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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ALBERTO PIMENTEL, et al.,
12 Plaintiffs,
13 v.
14 SEAWORLD, et al.,
15 Defendants.

Case No.: 24-cv-0127-JAH-SBC

**ORDER GRANTING IN PART AND
DENYING IN PART JOINT MOTION
TO (1) REOPEN FACT DISCOVERY
AND (2) SCHEDULE HEARING TO
SET NEW PRETRIAL DATES
[ECF NO. 24]**

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18 Before the Court is the parties' joint motion to reopen fact discovery and schedule a
19 hearing to set new pretrial dates. (ECF No. 24.) For the reasons set forth below, the joint
20 motion is **GRANTED IN PART** and **DENIED IN PART**.

21 **I. BACKGROUND**

22 The original scheduling order was issued in this case on March 21, 2024. (ECF No.
23 10.) The schedule provided a complete pretrial schedule for the case including a fact
24 discovery deadline of August 23, 2024, an expert discovery deadline of December 13,
25 2024, and a Pretrial Conference on May 14, 2025. (*Id.*)

26 On May 24, 2024, the Court held an attorneys-only Status Conference at which
27 Plaintiff's counsel did not appear. (ECF No. 12.) After considering a declaration filed by
28 Plaintiff's counsel, the Court excused counsel's failure to appear. (ECF Nos. 14, 15.)

1 On September 13, 2024, three weeks after the original fact discovery cutoff, the
2 parties filed a joint motion to continue scheduling order dates. (ECF No. 18.) The Court
3 convened a Status Conference on September 17, 2024, to discuss the joint motion with
4 counsel due to its concern about the lack of progress in the case. (ECF No. 20.) On
5 September 18, 2024, the Court issued an order granting in part and denying in part the joint
6 motion. (ECF No. 21.) The Court stated the following in its order:

7 The Court notes with concern that the parties' joint motion for
8 extensions was filed on September 13, 2024, three weeks after the August 23,
9 2024 fact discovery deadline had passed. In other words, the parties are
10 seeking to retroactively continue deadlines that already passed three weeks
11 ago.

12 The Court held a zoom status conference to address concerns regarding
13 the parties' diligence and efficiency. While the Court remains concerned
14 about the issues of diligence and efficiency, the Court nevertheless prioritizes
15 moving the case forward on its merits.

16 (*Id.*) The Court then issued an amended scheduling order providing a sixty-day extension
17 of discovery deadlines, including moving the fact discovery cutoff from August 23 to
18 October 18, 2024, and the expert discovery cutoff from December 13, 2024 to February
19 17, 2025. (*Id.*) The Pretrial Conference remained set for May 14, 2025. (*Id.*)

20 On November 13, 2024, Plaintiffs filed an Ex Parte Application to Continue Date of
21 Expert Exchange, Continue Discovery Cut-off Dates, and to Set Conference with Court Re
22 Status of Discovery. (ECF No. 22.) The Court denied the application without prejudice due
23 to Plaintiffs' failure to follow the Court's Civil Chambers Rules and referred counsel to
24 Section VI of the Court's Civil Chambers Rules regarding discovery disputes for further
25 guidance. (ECF No. 23.)

26 On November 19, 2024, the parties filed the joint motion currently before the Court.
27 (ECF No. 24.) The parties request that fact discovery, which closed on October 18, 2024,
28 be reopened because the assailant(s) who allegedly attacked Plaintiffs at Defendant Sea
World LLC's park "had not previously been disclosed by SeaWorld or otherwise identified
by the Plaintiffs until October 8, 2024." (*Id.*) "The parties agree that the alleged assailant(s)

1 will have to be located and deposed and that his/their testimony may give rise to the
2 necessity of conducting further fact discovery.” (*Id.*) The parties thus jointly request that
3 “fact discovery be reopened and that all pre-trial dates currently set by the court -- except
4 for the date of the Pre-Trial Conference -- be vacated and reset at a later date after the
5 parties inform the court of the status of fact discovery.” (*Id.*)

6 II. LEGAL STANDARDS

7 Under Rule 16 of the Federal Rules of Civil Procedure, the Court “must issue the
8 scheduling order as soon as practicable.” Fed. R. Civ. P. 16(b)(2). The scheduling order is
9 required to “limit the time to join other parties, amend the pleadings, complete discovery,
10 and file motions.” *Id.* R. 16(b)(3)(A). The schedule may be modified only for good cause
11 and with the judge’s consent. *Id.* R. 16(b)(4). The good cause standard under Rule 16(b)
12 “primarily considers the diligence of the party seeking the amendment.” *Johnson v.*
13 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). “Deadlines are not
14 options.” *See J.K.G. v. County of San Diego*, Civil No. 11cv0305 JLS(RBB), 2012 U.S.
15 Dist. LEXIS 126195, at *4 (S.D. Cal. Sept. 5, 2012). “Allowing parties to disregard the
16 instructions of a scheduling order would undermine the court’s ability to control its docket,
17 disrupt the agreed-upon course of the litigation, and reward the indolent and cavalier. Rule
18 16 was drafted to prevent this situation.” *Sokol Holdings, Inc. v. BMB Munai, Inc.*, 05 cv
19 3749 (KMW)(DCF), 2009 U.S. Dist. LEXIS 100478, at *17 (S.D.N.Y. Oct. 28, 2009)
20 (citation and internal quotations omitted).

