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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN EDWARDS,

Plaintiff,

v.

CORECIVIC OF TENNESSEE, LLC, et
al.,

Defendants.

Case No.: 21cv878-H(RBB)

**ORDER DENYING PLAINTIFF’S
MOTION TO CONTINUE FACT
DISCOVERY AND WRITTEN
DISCOVERY [ECF NO. 24]**

On April 14, 2022, Plaintiff John Edwards filed a Motion to Continue Fact Discovery and Written Discovery [ECF No. 24]. Defendants CoreCivic of Tennessee, LLC; Corecivic, LLC; and CoreCivic, Inc. (collectively “CoreCivic”) filed an opposition on April 28, 2022 [ECF No. 27]. Plaintiff filed a reply on May 5, 2022 [ECF No. 28]. For the reasons discussed below, Plaintiff’s motion is **DENIED**.

I. BACKGROUND

This action arises out of Plaintiff’s employment with CoreCivic as a program facilitator at one of its private prison facilities in San Diego. (Compl. 3, ECF No. 1.) Plaintiff’s job duties included planning and implementing workshops and classroom activities to prepare inmates for civilian life after incarceration. (*Id.* at 4.) During his employment, Edwards took medical leave pursuant to the Family Medical Leave Act

1 (“FMLA”) and non-FMLA leave due to severe anxiety and depression. (Id. at 4-6.)
2 Shortly before the expiration of his non-FMLA leave, Plaintiff submitted a request for
3 reasonable accommodation to Defendants, in which he asked, at the recommendation of
4 his doctor, that he not be required to teach classes “in which the resident-inmates
5 discussed their experiences with anger, depression, domestic violence, childhood trauma,
6 and other topics that were likely to precipitate Plaintiff’s own anxiety, depression, and
7 suicidal thoughts.” (Id. at 6.) According to Edwards, CoreCivic failed to engage in the
8 interactive process required by the Federal Employment and Housing Act (“FEHA”) and
9 denied his request for accommodation. (Id. at 6-7.) CoreCivic terminated Plaintiff’s
10 employment on January 6, 2020. (Id. at 7.) Plaintiff alleges that Defendants
11 discriminated and retaliated against him because of his disability, medical condition, and
12 exercise of his rights under the FMLA, FEHA, and California Family Rights Act. (Id.)

13 The Court issued a Scheduling Order Regulating Discovery and Other Pretrial
14 Proceedings (hereafter “scheduling order”) on July 29, 2021 [ECF No. 12]. The
15 scheduling order set a fact discovery deadline of January 28, 2022, and required written
16 discovery, including interrogatories, requests for admission, and document production
17 requests, to be served by November 26, 2021. (Scheduling Order 1-2, July 29, 2021,
18 ECF No. 12.) On September 22, 2021, two months after the issuance of the scheduling
19 order, Defendants filed a Motion to Disqualify Plaintiff’s Counsel and Request for
20 Monetary Sanctions [ECF No. 13]. The motion to disqualify was denied by this Court on
21 November 15, 2021 [ECF No. 17].

22 Nearly two months later, on January 7, 2022, the parties filed a Joint Motion to
23 Continue Fact and Expert Discovery Cut-off and Mandatory Settlement Conference [ECF
24 No. 20] (hereafter “first joint motion”). The parties requested a continuance of the fact
25 discovery deadline from January 28, 2022, to March 31, 2022. (Joint Mot. 2, ECF No.
26 20.) They also sought continuances of expert discovery deadlines, the pretrial motion
27 filing deadline, and a mandatory settlement conference. (Id.) The parties contended that
28 good cause existed for a continuance because they felt unable to conduct discovery for

1 two months due to the pendency of Defendants’ motion to disqualify. (Id. at 2-3.) They
2 also indicated that they had already propounded initial written discovery. (Id. at 3.) The
3 Court granted the joint motion in part on January 11, 2022. (Order 1, Jan. 11, 2022, ECF
4 No. 21.) The fact discovery deadline was continued to March 31, 2022, as the parties had
5 requested. (Id. at 2.) Because the parties did not seek a continuance of the written
6 discovery cutoff and had represented that initial written discovery had already been
7 propounded, the order reflected “No change” to the November 26, 2021 written discovery
8 cutoff. (Id.)

