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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT T. BLOUGH and GWENDOLYN K. BLOUGH, husband and wife, and the marital community composed thereof, individually, and as Trustees for the BLOUGH LIVING TRUST; WILLIAM L. FEHR and DIANE L. FEHR, husband and wife, and the marital community composed thereof; SOOK JUN JI, individually; JEFFREY L. OLIPHANT and SANDRA C. OLIPHANT, husband and wife, and the marital community composed thereof, individually and as Trustees for the JEFFREY AND SANDRA OLIPHANT LIVING TRUST; on behalf of themselves, and others similarly situated,

Plaintiffs,

v.

SHEA HOMES, INC., a Delaware corporation,

Defendant.

NO. C12-1493 RSM

ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR
RELIEF FROM DEADLINES AND
CONTINUATION OF TRIAL DATE

THIS MATTER comes before the Court on Motion for Relief from Deadlines and Continuation of the Trial Date by Defendant Shea Homes, Inc. Dkt. # 137. Defendant moves the Court to extend pre-trial and trial dates in this action by three months in light of previous continuations to the briefing schedule for Plaintiffs' motion for class certification. Plaintiffs have opposed the motion. Having considered the parties' briefs and the relevant record and for the reasons set forth herein, the Court grants Defendant's Motion in part.

ORDER GRANTING IN PART MOTION FOR RELIEF FROM DEADLINES – 1

1 **Procedural Background**

2 On March 1, 2013, the Court set a Scheduling Order establishing a November 14,
3 2013 notice deadline for Plaintiffs’ motion for class certification. *See* Dkt. # 24. The
4 Scheduling Order provided a four-month window between the class certification notice
5 deadline and the deadline for expert witness reports on March 12, 2014 and established five
6 and six month windows between the class certification notice date and the deadlines for
7 discovery motions and the close of discovery (April 11 and May 12, 2014, respectively). *Id.*

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9 Following the entry of the Scheduling Order, the parties agreed to changes in the
10 briefing schedule on class certification and limited corresponding adjustments to the overall
11 case schedule. On September 26, 2013, the Court entered a stipulated order continuing the
12 deadline for motion for class certification to November 18, 2013 and providing that all 2014
13 deadlines remain unchanged. Dkt. # 52. The parties stipulated twice thereafter to further
14 extensions. The parties initially agreed to continue the class certification motion deadline to
15 January 24, 2014 in light of ongoing mediation and the pending holiday season. Dkt. # 95.
16 Finally, the parties re-noted the class certification motion for March 7, 2014, in light of
17 Plaintiffs’ filing of an Amended Complaint and Amended Motion for Class Certification,
18 adding new plaintiffs and changing class definitions, and in light of Defendant’s need for
19 additional time to take depositions in order to oppose Plaintiff’s class certification motion.
20 Dkt. # 111. Neither of these latter two stipulations addressed 2014 deadlines following those
21 for class certification.
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24 Defendant Shea Homes, Inc. (“Shea”) filed the instant motion on February 27, 2014,
25 requesting the Court restore the original windows between the notice date for Plaintiff’s
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1 Motion for Class Certification and remaining case deadlines by extending pre-trial and trial
2 dates by three months. *See* Dkt. # 137. Shea contends that continuance is necessary to ensure
3 that the parties can shape expert work, fact discovery, and other aspects of litigation around
4 the class determination. Plaintiffs oppose continuance on the grounds that the request is
5 premature and unsupported by good cause. *See* Dkt. # 140.

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7 **Analysis**

8 Federal Rule of Civil Procedure 16(b)(4) provides that a schedule shall not be
9 modified except upon a showing of good cause and by leave of the district judge. To establish
10 “good cause,” parties seeking modification must generally show that they cannot meet the
11 established deadlines despite the exercise of due diligence. *Johnson v. Mammoth Recreations,*
12 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Mere failure to complete discovery by the Court-
13 ordered deadline does not constitute good cause for continuance. LCR 16(b)(4).

14 The Federal Rules of Civil Procedure also recognize the importance of determining
15 class status at a relatively early stage in litigation. Rule 23(c)(1)(A) requires the Court to
16 determine class certification “[a]t an early practicable time after a person sues or is sued as a
17 class representative.” This District has given effect to this timing requirement by providing a
18 180-day window for plaintiffs to move for class certification after filing a class action
19 complaint. LCR 23(i)(3). These rules allow a clear definition of the action to emerge at a
20 sufficiently early stage such that the parties can shape litigation in accordance with the
21 parameters of the putative class. *See Molina v. Café Rio, Inc.*, 2013 WL 7174022, *2 (C.D.
22 Cal. 2013)(explaining that the rules’ purpose is “to give a clear definition to the parameters of
23 the putative class, to outline the claims involved to the class action and to apprise the
24 defendants of their potential liability as soon as practicable”); *Bertrand ex rel. Bertrand v.*

1 *Maram*, 495 F.3d 452, 455 (7th Cir. 2007)(“Class-action status must be granted (or denied)
2 early not only to avoid problems with mootness...but also to clarify who will be bound by the
3 decision.”).

4 At the same time, there is no hard and fast rule to the precise stage in litigation when
5 class certification must be determined. In softening the former requirement for courts to
6 determine class certification “as soon as practicable after commencement of an action,” the
7 2003 Amendments to Federal Rule of Civil Procedure 23(c) recognized that “there are many
8 valid reasons that may justify deferring the initial certification decision,” such as the need to
9 accommodate discovery or motions to dismiss or for summary judgment. *See also, Vinole v.*
10 *Countrywide Home Loans, Inc.*, 571 F.3d 935 (2009). District courts retain broad discretion to
11 control the class certification process in particular and the pre-trial phase of litigation in
12 general. *See Id.* at 942 (holding that it was not procedurally improper for the district court to
13 consider class certification three weeks before the discovery cutoff); *Johnson v. Mammoth*
14 *Recreations, Inc.*, 975 F.3d 604, 607 (9th Cir. 1992).

17 Here, neither party disputes that there was good cause for continuing Plaintiff’s
18 Motion for Class Certification in response to ongoing mediation, the utility of discovery on
19 class certification, and the changes to subclasses effected by Plaintiff’s amended complaint.
20 Rather, the parties disagree as to whether good cause exists to extend remaining case
21 deadlines. While Shea contends that both parties require an opportunity to shape litigation in
22 response to the Court’s decision on class certification, Plaintiffs contend that Shea puts
23 forward its present motion to mask its foot-dragging during discovery. Plaintiffs point out that
24 it was clear to both sides that no limitations were being placed on the scope of discovery and
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1 Setting Trial Date & Related Dates (Dkt. # 24) subsequent to the deadline for motion for class
2 certification shall be continued for ten (10) weeks. The Clerk is directed to issue a modified
3 Scheduling Order in accordance with this determination.

4 Dated this 10th day of April 2014.

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8 RICARDO S. MARTINEZ
9 UNITED STATES DISTRICT JUDGE
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