

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Brum v. MarketSource, Inc.

Brum · No. 2:17-cv-00241-DAD-JDP · Decided December 5, 2025

SUMMARY

The United States District Court for the Eastern District of California granted plaintiffs’ ex parte application to continue deadlines in a putative class action. The court found excusable neglect and good cause to modify the scheduling order, resetting the final pretrial conference to April 13, 2026, and the jury trial to June 16, 2026.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dale A. Drozd
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 5, 2025
DOCKET	2:17-cv-00241-DAD-JDP
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs filed an ex parte application to continue the final pretrial conference and jury trial because their renewed motion for class certification remained pending. The court granted the application and amended the scheduling order.
STANDARD OF REVIEW	A district court's decision to modify a scheduling order is reviewed under the good-cause standard of Federal Rule of Civil Procedure 16(b)(4), with the inquiry focused primarily on the diligence of the party seeking modification. Ex parte relief requires irreparable prejudice absent immediate relief and lack of fault or excusable neglect in creating the need for emergency relief.
PRECEDENTIAL VALUE	Unknown
PARTIES	Jennifer Brum, et al. v. MarketSource, Inc., et al.

TOPICS

- motion to amend
- class actions
- civil procedure

PRACTICE AREAS

civil procedure

class action litigation

commercial litigation

QUESTIONS PRESENTED

1. Whether plaintiffs satisfied the requirements for ex parte relief by showing irreparable prejudice and excusable neglect.
2. Whether plaintiffs demonstrated good cause and sufficient diligence under Federal Rule of Civil Procedure 16(b)(4) to modify the scheduling order.
3. Whether the final pretrial conference and jury trial should be continued until after resolution of the pending renewed motion for class certification.

HOLDINGS

1. Plaintiffs were entitled to ex parte relief because proceeding with the final pretrial conference before resolution of the pending class-certification motion would irreparably prejudice them, and their delay in seeking modification constituted excusable neglect.
2. Plaintiffs demonstrated good cause and sufficient diligence to modify the scheduling order under Federal Rule of Civil Procedure 16(b)(4).

KEY QUOTATIONS

“Rule 16(b)’s “good cause” standard primarily considers the diligence of the party seeking the amendment. The district court may modify the pretrial schedule if it cannot reasonably be met despite the diligence of the party seeking the extension.” (at 2)

FACTUAL BACKGROUND

Plaintiffs had a renewed motion for class certification pending when the final pretrial conference and jury trial dates approached. The pretrial conference was scheduled before the court was expected to resolve the class-certification motion, which plaintiffs argued would improperly limit the scope of trial preparation and the eventual trial. Plaintiffs had not filed a properly noticed motion to modify the scheduling order when they filed the renewed class-certification motion, but the court found no indication of bad faith or prejudice to defendant from continuing the dates.

PROCEDURAL HISTORY

The final pretrial conference was set for December 8, 2025, and trial was set for February 9, 2026. Plaintiffs filed a renewed motion for class certification on June 30, 2025, and later sought ex parte relief to continue the deadlines because the motion had not been resolved. Defendant opposed the application, arguing that plaintiffs caused the emergency and had not shown good cause or diligence. The court found excusable neglect, sufficient diligence, irreparable prejudice, and good cause, and reset the pretrial conference and trial dates.

DISPOSITION

other

CASES CITED

- Jenkins v. City of Los Angeles, No. 2:24-cv-01056-MWC-AJR, 2025 WL 2019789, at *1 (C.D. Cal. Jan. 6, 2025)
- Pioneer Investment Services Company v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 395 (1993)
- Iopa v. Saltchuk-Young Bros., Ltd., 916 F.3d 1298, 1301 (9th Cir. 2019)
- FMC Corp. v. Vendo Co., 196 F. Supp. 2d 1023, 1030 (E.D. Cal. 2002)
- Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002)
- Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 608-609 (9th Cir. 1992)

OPINION

Brum

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 JENNIFER BRUM, et al., No. 2:17-cv-00241-DAD-JDP 12 Plaintiffs,

13 v. ORDER GRANTING PLAINTIFFS' EX

PARTE APPLICATION TO CONTINUE

14 MARKETSOURCE, INC., et al., DEADLINES

15 Defendants. (Doc. No. 167) 16 17 On December 2, 2025, counsel for plaintiffs filed an ex parte
application to continue the 18 dates for the final pretrial conference currently set for December 8,
2025 and jury trial currently 19 set for February 9, 2026 in this action in light of plaintiffs' pending
renewed motion to certify 20 class. (Doc. Nos. 147, 167.) On December 2, 2025, defendant
MarketSource, Inc. filed its 21 opposition to the ex parte application, arguing that plaintiffs have
failed to show that the granting 22 of the requested relief is warranted in this case and that there is
no good cause to continue the 23 trial. (Doc. No. 168.) 24 "In order to justify ex parte relief, the
moving party must establish (1) that its cause will 25 be irreparably prejudiced if the underlying
motion is heard according to regular noticed 26 procedures; and (2) that it is without fault in
creating the crisis that requires ex parte relief, or that 27 the crisis occurred as a result of excusable
neglect." Jenkins v. City of Los Angeles, No. 2:24-cv- 28 01056-MWC-AJR, 2025 WL 2019789,
at *1 (C.D. Cal. Jan. 6, 2025). "In determining whether 1 circumstances constitute excusable
neglect, the Supreme Court set forth the following four-factor 2 test in Pioneer Investment
Services Company v. Brunswick Associates Ltd. Partnership[, 507 U.S. 3 380, 395 (1993)]: 'the
danger of prejudice to the debtor, the length of the delay and its potential 4 impact on judicial
proceedings, the reason for the delay, including whether it was within the 5 reasonable control of

