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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CAT BROOKS and RASHEED SHABAZZ,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

THOMSON REUTERS CORPORATION,

Defendant.

Case No. 3:21-cv-1418-EMC-KAW

**PLAINTIFFS' RULE 16(B)(4) MOTION
TO MODIFY CASE SCHEDULE
(PURSUANT TO LOCAL RULE 6-3)**

Hon. Edward M. Chen

1 Plaintiffs respectfully move under Civil Local Rule 6-3 and Federal Rule of Civil Procedure 16(b)(4) to
2 modify the class certification briefing schedule so that Plaintiffs' opening brief is due December 22, 2022,
3 Thomson Reuters's opposition is due March 10, 2023, and Plaintiffs' reply is due May 8, 2023, and to set
4 concurrent deadlines for *Daubert* motions on class certification experts.

5 Introduction

6 Plaintiffs are diligently preparing for class certification motion practice; their opening brief is currently
7 due on November 9. Plaintiffs continue to review almost 71,000 documents containing over 400,000
8 pages—with more than 11,000 documents arriving in August 2022 alone and more expected in the coming
9 months, not to mention three reports of Defendant 'Thomson Reuters Corporation' class certification
10 rebuttal experts totaling 275 pages. Plaintiffs are on track to complete depositions of 'Thomson Reuters'
11 three experts by October 11, only a month after receiving their reports. At the same time, the parties
12 prepared for and completed a Court-ordered mediation session on October 5. But despite Plaintiffs' best
13 efforts, a modest extension is needed to adequately prepare class-certification-related filings.

14 Plaintiffs seek to extend the class certification briefing schedule and set deadlines for any *Daubert*
15 motions related to class certification experts. The existing schedule fails to address the timing of any
16 *Daubert* motions related to class certification experts. Because *Daubert* briefing (for class certification
17 experts) must be considered with the parties' class certification briefing, the schedule should allow
18 sufficient time to prepare simultaneous briefing. Plaintiffs propose adjusting the schedule to add time for
19 Plaintiffs to amend their complaint and prepare up to four motions—a motion for class certification and
20 any *Daubert* motions regarding 'Thomson Reuters' three experts—and to prepare corresponding reply
21 briefs. The schedule details are set forth in Plaintiffs' Proposed Order.

22 'Thomson Reuters refuses to agree to any adjustment of class certification deadlines, including
23 Plaintiffs' fast-approaching November 9 deadline, and proposes instead to set a new schedule for *Daubert*
24 motions in 2023. Thomson Reuters's proposal is inefficient, but more importantly it ignores that Plaintiffs
25 must necessarily consider 'Thomson Reuters's class certification experts' opinions in preparing their class
26 certification briefing. Given the complexity and breadth of class certification issues that 'Thomson Reuters's
27 experts have raised in their voluminous reports, additional time is needed to develop and incorporate
28 *Daubert* lines of attack *before* the class certification motion is filed, whether the deadlines to formally file the

1 *Daubert* motions are simultaneous (as Plaintiffs request) or staggered (as Thomson Reuters proposes).

2 If, however, the Court were to adopt Thomson Reuters's proposal as it relates to the timing of *Daubert*
 3 briefing, it should still extend the deadlines for Plaintiffs' class certification briefing and amendments to
 4 their complaint. Given Plaintiffs' diligence and competing case deadlines, an extension should be granted.
 5 Moreover, a modest extension such as this will not delay the resolution of this case, nor will it increase
 6 costs or lead to inefficiencies. If anything, without an extension, Plaintiffs may be substantially prejudiced
 7 in their ability to prepare their class certification briefing along with *Daubert* briefing.