9 The next filing with the Court was made on February 23, 2022, in the form of a
10 Joint Motion to Continue Fact Discovery, Expert Discovery, Mandatory Settlement
11 Conference, Motion Filing Cut-off, and Related Deadlines [ECF No. 22] (hereafter
12 “second joint motion”). The parties referred to a “mutual inability to conduct discovery”
13 between Plaintiff’s reopening of a bankruptcy proceeding on January 13, 2022, and the
14 bankruptcy trustee’s decision to not pursue this action as property of the bankruptcy
15 estate on February 11, 2022. (Joint Mot. 2, ECF No. 22.) As relevant here, the parties
16 requested a continuance of the fact discovery cutoff from March 31, 2022, to May 12,
17 2022, and indicated that “No change” was needed to the November 26, 2021 deadline to
18 serve written discovery. (Id. at 3-4.) On March 3, 2022, the Court granted the joint
19 motion and issued a revised scheduling order, confirming the new fact discovery deadline
20 of May 12, 2022, and reflecting “No change” to the written discovery deadline of
21 November 26, 2021. (Order 2, Mar. 3, 2022, ECF No. 23.)

22 On March 2, 2022, Plaintiff served Interrogatories, Set One, upon Defendant
23 CoreCivic of Tennessee, LLC. (Defs.’ Opp’n Attach. #1 Gleason Decl. Ex. A, at 5-12
24 [interrogs.], ECF No. 27.) Edwards then propounded a Request for Production of
25 Documents, Set Two, on March 28, 2022. (Id. Ex. C, at 26-33 [reqs. for produc.].)¹

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28 ¹ Edwards had previously propounded a Request for Production of Documents, Set One, on this
defendant on October 7, 2021. (Pl.’s Supp. Ex. 4-17 [reqs. for produc.], ECF No. 32.)

1 Defendant served objections to the interrogatories and document requests on April 1,
2 2022, and April 27, 2022, respectively, in which it objected to each of the discovery
3 requests on the grounds that they were served beyond the November 26, 2021 deadline to
4 serve written discovery and thus were untimely and improper. (Id. Ex. B, at 14-24 [objs.
5 to interros.] & Ex. D, at 35-45 [objs. to reqs. for produc.])

6 In the motion presently before the Court, Plaintiff seeks a continuance of the
7 written and fact discovery cutoffs for a period of three months and an order requiring
8 Defendant CoreCivic of Tennessee, LLC to substantively respond to the above written
9 discovery. (Pl.'s Mot. 5, 9, ECF No. 24.) Defendants request that the Court deny the
10 motion in its entirety. (Defs.' Opp'n 11, ECF No. 27.)

11 II. LEGAL STANDARDS

12 The scheduling order issued by the court is required to limit the time to join other
13 parties, amend the pleadings, complete discovery, and file motions. Fed. R. Civ. P.
14 16(b)(3). The schedule may be modified only for good cause and with the judge's
15 consent. Id. R. 16(b)(4). The "good cause" standard under Rule 16(b) "primarily
16 considers the diligence of the party seeking the amendment." Johnson v. Mammoth
17 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992); see also Fed. R. Civ. P. 16 advisory
18 committee notes to 1983 Amendment ("[T]he court may modify the schedule on a
19 showing of good cause if it cannot reasonably be met despite the diligence of the party
20 seeking the extension."). This is unlike the liberal amendment policy of Federal Rule of
21 Civil Procedure 15(a), which governs amended and supplemental pleadings, and which
22 focuses on the bad faith of the party seeking amendment and the prejudice to the
23 opposing party. Johnson, 975 F.2d at 609. While the court may consider these factors,
24 "the focus of the inquiry is upon the moving party's reasons for seeking modification."
25 Id. "If that party was not diligent, the inquiry should end" and the motion to modify
26 should not be granted. Id.

