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

APRIL MCELROY, *individually*,
Plaintiff,
v.
PERNOD RICARD USA, LLC.;
GARFIELD BEACH CVS, L.L.C.;
SOUTHERN GLAZER’S WINE AND
SPIRITS, LLC; DOES 1 through 39; and
DOES 41 through 50, inclusive,
Defendants.

Case No.: 3:23-cv-02183-CAB-VET

**ORDER GRANTING IN PART
JOINT MOTION AND ISSUING
AMENDED SCHEDULING ORDER**

[Doc. No. 80]

AND ALL RELATED CROSS
ACTIONS

Before the Court is the parties’ Joint Motion Regarding Discovery Status and to Continue Pre-Trial Deadlines (“Joint Motion”). Doc. No. 80. For the reasons stated below, the Court **GRANTS IN PART** the Joint Motion and **ISSUES** an Amended Scheduling Order.

I. JOINT MOTION AND PROCEDURAL BACKGROUND

On May 16, 2024, the Court issued the initial Scheduling Order Regulating Discovery and Other Pre-Trial Proceedings. Doc. No. 26. On November 19, 2024, the

1 parties filed a joint motion, proposing to extend all deadlines by 90 days. Doc. No. 63. On
2 November 22, 2024, the Court granted that motion. Doc. No. 64. On March 7, 2025, the
3 parties filed the instant Joint Motion requesting another 90-day extension of all dates. Doc.
4 No. 80. The parties describe the discovery efforts that have occurred to date, including
5 exchanging written discovery and taking depositions. *Id.* at 2–3.

6 **II. LEGAL STANDARD**

7 In determining whether to modify a scheduling order, the Court considers the “good
8 cause” standard set forth in Federal Rule of Civil Procedure 16(b)(4). Fed. R. Civ. P.
9 16(b)(4). Pursuant to Rule 16(b)(4), a “schedule may be modified *only* for good cause and
10 with the judge’s consent.” *Id.* (emphasis added); *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d
11 1080, 1087 (9th Cir. 2002). Rule 16(b)(4)’s “good cause” standard “primarily considers
12 the diligence of the party seeking the amendment.” *Learjet, Inc. v. Oneok, Inc. (In re W.*
13 *States Wholesale Natural Gas Antitrust Litig.)*, 715 F.3d 716, 737 (9th Cir. 2013). “The
14 district court may modify the pretrial schedule ‘if it cannot reasonably be met despite the
15 diligence of the party seeking the extension.’” *Johnson v. Mammoth Recreations, Inc.*, 975
16 F.2d 604, 609 (9th Cir. 1992) (citing to Fed. R. Civ. P. 16 advisory committee’s notes on
17 the 1983 amendment); *see also Zivkovic*, 302 F.3d at 1087; 6A *Wright, Miller & Kane,*
18 *Federal Practice and Procedure* § 1522.1 at 231 (2d ed. 1990) (“good cause” means
19 scheduling deadlines cannot be met despite party’s diligence). “[C]arelessness is not
20 compatible with a finding of diligence and offers no reason for a grant of relief.” *Johnson*,
21 975 F.2d at 609. The focus of the inquiry is upon the moving party’s reasons for seeking
22 modification. *Id.* “If the moving party was not diligent, the inquiry should end.” *Id.*; *Branch*
23 *Banking & Tr. Co. v. D.M.S.I., LLC*, 871 F.3d 751, 764 (9th Cir. 2017) (same).

24 Further, Civil Local Rule 16.1(b) requires that all counsel “proceed with diligence
25 to take all steps necessary to bring an action to readiness for trial.” Civ.LR 16.1(b).
26 Similarly, this Court’s Civil Chambers Rules require that any motion to continue a
27 scheduling order deadline include a showing of good cause, supported by a “declaration
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1 from counsel that details steps taken by the Parties to meet current deadlines and reasons
2 why the Parties can no longer meet those deadlines.” J. Torres Civ. Chambers R. VI.D.

3 **III. DISCUSSION**

4 The basis for the parties’ request stems primarily from a need to complete fact
5 discovery and resolve disputes surrounding Rule 30(b)(6) depositions and written
6 discovery responses. The Court already intervened concerning dates for Rule 30(b)(6)
7 depositions and previously ordered Defendant Southern Glazer to provide dates for a
8 30(b)(6) deposition by January 17, 2025. *See* Doc. No. 68. The parties will participate in a
9 second discovery conference with the Court on March 21, 2025 to address disputes raised
10 by Plaintiff on March 3, 2025 and March 5, 2025. These new disputes pertain to Defendants
11 Southern Glazer and Pernod Ricard and involve, among other issues, a failure to timely
12 provide deposition dates for Rule 30(b)(6) witnesses.