the movant, and whether the movant acted in good faith.” *Iopa v. 6 Saltchuk-Young Bros., Ltd.*, 916 F.3d 1298, 1301 (9th Cir. 2019). 7 Plaintiffs argue that they will be irreparably prejudiced because holding a final pretrial 8 conference prior to the resolution of their pending motion for class certification will improperly 9 limit the scope of the trial in this action. (Doc. No. 167 at 10.) Defendant argues that plaintiffs 10 have created this emergency by failing to file a properly noticed motion to modify the scheduling 11 order when they filed their renewed motion for class certification on June 30, 2025, the final day 12 for doing so. (Doc. No. 168 at 5–7.) Defendant contends that ex parte relief is therefore not now 13 warranted. (Id.) 14 There can be no dispute that plaintiffs will be prejudiced if the final pretrial conference 15 proceeds prior to the court’s ruling on the pending motion for class certification. The court does 16 find that plaintiffs’ failure to file a properly-noticed motion to amend the scheduling order when 17 they filed their renewed motion for class certification has certainly contributed to the need for 18 emergency relief now. By the same token, the court itself is at least to some degree responsible 19 for not recognizing that the pending motion would not be ruled upon in time to proceed as 20 scheduled and in failing to continue the scheduled final pretrial conference and trial dates on its 21 own motion. Moreover, there is nothing before the court to suggest that defendant would be 22 prejudiced by this delay or that plaintiffs acted in bad faith by waiting to see if the court had 23 issued a ruling on their pending motion for class certification prior to the date set for the final 24 pretrial conference. In light of this, although plaintiffs’ delay in filing the motion has created the 25 crisis, the court finds that this delay was a result of excusable neglect. 26 Defendant next argues that plaintiffs have not established good cause to amend the 27 scheduling order. (Doc. No. 168 at 7.) Specifically, defendant contends that plaintiffs have failed 28 to show their diligence in seeking modification of the scheduling order, noting that plaintiffs have 1 been informed multiple times of the well-known heavy caseload of the Eastern District of 2 California. (Id.) “The decision to modify a scheduling order is within the broad discretion of the 3 district court.” *FMC Corp. v. Vendo Co.*, 196 F. Supp. 2d 1023, 1030 (E.D. Cal. 2002). Pursuant 4 to Rule 16 of the Federal Rules of Civil Procedure, a case “schedule may be modified only for 5 good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Thus, when a party seeks to 6 modify the scheduling order, that party must first show “good cause.” See *Zivkovic v. S. Cal. 7 Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002); *Johnson v. Mammoth Recreations, Inc.*, 975 8 F.2d 604, 608 (9th Cir. 1992). In *Johnson*, the Ninth Circuit explained that

9 Rule 16(b)’s “good cause” standard primarily considers the diligence of the party seeking the amendment. The district court may modify 10 the pretrial schedule if it cannot reasonably be met despite the diligence of the party seeking the extension. Moreover, carelessness 11 is not compatible with a finding of diligence and offers no reason for a grant of relief. Although existence of a degree of prejudice to the 12 party opposing the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party’s 13 reasons for modification. If that party was not diligent, the inquiry should end. 14 15 975 F.2d at

609 (internal quotation marks and citations omitted); see also 6A Wright & Miller, et al., Fed. Prac. & Proc. § 1522.2 (3d ed. 2018) (“What constitutes good cause sufficient to justify the modification of a scheduling order necessarily varies with the circumstances of each case.”). The court concludes for the same reasons that it has found that plaintiffs’ delay was a result of excusable neglect, that plaintiffs have shown sufficient diligence in moving to modify the scheduling order at this late date. The court also concludes that, because plaintiffs have shown they would be irreparably prejudiced by the court conducting a final pretrial conference in this action prior to the resolution of their pending motion for class certification, there exists good cause to amend the scheduling order. For the reasons above, 1. Plaintiffs’ ex parte application to continue deadlines (Doc. No. 167) is GRANTED; 2. The final pretrial conference currently set for December 8, 2025 is hereby RESET for April 13, 2026 at 1:30 PM before District Judge Dale A. Drozd by Zoom; and 3. The jury trial currently set for February 9, 2026 is hereby RESET for June 16, 2026 at 9:00 AM before District Judge Dale A. Drozd in Courtroom 4. IT IS SO ORDERED. * | Dated: _ December 4, 2025 Dab A. 2, sxe

5 DALE A. DROZD

‘ UNITED STATES DISTRICT JUDGE

8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 ' Tf these new dates are unavailable to counsel, the court would encourage counsel to meet and confer after consulting with Courtroom Deputy Pete Buzo regarding the court’s calendar and to submit a stipulation and order reflecting dates available to both counsel and the court.