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III. DISCUSSION

A. Plaintiff Has Not Acted with Diligence

1. Lack of diligence in reading court orders

The primary basis of Plaintiff's motion is his insistence that his counsel made a "simple clerical error" in overlooking that the parties' second joint motion to continue dates reflected that "no change" was needed to the written discovery deadline. (Pl.'s Mot. 3, ECF No. 24.) Edwards states that he "logically assumed" that the written discovery cutoff would be extended beyond November 26, 2021, along with the fact discovery cutoff. (Pl.'s Reply 4, ECF No. 28.) But contrary to Plaintiff's belief that the written discovery deadline was subsumed within the fact discovery cutoff, the Court's original scheduling order made it abundantly clear that the service of written discovery was governed by a separate deadline. (See Scheduling Order 1-2, July 29, 2021, ECF No. 12 (setting forth distinct deadlines in two separate paragraphs for completion of fact discovery and service of written discovery).) And notwithstanding Plaintiff's statement that he only overlooked the language maintaining the original written discovery deadline once, the Court's orders on both the parties' first joint motion and second joint motion reflected "No change" to the deadline to serve written discovery. (See Order 2, Jan. 11, 2022, ECF No. 21; Order 2, Mar. 3, 2022, ECF No. 23.) "A scheduling order 'is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril.'" Johnson, 975 F.2d at 610 (quoting Gestetner Corp. v. Case Equip. Co., 108 F.R.D. 138, 141 (D. Maine 1985)). While Plaintiff claims that he was not aware that the written discovery deadline "was even plausibly at issue" until Defendant served objections to his interrogatories on April 1, 2022, (see Pl.'s Reply 4, ECF No. 28), even cursory reviews of the Court's January 11, 2022, and March 3, 2022 orders would have led Edwards to recognize that the written discovery deadline remained November 26, 2021. His failure to make this realization upon review of two separate court orders, as well as the parties' own second joint motion, reflects not merely a simple clerical error but a lack of diligence.

1 **2. Lack of diligence in serving foundational written discovery**

2 A party seeking to modify a scheduling order must demonstrate good cause, which
3 "primarily considers the diligence of the party seeking the amendment." Johnson, 975
4 F.2d at 609; see also Fed. R. Civ. P. 16(b)(4). Edwards has failed to show that he acted
5 with diligence in serving foundational written discovery of an appropriate scope in a
6 timely manner. First, there is no reason that Plaintiff could not have served foundational
7 written discovery before the November 26, 2021 deadline. Despite his belief that he was
8 "de facto prohibited from conducting any discovery" during the pendency of Defendant's
9 motion to disqualify, (see Pl.'s Mot. 2, ECF No. 24), he points to nothing in the record
10 nor any case authority substantiating his position. The Federal Rules of Civil Procedure
11 do not provide for automatic or blanket stays of discovery even when a potentially
12 dispositive motion is pending, let alone a motion to disqualify counsel. See, e.g.,
13 Skellerup Indus. Ltd. v. City of Los Angeles, 163 F.R.D. 598, 600-01 (C.D. Cal. 1995)
14 ("Had the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. P.
15 12(b)(6) would stay discovery, the Rules would contain a provision for that effect.");
16 Turner Broad. Sys., Inc. v. Tracinda Corp., 175 F.R.D. 554, 556 (D. Nev. 1997) (stating
17 that a pending dispositive motion is "not ordinarily a situation that in and of itself would
18 warrant a stay of discovery"). Additionally, other courts have found no "per se rule that a
19 pending motion for disqualification warrants a general stay of all proceedings." See
20 Allstate Ins. Co. v. Belsky, Case No. 2:15-cv-02265-MMD-CWH, 2017 WL 9434415, at
21 *1. The prudent course would have been to seek an order staying discovery or
22 clarification from the Court regarding the status of discovery. See, e.g., IPVX Patent
23 Holdings, Inc. v. 8X8, Inc., Case No. C 13-01707 SBA, 2013 WL 6000590, at *2 (Nov.
24 12, 2013) (case with pending motion to disqualify not stayed until the defendant filed
25 motion to clarify the court's directive regarding discovery). In this case, neither party
26 sought a stay on discovery or of any other dates contained in the scheduling order, and
27 the Court did not enter a stay. Edwards's position that discovery was stayed is erroneous;
28 thus, there is no reason that Plaintiff could not have served foundational written discovery

1 before November 26, 2021, including while Defendants’ motion to disqualify was
2 pending. Furthermore, to the extent that Defendants’ motion to disqualify or the
3 reopening of Plaintiff’s bankruptcy proceeding delayed the case from progressing, the
4 Court’s orders on the parties’ first and second joint motions addressed those delays.