13 While it appears that good cause exists for extending current case deadlines, in part
14 to accommodate the late addition of a third-party defendant, the Court is also concerned
15 that much delay stems from potentially unnecessary discovery disputes, including a failure
16 to timely provide deposition dates. The Court cautions the parties that delay tactics and/or
17 gamesmanship will not be tolerated and every effort should be made to timely respond to
18 discovery and requests for deposition dates.

19 Based on a review of the Joint Motion and record, and good cause appearing, the
20 Court **GRANTS IN PART** the Joint Motion. This extension, combined with the prior
21 extension, means the parties will have had a year to conduct fact discovery. Accordingly,
22 absent extraordinary circumstances, **no further continuances shall be granted.**

23 **IV. AMENDED SCHEDULING ORDER**

24 The Court **AMENDS** the operative scheduling order (Doc. No. 64) as follows:

25 1. Counsel shall refer to the Judge Bencivengo’s Chambers Rules for Civil
26 Cases, which are accessible via the Court’s website at www.casd.uscourts.gov. For ease of
27 reference, Judge Bencivengo’s rules concerning the procedure for seeking permission to
28 file documents under seal is attached hereto.

1 2. All fact discovery shall be completed by all parties by **May 19, 2025**.
2 “Completed” means that all discovery under Fed. R. Civ. P. 30-36, and discovery
3 subpoenas under Fed. R. Civ. P. 45, must be initiated a sufficient period of time in advance
4 of the cut-off date, so that it may be completed by the cut-off date, taking into account the
5 times for service, notice, and response as set forth in the Federal Rules of Civil Procedure.
6 Counsel shall promptly and in good faith meet and confer regarding all discovery disputes
7 in compliance with Local Rule 26.1(a). The Court expects counsel to make every effort to
8 resolve all disputes without court intervention through the meet and confer process. If the
9 parties reach an impasse on any discovery issue, counsel shall follow the procedures
10 governing discovery disputes set forth in Judge Torres’ Civil Chambers Rules. **A failure**
11 **to comply in this regard will result in a waiver of a party’s discovery issue. Absent an**
12 **order of the Court, no stipulation continuing or altering this requirement will be**
13 **recognized by the Court.**

14 3. A Mandatory Settlement Conference (“MSC”) shall be conducted by Zoom
15 video conferencing on **June 10, 2025** at **9:30 a.m.** before Magistrate Judge Valerie E.
16 Torres.¹

17 a. The following are **mandatory** procedures to be followed in preparation for
18 the MSC. Absent express permission from this Court, counsel must timely comply with
19 the dates and deadlines herein. Questions regarding the MSC or the mandatory guidelines
20 set forth herein may be directed to Judge Torres’ Chambers at (619) 557-6384.

21 b. **Full Settlement Authority Required.** Pursuant to Local Rule 16.1.c.1, all
22 parties, party representatives, including claims adjusters for insured parties, and the
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27 ¹ Counsel may request the MSC be converted to an in-person appearance through a joint
28 call or email to Judge Torres’ Chambers (efile_torres@casd.uscourts.gov). Counsel
must meet and confer prior to making such a request.

1 principal attorney(s) responsible for the litigation must participate in the MSC.² This
2 appearance must be made with full and complete authority to negotiate and enter into a
3 binding settlement.³ Counsel for a government entity is excused from this requirement if
4 the government attorney who participates in the MSC (i) has primary responsibility for
5 handling the case, and (ii) may negotiate settlement offers that the attorney is willing to
6 recommend to the government official having ultimate settlement authority.

7 c. **Confidential Settlement Brief.** No later than seven (7) calendar days
8 before the MSC, each party must lodge a Confidential Settlement Brief by email to
9 efile_torres@casd.uscourts.gov. The Confidential Settlement Brief should not exceed ten
10 (10) pages, excluding exhibits, and must be formatted according to the requirements of
11 Local Rule 5.1(a). Parties attaching exhibits must attach only the relevant pages of multi-
12 page exhibits and must highlight the relevant portions.

