

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

UNILOC USA, INC., and UNILOC  
LUXEMBOURG, S.A.,

Plaintiffs,

v.

BIG FISH GAMES, INC.

Defendant.

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**CIVIL ACTION NO. 2:16-CV-00741-RWS  
(LEAD CASE)**

**CIVIL ACTION NO. 2:16-CV-00858-RWS**

**ORDER**

Before the Court is Defendant Big Fish Games, Inc.’s Opposed Motion to Amend Docket Control Order (Docket No. 372). Big Fish requests a six-week extension of the expert discovery deadline, currently slated for May 6, 2020; a three-week extension of the dispositive and *Daubert* motion deadline, currently set for June 4, 2020; and a two-week extension of the dispositive and *Daubert* motion hearing date, currently scheduled for August 4, 2020. *See* Docket No. 372 at 2–3. For the reasons set forth below, the motion is **GRANTED-IN-PART** and **DENIED-IN-PART**.

The Federal Rules of Civil Procedure provide that a scheduling order “may be modified only for good cause and with the judge’s consent.” FED. R. CIV. P. 16(b)(4). “The good cause standard requires the party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.” *S&W Enters., L.L.C. v. SouthTrust Bank of Ala.*, 315 F.3d 533, 535 (5th Cir. 2003) (quotation and citation omitted). Trial courts have broad discretion to allow scheduling order modifications and should consider four elements when determining whether to allow a modification: (1) the explanation for the failure to meet the deadline; (2) the importance of the thing that would be excluded; (3) potential prejudice in allowing

the thing that would be excluded; and (4) the availability of a continuance to cure such prejudice. *Id.* at 535–36.

Big Fish contends that its requested extension is necessary because it cannot prepare for and complete all necessary expert witness depositions by May 6 due to the COVID-19 pandemic. *Id.* at 1–2. Big Fish’s litigation counsel and experts are all located in cities subject to stay-at-home orders.<sup>1</sup> *Id.* at 2. Big Fish submits that conducting the depositions remotely is impractical without accommodations and additional time to prepare. *Id.* at 3. Big Fish further alleges that office closures make document retrieval and preparation impractical and that school cancellations have impacted attorneys’ ability to prepare for and conduct depositions. *Id.*

Uniloc opposes Big Fish’s request. Docket No. 374. It notes that this Court already extended deadlines, at Big Fish’s request, by three months. *Id.* at 1–2; *see also* Docket Nos. 369, 370. Uniloc points out that Big Fish’s motion implies that, in the 10 weeks since the Court entered the new DCO, Big Fish has done nothing to prepare for the necessary expert depositions. *Id.* at 2. Big Fish does not explain its inaction, Uniloc contends, and instead offers only generalized arguments about COVID-19 that do not establish good cause. *Id.* Uniloc contends that it offered to conduct all required depositions remotely, but Big Fish declined. *Id.* Uniloc submits that the Court should not reward Big Fish for its last-minute-extension-request strategy. *Id.* at 2–3.

Big Fish has not demonstrated good cause for its requested extension because its motion lacks specificity. The country is undoubtedly in the throes of a public health crisis. But Big Fish’s request does not explain how the crisis has affected its deposition preparations or why it has encountered difficulty in complying with current deadlines. Motions such as these require

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<sup>1</sup> Some of Big Fish’s counsel are in Houston, where the stay-at-home order expires and certain state-wide restrictions will be lifted on May 1. *See* <https://www.readyharris.org/stay-home> (extending Harris County stay-at-home order through April 30).

something more than Big Fish's generalized concerns about COVID-19 to establish good cause. *See, e.g., Velicer v. Falconhead Capital LLC*, No. C19-1505 JLR, 2020 WL 1847773, at \*2 (W.D. Wash. Apr. 13, 2020) (denying requested extension for lack of specificity). Big Fish does not explain why conducting the depositions remotely is impractical or what accommodations are necessary. Likewise, Big Fish does not represent that the documents necessary to each deposition are locked in closed offices or otherwise inaccessible. The motion does not include a single affidavit or declaration detailing specific hardships, nor does it explain Big Fish's efforts to prepare for or conduct the depositions. In short, Big Fish's motion does not provide any specific reason why it cannot conduct remote depositions or why it could not have begun preparing for them earlier.

Nonetheless, in view of the approaching May 6 deadline for expert discovery and Big Fish's failure to timely file its motion, a brief extension is necessary. Accordingly, it is

**ORDERED** that Big Fish's motion to amend the DCO (Docket No. 372) is **GRANTED-IN-PART** and **DENIED-IN-PART**. The expert discovery deadline shall be extended three weeks from May 6 to **May 27, 2020**. The motion is denied in all other respects.

**So ORDERED and SIGNED this 30th day of April, 2020.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE