

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\*\*\*

Case No. 2:17-cv-00236-JAD-VCF

**ORDER**

PLAINTIFF'S MOTION TO EXTEND DISCOVERY  
DEADLINE (ECF No. 13)

MARINA CABALLERO,

Plaintiff,

vs.

BODEGA LATINA CORPORATION d/b/a EL  
SUPER,

Defendant.

This matter involves Plaintiffs Marina Caballero's personal injury case from an alleged slip and fall against Defendant Bodega Latina Corporation d/b/a El Super ("Bodega"). Before the Court is Caballero's Motion to Extend Discovery Deadlines (ECF No. 13). Bodega filed a Response to Caballero's Motion to Extend Discovery Deadlines (ECF No. 14), and Caballero filed a Reply (ECF No. 16). For the reasons stated below, Caballero's Motion is granted.

**I. LEGAL STANDARD**

Federal Rule of Civil Procedure 16(b)(4) governs the modification of scheduling orders. It states that "[a] schedule may be modified only for good cause and with the judge's consent." See Fed. R. Civ. P. 16(b)(4); see also 6A Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, Federal Practice and Procedure, § 1522.2, 312-13 (3d ed. 2010) ("What constitutes good cause sufficient to justify the modification of a scheduling order necessarily varies with the circumstances of each case."). In the context of Rule 16, good cause is measured by diligence. See *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294-95 (9th Cir. 2000) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-09 (9th Cir. 1992)); see also 6A Wright et al., supra, § 1522.2, 313-14 (3d ed. 2010) ("In general, if the party seeking relief

1 can show that the deadlines cannot reasonably be met despite the party’s diligence, relief may be given.”).  
2 The rule permits modification of a scheduling order, but only if the existing deadlines cannot be met  
3 despite the diligence of the party seeking the extension. Id. Prejudice to the opposing party may be  
4 considered, but where the movant fails to show diligence, the Court’s inquiry must end. See id.; see also  
5 6A Wright et al., supra, § 1522.2, 313-14 (3d ed. 2010) (“[r]elief may be granted if the court finds that  
6 the movant has not unduly delayed the action and that the opponent will not be prejudiced by the  
7 modification.”).

8 Local Rule 26-4 supplements Federal Rule 16. It states:

9 A motion or stipulation to extend any date set by the discovery plan,  
10 scheduling order, or other order must, in addition to satisfying the  
11 requirements of LR IA 6-1, be supported by a showing of good cause for  
12 the extension. A motion or stipulation to extend a deadline set forth in a  
13 discovery plan must be received by the court no later than 21 days before  
the expiration of the subject deadline. A request made within 21 days of the  
subject deadline must be supported by a showing of good cause ... A motion  
or stipulation to extend a discovery deadline ... must include:

- 14 (a) A statement specifying the discovery completed;
- 15 (b) A specific description of the discovery that remains to be  
16 completed;
- 17 (c) The reasons why the deadline was not satisfied or the remaining  
18 discovery was not completed within the time limits set by the  
discovery plan; and
- 19 (d) A proposed schedule for completing all remaining discovery

20 See Local Rule 26-4.<sup>1</sup> The “good cause” standard outlined in LR 26-4 is the same as the standard  
21 governing modification of the scheduling order under Fed. R. Civ. P. 16(b)(4). The Court has broad  
22

---

23  
24 <sup>1</sup> LR IA 6-1(a) and (b) state:

- 25 (a) A motion or stipulation to extend time must state the reasons for the extension  
requested and must inform the court of all previous extensions of the subject deadline

1 discretion in supervising the pretrial phase of litigation. See *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080,  
2 1087 (9th Cir. 2002).

3 Scheduling orders are critical to the Court’s management of its docket. See *Mammoth Recreations,*  
4 *Inc.*, 975 F.2d at 610 (“Disregard of the order would undermine the court’s ability to control its docket,  
5 disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier.”). The Court is  
6 charged with securing “the just, speedy, and inexpensive determination of every action and proceeding.”  
7 See Fed. R. Civ. P. 1. Delay frustrates this command. The Ninth Circuit has emphasized that a case  
8 management order “is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by  
9 counsel without peril.” See *Mammoth Recreations, Inc.*, 975 F.2d at 610.