8 **Argument**

9 Rule 16(b)(4) provides that "[a] schedule may be modified only for good cause and with the judge's
 10 consent." "Good cause" exists when a deadline "cannot reasonably be met despite the diligence of the
 11 party seeking the extension." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). The
 12 primary focus of the "good cause" inquiry, then, is on the diligence of the moving party. *See id.*; *Lyon v. U.S.*
 13 *Immigr. & Customs Enft.*, 308 F.R.D. 203, 216 (N.D. Cal. 2015). Courts may also consider "whether the non-
 14 moving party would be prejudiced[.]" *Ries v. Arizona Beverages USA LLC*, 2013 WL 12172652, at *2-3 (N.D.
 15 Cal. Feb. 5, 2013). Under Local Rule 6-3(a), the Court may enlarge or shorten time once a party shows a
 16 particularized need and "identifies the substantial harm or prejudice that would occur absent the Court's
 17 extension." Once such a showing is made, "requests for extensions of time made before the applicable
 18 deadline has passed should normally . . . be granted in the absence of bad faith or prejudice to the adverse
 19 party." *Abanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (cleaned up). Here, there is good
 20 cause to modify the schedule because, despite Plaintiffs' diligence, Plaintiffs will be substantially prejudiced
 21 absent the requested extension, and that extension will not prejudice Thomson Reuters, particularly as the
 22 close of fact discovery will remain the same.

23 After conferring, the parties cannot agree on an extension to the briefing schedule. Plaintiffs propose a
 24 modest extension to the current class certification briefing schedule to provide adequate time to prepare
 25 this complex briefing and to file *Daubert* motions simultaneously with their motion for class certification.
 26 Thomson Reuters, for its part, refuses to extend Plaintiffs' deadlines to move for class certification and
 27 amend the pleadings, and instead proposes a *Daubert* schedule in 2023. *See* Declaration of Andre Mura at ¶
 28 8. As discussed below, Plaintiffs' requested extension avoids substantially prejudicing Plaintiffs and would

not prejudice Thomson Reuters. Importantly, Plaintiffs *do not* propose extending deadlines for the close of fact discovery.

I. Good cause exists to set *Daubert* briefing and extend class certification deadlines

Plaintiffs have diligently prosecuted this case and prepared for class certification, a fact Thomson Reuters does not contest. *See* Mura Dec. at ¶ 8. Plaintiffs have served six sets of requests for production of documents, three sets of interrogatories, and one set of requests for admission, and negotiating multiple additional custodians and further substantial productions. Throughout discovery, Plaintiffs have spent hours in conferences with Thomson Reuters' counsel, and have escalated disputes to the Court (one of which remains pending). *See* ECF Nos. 81, 82, 95, 109. To date, Plaintiffs have deposed three Thomson Reuters employees and produced two expert reports supporting class certification.

Plaintiffs also navigated especially demanding discovery obligations in the past month. In September, Thomson Reuters served three rebuttal expert reports totaling 275 pages, replete with complex analyses. Plaintiffs deposed two of these experts on September 28 and October 6, and will take the third on October 11. In that same timeframe, the parties also mediated this case on October 5.

Despite their diligence, Plaintiffs will be substantially prejudiced if the Court does not grant the requested extension. One week after the Court entered the operative case schedule, *see* ECF No. 84, the Ninth Circuit issued its en banc ruling in *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, indicating that district courts may consider challenges to the reliability of expert evidence at the class certification stage under *Daubert*. *See* 31 F.4th 651, 665 n.7 (9th Cir. 2022). The operative schedule does not account for *Daubert* briefing, and without Plaintiffs' requested modification to account for that briefing, Plaintiffs must prepare their motion for class certification while evaluating three potential *Daubert* challenges; indeed, Plaintiffs will need to do much of that work before filing the class certification motion, even if the deadlines for *Daubert* come later. Thomson Reuters's three rebuttal expert reports raise new issues and arguments regarding why a class should not be certified that Plaintiffs must anticipate in crafting their motion for class certification. The requested extension allows Plaintiffs to prepare without any postponement of fact discovery.

Apart from the need to brief *Daubert* challenges, counsels' complex schedules over the next two months independently warrant an extension, particularly considering unforeseen developments in other