21 The standard for amending a scheduling order was described in *Zivkovic v. S. Cal.*
22 *Edison Co.*, 302 F.3d 1080 (9th Cir. 2002). “The pretrial schedule may be modified ‘if it
23 cannot reasonably be met despite the diligence of the party seeking the extension.’” *Id.* at
24 1087 (quoting *Johnson*, 975 F.2d at 609). “If the party seeking the modification ‘was not
25 diligent, the inquiry should end’ and the motion to modify should not be granted.” *Id.*
26 (quoting *Johnson*, 975 F.2d at 609). Parties must therefore “diligently attempt to adhere to
27 [the] schedule throughout the . . . course of the litigation.” *Jackson v. Laureate, Inc.*, 186
28 F.R.D. 605, 607 (E.D. Cal. 1999).

1 Under Rule 6, when a motion to extend time is made after the time has expired, the
2 Court may extend time “if the party failed to act because of excusable neglect.” Fed. R.
3 Civ. P. 6(b)(1)(B).

4 III. DISCUSSION

5 The parties do not explicitly address good cause or excusable neglect in their joint
6 motion. Moreover, given the lack of detail in the joint motion, it is difficult for the Court
7 to ascertain whether the parties proceeded with diligence and efficiency with respect to
8 identifying the alleged assailant(s) who attacked Plaintiffs. Nonetheless, in light of the
9 parties’ agreement about the necessity of locating and deposing the alleged assailant(s),
10 and reopening fact discovery to do so, as well as the Court’s interest in moving this case
11 forward on its merits, the Court finds sufficient cause for a continuance of the discovery
12 deadlines in this case. The joint motion is therefore GRANTED IN PART.

13 As set forth above, Rule 16 requires the Court to issue a scheduling order that
14 “limit[s] the time to join other parties, amend the pleadings, complete discovery, and file
15 motions.” Fed. R. Civ. P. 16(b)(3)(A). “Deadlines are not options.” *J.K.G.*, 2012 U.S. Dist.
16 LEXIS 126195, at *4. Therefore, the parties’ request that all dates, other than the Pretrial
17 Conference, be “vacated and reset at a later date after the parties inform the court of the
18 status of fact discovery[,]” is DENIED. The Court instead issues the following fully
19 amended scheduling order. Because reopening fact discovery necessitates moving other
20 dates and deadlines in this case, the following schedule resets expert discovery deadlines,
21 the pretrial motion filing cutoff, and the Pretrial Conference and related dates:
22

23 Deadline/Event	Current Deadline	Revised Deadline
24 Motion to amend deadline	May 6, 2024	May 6, 2024 (unchanged)
25 Fact discovery deadline	October 18, 2024	January 24, 2025
26 Expert witness designations	November 18, 2024	February 7, 2025
27 Rebuttal expert designations	December 2, 2024	February 21, 2025
28 Expert witness disclosures	January 2, 2025	March 21, 2025
Rebuttal expert disclosures	January 16, 2025	April 4, 2025

1	Expert discovery deadline	February 17, 2025	May 2, 2025
2	Pretrial motion filing deadline	March 18, 2025	May 30, 2025
3	Mandatory Settlement Conference	April 2, 2025, at 10:00 a.m.	April 2, 2025, at 10:00 a.m. (unchanged)
4	Mandatory Settlement Conference briefs due	March 26, 2025	March 26, 2025 (unchanged)
5	Pretrial disclosures	April 16, 2025	August 27, 2025
6	Meeting of counsel pursuant to Local Rule 16.1(f)(4)	April 23, 2025	September 3, 2025
7	Proposed pretrial order due from counsel	April 30, 2025	September 10, 2025
8	Proposed Final Pretrial Conference Order lodging	May 7, 2025	September 17, 2025
9	Pretrial Conference	May 14, 2025, at 2:30 p.m.	September 24, 2025, at 2:30 p.m.

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14 The Court expects the parties to fully comply with the schedule set forth above. No
15 further extensions will be granted absent a detailed showing of good cause. In the event the
16 parties seek any extension of deadlines in the future, the parties will be required to show
17 diligence and efficiency, and thus must detail the steps they have taken to comply with the
18 dates and deadlines in the schedule, including identifying the specific discovery conducted,
19 the specific discovery remaining outstanding, and the reason why each deadline sought to
20 be extended cannot be met. Finally, an attorneys-only Status Conference is set for **January**
21 **24, 2025, at 9:30 a.m.** To participate in the conference, counsel shall use the Zoom meeting
22 information to be emailed to counsel.

23 **IT IS SO ORDERED.**

24 Dated: November 26, 2024

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27 Hon. Steve B. Chu
28 United States Magistrate Judge