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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 Case No. C17-339RSM

11 NATIONAL FROZEN FOODS  
12 CORPORATION, A WASHINGTON  
13 CORPORATION,,

14 Plaintiff,

15 v.

16 BERKLEY ASSURANCE COMPANY, an  
17 Iowa Corporation,

18 Defendant.

ORDER DENYING MOTION FOR  
EXTENSION OF TIME

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20 This matter comes before the Court on Defendant Berkley Assurance Company  
21 (“Berkley”)’s Motion to Continue Trial Date and Amend Case Schedule. Dkt. #91. Berkley  
22 seeks a 90-day extension of all remaining deadlines “based on the withdrawal of lead trial  
23 counsel.” *Id.* at 1.

24 This case was originally removed to this Court on March 6, 2017, with a trial date set for  
25 July 30, 2018. Dkts. #1 and #35. On December 20, 2017, the Court granted a stipulated motion  
26 and continued trial until February 4, 2019. Dkt. #53. The deadlines for discovery were  
27 extended twice after that. Dkts. #64 and #77.  
28

ORDER GRANTING MOTION FOR RELIEF FROM EXPERT DISCLOSURE DEADLINE -

1 Defendant Berkley is represented by local counsel and “lead counsel” appearing pro hac  
2 vice. Berkley states that its lead counsel from the firm Mound Cotton Wollan Greengrass  
3 “recently... identified the need to withdraw from this case based on a conflict.” Dkt. #91 at 2.  
4 Berkley quickly retained new counsel from the firm Coughlin Duffy LLP and requests this  
5 continuance so that Coughlin Duffy can “get up to speed in this case and prepare for remaining  
6 discovery, dispositive motions, further settlement negotiations, and trial.” *Id.*  
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8 The decision to modify a scheduling order is within the broad discretion of the district  
9 court. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992). For good  
10 cause shown, the Court may grant a request to modify or enlarge the deadlines in a Case  
11 Scheduling Order. Fed. R. Civ. P. 16(b)(4). This “good cause” standard “primarily considers  
12 the diligence of the party seeking the amendment,” though the court may also take into account  
13 “the existence or degree of prejudice to the party opposing the modification.” *Johnson*, 975  
14 F.2d at 609. Mere “carelessness is not compatible with a finding of diligence.” *Id.* The Court  
15 should also consider *inter alia*, the need for a continuance, the inconvenience to the witnesses  
16 and the Court, and the hardship a denial of a continuance would cause the moving party. *See*  
17 *United States v. 2.61 Acres of Land*, 791 F.2d 666, 670–71 (9th Cir. 1986).  
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20 Plaintiff National Frozen Food Corporation (“NFF”) argues that Mound Cotton Wollan  
21 Greengrass’s failure to detect a conflict was “carelessness” and that Berkley has failed to  
22 demonstrate it acted with diligence. Dkt. #101 at 4. NFF argues that Berkeley is replacing only  
23 half of its legal team, as it has continued to have the same local counsel, and argues that  
24 Berkley’s basis for this motion relies only on the “generic and generalized” statement of the  
25 new counsel needing to “get up to speed.” *Id.* at 5–6. NFF also argues that trial was five  
26 months away at the time of the Motion and thus there is no significant hardship to prepare for  
27 trial. *Id.* at 6. NFF argues it will suffer prejudice if a continuance is granted. *Id.*  
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1 On Reply, Berkley argues that “NFF has cited no case law or provided any persuasive  
2 reasoning for imputing former counsel’s conduct to more swiftly identify the conflict to  
3 Berkley,” and that “NFF simply cannot argue, as it must, that Berkley did not act diligently in  
4 replacing Mound Cotton with Coughlin Duffy and for moving for a continuance.” Dkt. #106 at  
5 2. Berkley argues that it will suffer a hardship if this Motion is not granted because it will  
6 “potentially be[] deprived of the right to mount an adequate defense after the firm most familiar  
7 with the matter and prepared to try the case withdrew through no fault of Berkley’s.” *Id.* at 3.  
8 Berkley discusses the looming pretrial deadlines.  
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10 The Court is not convinced by the record that Berkley or its counsel acted with sufficient  
11 diligence in identifying the conflict necessitating the requested relief. Furthermore, Berkley’s  
12 arguments for need and hardship are too generalized, and fail to account for the role of local  
13 counsel. As in any case, local counsel is required to be ready to handle the matter in the event  
14 pro hac vice counsel is unable to be present. *See* LCR 83.1(d)(2). The Court finds no good  
15 cause for yet another continuance of the trial date and pretrial deadlines.  
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18 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
19 finds and ORDERS that Defendant Berkley’s Motion to Continue Trial Date and Amend Case  
20 Schedule, Dkt. #91, is DENIED. The Deadline to Exchange Expert Reports is now set for the  
21 day after this Order is entered. *See* Dkt. #107.  
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23 DATED this 17 day of October, 2018.

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25 RICARDO S. MARTINEZ  
26 CHIEF UNITED STATES DISTRICT JUDGE  
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