13 d. **Contents of Settlement Brief.** All Confidential Settlement Briefs shall
14 include the content specified in the Court’s Chambers Rules, available at
15 <https://www.casd.uscourts.gov/Judges/torres/docs/Civil%20Chambers%20Rules.pdf>.

16 e. **Procedure for Zoom Videoconference.** No less than two (2) business
17 days prior to the MSC, the Court will email counsel of record an invitation with the Zoom
18 meeting information. Participants can join the Zoom video conference by following the
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20 ² The attendance requirement includes parties that are indemnified by others. Any
21 deviation from this Order requires prior Court approval.

22 ³ Full authority to settle means that the individuals at the MSC are authorized to fully
23 explore settlement options and to agree at that time to any settlement terms acceptable
24 to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th
25 Cir. 1989). Party participants need to have “unfettered discretion and authority” to
26 change the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481,
27 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with complete
28 settlement authority to attend the conference is that the person’s view of the case may
be altered during the face-to-face conference. *Id.* at 486. Limited or sum certain
authority is not adequate. *Nick v. Morgan’s Foods, Inc.*, 270 F.3d 590, 595-597 (8th
Cir. 2001).

1 ZoomGov Meeting hyperlink or using the meeting ID and password provided. Each
2 participant should plan to join the Zoom video conference *at least five (5) minutes before*
3 the start of the MSC. Counsel is responsible for ensuring their clients can participate in the
4 MSC. All participants must display the same level of professionalism and attention during
5 the MSC as if they were attending in person (e.g., not be driving while speaking to the
6 Court, or otherwise distracted).

7 4. The parties shall designate their respective experts in writing by **June 20,**
8 **2025.** The parties must identify any person who may be used at trial to present evidence
9 pursuant to Fed. R. Evid. 702, 703 or 705. This requirement is not limited to retained
10 experts. The parties shall designate rebuttal experts in writing by **July 7, 2025.** The written
11 expert designations shall include the name, address and telephone number of the expert
12 and a reasonable summary of the testimony the expert is expected to provide, including
13 any summary of facts and opinions required by Fed. R. Civ. P. 26(a)(2)(C). The
14 designations shall also include the normal rates the expert charges for deposition and trial
15 testimony.

16 5. By **August 7, 2025,** each party shall comply with the disclosure provisions in
17 Fed. R. Civ. P. 26(a)(2)(A) and (B). This disclosure requirement applies to all persons
18 retained or specially employed to provide expert testimony, or whose duties as an employee
19 of the party regularly involve giving expert testimony. Except as provided in the paragraph
20 below, any party that fails to make these disclosures shall not, absent substantial
21 justification, be permitted to use evidence or testimony not disclosed at any hearing or at
22 the time of trial. In addition, the Court may impose sanctions as permitted by Fed. R. Civ.
23 P. 37(c).

24 6. Any party shall supplement its disclosure regarding contradictory or rebuttal
25 evidence under Fed. R. Civ. P. 26(a)(2)(D) and 26(e) by **August 21, 2025.**

26 7. All expert discovery shall be completed by all parties by **September 22, 2025.**
27 The parties shall comply with the same procedures set forth in the paragraph governing
28 fact discovery.

1 8. All pre-trial motions, other than motions to amend or join parties, or motions
2 *in limine*, shall be filed on or before **October 22, 2025**. All *Daubert* motions shall be filed
3 on or before **October 22, 2025**. Counsel for the moving party shall set the motion date on
4 the date that is 35 days from the date the motion is filed. Parties intending to file a motion
5 shall *not* contact Judge Bencivengo's chambers for a hearing date. The parties should
6 review Judge Bencivengo's chambers rules for civil cases for the additional requirements
7 for noticed motions before Judge Bencivengo.

8 Pursuant to Local Rule 7.1.f.3.c, **if an opposing party fails to file opposition**
9 **papers in the time and manner required by Local Rule 7.1.e.2, that failure may**
10 **constitute a consent to the granting of a motion or other request for ruling by the**
11 **Court.** Accordingly, all parties are ordered to abide by the terms of Local Rule 7.1.e.2 or
12 otherwise face the prospect of any pretrial motion being granted as an unopposed motion
13 pursuant to Local Rule 7.1.f.3.c.

14 9. In jury trial cases before the Honorable Cathy Ann Bencivengo, neither party
15 is required to file Memoranda of Contentions of Fact and Law pursuant to Civil Local Rule
16 16.1.f.2.