cases. Gibbs Law Group attorneys Andre Mura and Amy Zeman are also counsel for multiple plaintiffs in *In re 3M Products Liability Litigation*, MDL No. 2885, which recently resumed after a pause for bankruptcy proceedings. Mura and Zeman now face competing deadlines in November for choice of law, *Daubert*, and summary judgment in six separate cases that will be remanded for trial. In addition, Jennifer Bennett of Gupta Wessler has multiple significant briefing deadlines and oral arguments that were recently scheduled for October and November, which will make it difficult to assist in briefing without an extension. *See* Declaration of Jennifer Bennett. These external pressures warrant an extension to prevent prejudice at the critical point of Plaintiffs' case. "[T]he certification decision is typically a game-changer, often the whole ballgame, for plaintiffs and plaintiffs' counsel." *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 591 (3d Cir. 2012). And expert testimony is "an important part of the class certification submission" for both parties. 1 McLaughlin on Class Actions § 3:14 (18th ed., 2021). Naturally, courts prefer to consider *Daubert* and class 2 certification briefing together, and often enter schedules to that effect. *See, e.g., Cholakyan v. Mercedes-Benz, USA, LLC*, 281 F.R.D. 534, 541–42 (C.D. Cal. 2012) (explaining courts must consider *Daubert* challenges 3 before resolving the merits of class cert); *see also In re EpiPen Mktg., Sales Practices and Antitrust Litig.*, 2019 4 WL 1569294, at *4 (D. Kan. Apr. 11, 2019) (modifying class cert briefing schedule to account for *Daubert* 5 challenges integral to class certification).

In sum, Plaintiffs will suffer "substantial harm or prejudice" if the Court does not grant the requested case schedule modification. Civil Local Rule 6-3(a)(3). Accordingly, Plaintiffs respectfully submit that there is good cause for modifying the case schedule, and considering their diligence and the lack of prejudice to Defendant, ask the Court to grant Plaintiffs' request. *See Abanchian*, 624 F.3d at 1259.

II. Plaintiffs' requested modification does not prejudice Thomson Reuters

Thomson Reuters would not agree to extend the class certification deadlines. Mura Decl. ¶ 8. The parties twice stipulated to extensions earlier in the case. *See* ECF Nos. 78 (60-day extension for lead trial counsel's selection for jury service), 84 (30-day extension to prepare for expert disclosures). As part of those courtesy extensions, which were not due to a lack of diligence, the parties stipulated neither party was prejudiced. *See* ECF Nos. 78 at 2, 84 at 2. But even considering prior extensions, recent developments establish good cause to grant this limited and reasonable request that will not prejudice either party.

Thomson Reuters fails to articulate how it would be prejudiced in any way by the proposed

modification. Plaintiffs' requested extension will not change the close of fact discovery. *See* ECF No. 84. And no Thomson Reuters expert or employee will face any additional obligations. The only effect of Plaintiffs' request will be to provide an extension for *all* briefing deadlines related to the motion for class certification—including Thomson Reuters' opposition brief—so the parties can submit *Daubert* briefing alongside their class certification briefs. Thomson Reuters will still have more than two months to prepare its opposition brief. *See id.* This two-month period is more than sufficient for Thomson Reuters to prepare its opposition, and similarly gives it additional time to prepare any *Daubert* challenges, which it agrees must be completed with class certification briefing. *See* Mura Decl. at ¶ 8.

Thomson Reuters instead offered only a schedule for *Daubert* briefing in 2023. *See id.* That proposal offers no extension for class certification briefing deadlines, and thus does not account for the concerns Plaintiffs identify above and should be rejected. If the Court does adopt Thomson Reuters' proposed *Daubert* schedule, Plaintiffs ask that the Court still extend the deadlines for Plaintiffs' motion for class certification briefing and amended pleadings. Without that extension, Plaintiffs would have to fully brief both their and Thomson Reuters's *Daubert* challenges during the same two months Plaintiffs are preparing their reply in support of class certification. Extending class certification briefing, including adding 15 days for a reply brief, will not materially impede the ultimate disposition of the case and limits Plaintiffs' prejudice. And, because Thomson Reuters removed this case from state court, the operative complaint addresses only California procedural standards. *See* ECF No. 1. It makes sense to have one deadline to address Rule 23 concerns, in both Plaintiffs' motion for class certification and first amended complaint.

For these reasons, Plaintiffs respectfully request the Court modify the case schedule to set deadlines for the parties' respective *Daubert* briefing, to tie those deadlines to the class certification briefing schedule, and to permit sufficient time for the parties to prepare those motions. In the alternative, Plaintiffs request a 43-day extension of their deadline to move for class certification and to amend the pleadings.

Dated: October 7, 2022

Respectfully submitted,

By: /s/ Andre M. Mura

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