th Cir. 2007) (citation
9 omitted). “Although the existence or degree of prejudice to the party opposing the
10 modification might supply additional reasons to deny a motion, the focus of the inquiry is
11 upon the moving party's reasons for seeking modification.” Johnson v. Mammoth
12 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992).

13 **III. DISCUSSION**

14 **A. Parties’ Positions**

15 Defendants argue that under the current schedule, the parties would be forced to
16 unnecessarily litigate claims in a summary judgment motion that may be resolved by the
17 pending motion to dismiss. Mot. at 3. They state that their motion to dismiss the SAC is
18 scheduled to be heard on October 20, 2020, so it will not be ruled on before the October 9,
19 2020 deadline to file pretrial motions. Id. Defendants contend that good cause exists to
20 grant their request because it would be a waste of resources for the parties and the Court to
21 complete pretrial work and go forward with the MSC while their motion to dismiss is still
22 pending. Id. at 4. They argue that the pretrial deadlines should be continued to (1) allow
23 the Court sufficient time to issue its ruling on the motion to dismiss, (2) permit Defendants
24 to file their answer to any remaining claims, and (3) allow Defendants to file, if necessary,
25 their motion for summary judgment. Id. at 3.

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28 ² Citations of rules in this order refer to the Federal Rules of Civil Procedure, unless
otherwise stated.

1 Plaintiffs oppose the motion, arguing that Defendants are seeking merely to further
2 delay this action. *Oppo.* at 3, 6. Plaintiffs contend the current motion to dismiss is identical
3 to Defendants’ first motion to dismiss, which Plaintiffs claim the Court denied when it
4 granted in part Plaintiffs’ motion to amend the first amended complaint and stated, “In this
5 case, the Court has considered and incorporated the arguments advanced in support of the
6 Defendants’ motion to dismiss/strike in its analysis of the motion to amend.” *Id.* at 2; ECF
7 No. 54 at 12. Plaintiffs also argue that (1) they have allowed Defendants numerous
8 extensions in this case; (2) that Defendants have been aware of the pretrial motions
9 deadline for over a year; (3) Defendants fail to cite a specific and necessary reason to extend
10 deadlines; and (4) moving the trial date would be unfair and prejudicial to Plaintiffs who
11 have been waiting for trial for years. *Oppo.* at 3–7.

12 **B. Good Cause**

13 The Court finds that extending the remaining dates and deadlines will promote
14 judicial efficiency and save the parties’ resources. Through no fault of the parties, the
15 motion to dismiss the SAC will not be ruled on prior to the pretrial motions filing deadline.
16 The Court finds an extension of the pretrial motions filing deadline will allow the Court
17 time to rule on the motion to dismiss and clarify which causes of action remain before
18 motions for summary judgment are due and before final trial preparation occurs in the
19 remaining deadlines. The Court is not persuaded by Plaintiffs’ claim that the district judge
20 already denied an identical motion to dismiss filed by Defendants. The district judge wrote
21 the following:

22 In this case, the Court has considered and incorporated the arguments
23 advanced in support of the Defendants’ motion to dismiss/strike in its analysis
24 of the motion to amend. Because the Court grants in part Plaintiff’s motion
25 for leave to amend, the Defendants’ Motion to Dismiss or to strike is DENIED
as moot.

26 ECF No. 54 at 12. Because the previous and almost identical motion to dismiss was denied
27 as moot, the Court is not convinced that the first motion to dismiss was denied on the
28 merits.

1 The Court finds that Defendants have been reasonably diligent regarding the
2 remaining dates and deadlines. Although the Court has previously granted several
3 extensions in this case, all but one of the deadlines at issue have never been continued. See
4 ECF No. 23. Only the pretrial motions filing deadline was continued twice previously for
5 good cause. See ECF Nos. 23, 41, 53. Defense counsel attests that she reached out to
6 Plaintiffs' counsel beginning August 26, 2020—two days after the district judge granted in
7 part and denied in part Plaintiffs' motion to amend the FAC—to discuss the upcoming
8 deadlines and case scheduling. ECF No. 58-1, Declaration of Sylvia S. Aceves. ¶¶ 3–9.
9 Defense counsel learned in September that Plaintiffs would oppose a motion to continue
10 dates. Id. Defendants filed the instant Motion two weeks after filing their motion to dismiss
11 the SAC. See ECF Nos. 56, 58. Therefore, the Court finds that Defendants acted reasonably
12 diligently and without long delays to file the instant Motion as soon as they realized that
13 their motion to dismiss the SAC would not be ruled on before the pretrial motions filing
14 deadline.

15 Because the Court finds that Defendants acted reasonably diligently regarding the
16 remaining dates and deadlines and that extending them will promote judicial efficiency and
17 save the parties' resources, the Court finds good cause exists to extend the remaining
18 pretrial dates and deadlines. See Johnson v. Mammoth Recreations, Inc., 975 F.2d at 609.
19 Nevertheless, the Court is mindful that this action was originally removed to federal court
20 almost two years ago. See ECF No. 1. Accordingly, the Court finds good cause to amend
21 the scheduling order, but for a shorter amount of time than requested. Barring any other
22 extraordinary circumstances, if the new deadline arrives and the motion to dismiss has still
23 not been ruled on, this Court will not grant a further continuance to the pretrial motions
24 filing deadline. Given the age of this action, additional future extensions will begin to tip
25 the scale from efficiency and economy to prejudice to Plaintiffs.

26 **IV. CONCLUSION**

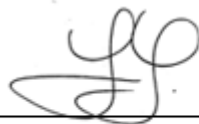
27 For the reasons set forth above, the Court **GRANTS IN PART and DENIES IN**
28 **PART** Defendants' ex parte motion to amend the scheduling order as follows:

	OLD DATE	NEW DATE
Pretrial Motions Filing Deadline	October 9, 2020	November 9, 2020
Confidential MSC Statements Due	November 10, 2020	January 12, 2021
MSC	November 18, 2020 at 9:30 a.m.	January 20, 2021 at 9:30 a.m.
Joint Statement Regarding Willingness to Participate in Another Settlement Conference	December 8, 2020	February 1, 2021
Pretrial Disclosure Deadline	November 30, 2020	February 8, 2021
Local Rule 16.1(f)(4) Meet and Confer Deadline	December 7, 2020	February 16, 2021
Plaintiffs to Provide Defense with Proposed Pretrial Order	December 14, 2020	February 22, 2021
Lodgment of Proposed Final Pretrial Conference Order	December 21, 2020	March 1, 2021
Final Pretrial Conference	January 11, 2021 at 10:30 a.m.	March 8, 2021 at 10:30 a.m.

All other requirements remain as previously set. See ECF No. 23.

IT IS SO ORDERED.

Dated: October 5, 2020



Honorable Linda Lopez
United States Magistrate Judge