17 10. The parties must comply with the pre-trial disclosure requirements of Fed. R.
18 Civ. P. 26(a)(3) no later than **January 23, 2026**. **Please be advised that failure to comply**
19 **with this section or any other discovery order of the Court may result in the sanctions**
20 **provided for in Fed. R. Civ. P. 37, including a prohibition on the introduction of**
21 **experts or other designated matters in evidence.**

22 11. Counsel shall confer and take the action required by Local Rule 16.1(f)(4)(a)
23 on or before **January 30, 2026**. The parties shall meet and confer and prepare a proposed
24 pretrial order containing the following:

25 1. A joint neutral statement to be read to the jury, not in excess of one
26 page, of the nature of the case and the claims and defenses.

27 2. A list of the causes of action to be tried, referenced to the Complaint
28 [and Counterclaim if applicable]. For each cause of action, the order shall

1 succinctly list the elements of the claim, damages and any defenses. A cause
2 of action in the Complaint [and/or Counterclaim] which is not listed shall be
3 dismissed with prejudice.

4 3(a). A list of each witness counsel actually expect to call at trial with a brief
5 statement, not exceeding four sentences, of the substance of the witnesses'
6 testimony.

7 3(b). A list of each expert witness counsel actually expect to call at trial with
8 a brief statement, not exceeding four sentences, of the substance of the
9 witnesses' testimony.

10 3(c). A list of additional witnesses, including experts, counsel do not expect
11 to call at this time but reserve the right to call at trial along with a brief
12 statement, not exceeding four sentences, of the substance of the witnesses'
13 testimony.

14 4(a). A list of all exhibits that counsel actually expect to offer at trial with a
15 one-sentence description of the exhibit. All exhibits are to be identified
16 numerically, plaintiff starting with "1" and defendant beginning with an
17 agreed upon numerical designation.

18 4(b). A list of all other exhibits that counsel do not expect to offer at this time
19 but reserve the right to offer if necessary at trial with a one-sentence
20 description of the exhibit.

21 5. A statement of all facts to which the parties stipulate. This statement
22 shall be on a separate page and will be read to and provided to the jury.

23 6. A list of all deposition transcripts by page and line, or videotape
24 depositions by section, that will be offered at trial.

25 7. Counsel will note any objections they have to any other parties' Fed. R.
26 Civ. P. 26(a)(3) Pretrial Disclosures.

27 The Court encourages the parties to consult with the assigned magistrate judge to work out
28 any problems in preparation of the proposed pretrial order. The court will entertain any
questions concerning the conduct of the trial at the pretrial conference.

1 12. Counsel for the Plaintiff(s) must provide opposing counsel with the proposed
2 pretrial order for review and approval and take any other action required by Local Rule
3 16.1.f.6.a on or before **February 6, 2026**. Opposing counsel must communicate promptly
4 with plaintiff's counsel concerning any objections to form or content of the pretrial order,
5 and both parties shall attempt promptly to resolve their differences, if any, concerning the
6 order.

7 13. The Proposed Final Pretrial Conference Order, including objections to any
8 other parties' Fed. R. Civ. P. 26(a)(3) Pretrial Disclosures, shall be prepared, served, and
9 lodged with the assigned district judge's chambers on or before **February 13, 2026**, and
10 shall be in the form prescribed in and comply with Local Rule 16.1(f)(6).

11 14. The final Pretrial Conference is scheduled on the calendar of the **Honorable**
12 **Cathy Ann Bencivengo** on Friday, **February 20, 2026** at **2:00 p.m.**.

13 15. The trial in this matter shall commence on Monday, **March 23, 2026** at **8:45**
14 **a.m.**

15 16. The parties must review the chambers' rules for the assigned district judge
16 and magistrate judge.

17 17. A post-trial settlement conference before a magistrate judge may be held
18 within 30 days of verdict in the case.

19 18. The dates and times set forth herein will not be modified except for good cause
20 shown.

21 19. Briefs or memoranda in support of or in opposition to any pending motion
22 shall not exceed twenty-five (25) pages in length without leave of a district court judge. No
23 reply memorandum shall exceed ten (10) pages without leave of a district court judge.
24 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
25 and a table of authorities cited.

1 20. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
2 case hereafter.

3 **IT IS SO ORDERED.**

4 Dated: March 12, 2025



Honorable Valerie E. Torres
United States Magistrate Judge

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