## 10 **II. DISCUSSION**

11 Caballero’s Motion is granted because she has met her burden to show good cause. Caballero filed  
12 the instant motion on June 26, 2017, seeking to extend the following deadlines:

13 Amend Pleadings	July 31, 2017
14 Interim Status Report	August 28, 2017
15 Discovery Cut-off	October 27, 2017
16 Expert Disclosures	August 28, 2017
17 Rebuttal Expert Disclosures	September 27, 2017
18 Dispositive Motions	November 27, 2017

19  
20  
21  
22 

---

the court granted ... A request made after the expiration of the specified period will  
23 not be granted unless the movant or attorney demonstrates that the failure to file the  
24 motion before the deadline expired was the result of excusable neglect. Immediately  
25 below the title of the motion or stipulation there also must be a statement indicating  
whether it is the first, second, third, etc., requested extension, i.e.: STIPULATION TO  
EXTEND TIME TO FILE MOTIONS (First Request).

(b) The court may set aside any extension obtained in contravention of this rule.

1 See ECF Nos. 13 at 7; 9 at 3-4.

2  
3 Caballero's Motion complies with Local Rule 26-4 to a sufficient extent. The motion contains (1)  
4 a statement specifying the discovery completed; (2) a specific description of the discovery that remains to  
5 be completed; (3) the reasons why the deadline was not satisfied or the remaining discovery not completed  
6 within the time set by the discovery plan; and (4) a proposed schedule for completing all remaining  
7 discovery. See ECF Nos. 11 at 6-7; 13 at 5-7.

8 Caballero's motion states that an extension is needed due a "pending discovery dispute with  
9 [Bodega]" about requests for the production of documents and interrogatories. See ECF No. 13 at 3, 5.  
10 On June 21, 2017, Caballero filed a motion to compel production of information pertaining to "prior and  
11 subsequent incidents at Defendant's store, its employee files for the employees involved in the incident,  
12 and policy changes implemented in response to Plaintiff[s] fall." See ECF No. 16 at 3. That motion to  
13 compel is currently pending before this Court. See ECF No. 11. Caballero claims that she needs that  
14 information "to adequately prepare for, notice, and obtain Defendant's Rule 30(b)(6) witness testimony."  
15  
16 Id.

17 Bodega's response argues that "there is adequate time for Plaintiff to conduct any needed  
18 discovery," because "four months of discovery remain before discovery expires." See ECF No. 14 at 5-  
19 6. Bodega also argues that it "has produced ... relevant portions of the responsive documents," including  
20 safety policies and procedures. To be sure, Caballero does argue in her motion that the discovery dispute  
21 primarily involved production of Bodega's safety policies and procedures for purposes of deposing  
22 Bodega's Rule 30(b)(6) witness. See ECF Nos. 13 at 5 ("Due to the above-described discovery dispute  
23 and Plaintiff's need for the discovery sought to accurately Notice and Depose Defendant's Rule 30(b)(6)  
24  
25

1 witness regarding Defendant’s safety policies and procedures; good cause exists ....”); 11 at 7 (“Defendant  
2 has refused to produce its written slip and fall prevention and investigation policies and procedures.”).

3           Although Bodega appears to have produced written slip and fall prevention and investigation  
4 policies and procedures, Caballero argues that “much of the information sought has been withheld.” See  
5 ECF No. 16 at 3. Caballero acknowledges that the discovery cutoff date remains three and half months  
6 away. But she argues that other discovery deadlines are quickly approaching, including the initial expert  
7 deadline due August 28, 2017. And Caballero claims that she needs to depose Bodega’s 30(b)(6) witness  
8 and “that [the] deposition transcript must be provided to any liability expert well before the close of the  
9 initial expert deadline.”

10           The Court finds that Caballero has met her burden to show good cause. Bodega does not argue  
11 that it will be prejudiced by the modification. In light of the above, the Court finds that an extension of  
12 the discovery deadlines by 60 days is appropriate; and not the requested 90 days.

13 ///

14 ///

15 ///

1 ACCORDINGLY, and for good cause shown,

2 IT IS ORDERED that Plaintiffs Marina Caballero's Motion to Extend Discovery Deadlines  
3 (ECF No. 13) is GRANTED.

4 IT IS FURTHER ORDERED that the following deadlines apply:

5 Amend Pleadings September 18, 2017

6 Interim Status Report October 27, 2017

7 Discovery Cut-off December 26, 2017

8 Expert Disclosures October 27, 2017

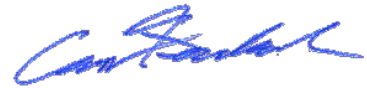
9 Rebuttal Expert Disclosures November 26, 2017

10 Dispositive Motions January 26, 2018

11 Joint Pretrial Order February 25, 2018

12 IT IS SO ORDERED.

13 DATED this 21st day of July, 2017.

14  
15  
16 

17  
18 CAM FERENBACH  
19 UNITED STATES MAGISTRATE JUDGE  
20  
21  
22  
23  
24  
25