

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

OPINION

Brum

PER CURIAM.

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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 order when they filed their renewed motion for class certification on June 30, 2025, the final day for doing so. (Doc. No. 168 at 5–7.) Defendant contends that *ex parte* relief is therefore not now warranted. (Id.) There can be no dispute that plaintiffs will be prejudiced if the final pretrial conference proceeds prior to the court’s ruling on the pending motion for class certification. The court does find that plaintiffs’ failure to file a properly-noticed motion to amend the scheduling order when they filed their renewed motion for class certification has certainly contributed to the need for emergency relief now. By the same token, the court itself is at least to some degree responsible for not recognizing that the pending motion would not be ruled upon in time to proceed as scheduled and in failing to continue the scheduled final pretrial conference and trial dates on its own motion. Moreover, there is nothing before the court to suggest that defendant would be prejudiced by this delay or that plaintiffs acted in bad faith by waiting to see if the court had issued a ruling on their pending motion for class certification prior to the date set for the final pretrial conference. In light of this, although plaintiffs’ delay in filing the motion has created the crisis, the court finds that this delay was a result of excusable neglect. Defendant next argues that plaintiffs have not established good cause to amend the scheduling order. (Doc. No. 168 at 7.) Specifically, defendant contends that plaintiffs have failed to show their diligence in seeking modification of the scheduling order, noting that plaintiffs have been informed multiple times of the well-known heavy caseload of the Eastern District of California. (Id.) “The decision to modify a scheduling order is within the broad discretion of the district court.” *FMC Corp. v. Vendo Co.*, 196 F. Supp. 2d 1023, 1030 (E.D. Cal. 2002). Pursuant to Rule 16 of the Federal Rules of Civil Procedure, a case “schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Thus, when a party seeks to modify the scheduling order, that party must first show “good cause.” See *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). In *Johnson*, the Ninth Circuit explained that 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. Moreover, carelessness 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 party opposing the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party’s reasons for modification. If that party was not diligent, the inquiry should end. 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 21 shown they would be irreparably prejudiced by the court conducting a final pretrial conference in 22 this action prior to the resolution of their pending motion for class certification, there exists good 23 cause to amend the scheduling order. 24 For the reasons above, 25 1. Plaintiffs' ex parte application to continue deadlines (Doc. No. 167) is 26 GRANTED; 27 2. The final pretrial conference currently set for December 8, 2025 is hereby RESET 28 for April 13, 2026 at 1:30 PM before District Judge Dale A. Drozd by Zoom; and 1 3. The jury trial currently set for February 9, 2026 is hereby RESET for June 16, 2 2026 at 9:00 AM before District Judge Dale A. Drozd in Courtroom 4. 3 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 28 | submit a stipulation and order reflecting dates available to both counsel and the court.