5 Second, the interrogatories and document requests belatedly served by Plaintiff
6 seek foundational information that should have been requested at the outset of discovery.
7 Set one of Plaintiff’s interrogatories seek basic information including the identification of
8 individuals who participated in the decision to terminate his employment and in efforts to
9 explore reasonable accommodations, engage in an interactive dialogue, and seek job
10 reassignment (Interrog. Nos. 1-2, 4-6); the date of his termination (Interrog. No. 3); the
11 identification of vacant job positions during the relevant time period (Interrog. No. 7); the
12 reasons for his termination (Interrog. No. 8); the identification of the Person Most
13 Qualified regarding Defendants’ compliance with disability discrimination laws and
14 regulations (Interrog. No. 9); and the identification of the Person Most Qualified
15 regarding the reason for his termination (Interrog. No. 10). (See Defs.’ Opp’n Attach. #1
16 Gleason Decl. Ex. A, at 9-10 [interrogs.], ECF No. 27.) Similarly, set two of his
17 document requests seek basic documents that should have been requested during the early
18 on in discovery. Specifically, the eight requests contained in set two of his document
19 production requests seek Defendants’ contracts with the California Department of
20 Corrections and Rehabilitation (“CDCR”) regarding its Boston Avenue, Ocean View, and
21 Otay Mesa Detention Center facilities (Req. Nos. 62-64); documents relating to staffing
22 levels for treatment managers and program facilitators (Req. No. 65); and various
23 communications between Defendants and CDCR regarding Edwards, job vacancies, and
24 staffing levels (Req. Nos. 66-69). (See id. Ex. C, at 30-31 [reqs. for produc.].) Even if,
25 as Edwards claims, he was not aware of Defendants’ contracts with the CDCR until
26 deposition testimony elicited on March 11, 2022, from Defendants’ former human
27 resources employee, Sherri Lashlee, and on March 21, 2022, from Plaintiff’s former
28 supervisor, Denise Reed, (see Pl.’s Mot. 7, ECF No. 24), it is the Court’s view that

1 diligent counsel would have served a broad request for documents relating to agreements
2 between Defendants and any other entities governing the employment relationship with
3 their staff at the early stages of the case. Here, a review of set one of Plaintiff's
4 document requests served on October 7, 2021, prior to the written discovery deadline,
5 shows that he did not do so. (Pl.'s Supp. Ex. 4-17 [reqs. for produc.], ECF No. 32.)

6 If a party seeking to modify the schedule "was not diligent, the inquiry should end"
7 and the motion to modify should not be granted. Johnson, 975 F.2d at 609. Here,
8 Plaintiff has provided no valid reason that he could not have served the discovery sought
9 in set one of his interrogatories or set two of his document production requests prior to
10 the written discovery deadline of November 26, 2021. Even taking into account
11 Plaintiff's position that the parties had an unwritten agreement to not conduct discovery
12 during the pendency of Defendant's motion to disqualify, that motion was not filed until
13 September 22, 2021. Edwards was on notice of the November 26, 2021 written
14 discovery deadline when the Court issued the initial scheduling order on July 29, 2021.
15 Thus, he had nearly two months prior to the filing of the motion to disqualify to initiate
16 written discovery. His failure to timely serve discovery seeking the basic foundational
17 information contained in the interrogatories and document requests presently at issue
18 shows a lack of diligence, and thus his motion to continue the written and fact discovery
19 deadlines must be denied.

20 **B. No Showing that Defendant Failed to Comply with Rule 26 Requirements**

21 As an additional basis for his requested continuance of the fact and written
22 discovery cutoffs, Plaintiff contends that Defendants failed to comply with the initial
23 disclosure requirements of Rule 26 of the Federal Rules of Civil Procedure by not
24 providing its contracts with the CDCR, which "governed staffing levels, work
25 assignments, job duties, and more." (Pl.'s Mot. 7, ECF No. 24.) Rule 26 requires parties,
26 without awaiting a discovery request, to provide to the other parties "all documents . . .
27 that the disclosing party has in its possession, custody, or control and may use to support
28 its claims or defenses, unless the use would be solely for impeachment[.]" Fed. R. Civ.

1 P. 26(a)(1)(ii). According to Plaintiff, Defendant did not produce any of the CDCR
2 contracts until April 12, 2022, when, it appears, Defendants produced its contract with
3 the CDCR pertaining to the Boston Avenue facility, where Plaintiff had been employed.
4 (Pl.’s Mot. 8, ECF No. 24; Defs.’ Opp’n 5, ECF No. 27.) Edwards contends that the
5 “belated” production of the contract is prejudicial to him because many of his depositions
6 of Defendants’ employees, current and former, have already been taken. (Pl.’s Mot. 8,
7 ECF No. 24.) He also states that he still has five additional depositions of current and
8 former employees of Defendants to take and would be “hard-pressed” to review and
9 understand the contracts in time to “comprehensively” depose the remaining witnesses.
10 (Id.)

11 The Court is unable to find, based on current record, that the CDCR contracts
12 should have been produced as part of Defendants’ initial Rule 26 disclosures. Defendants
13 were required to provide the contracts with their initial disclosures only if they intended
14 to rely on these documents to support their defenses. See Fed. R. Civ. P. 26(a)(1)(ii).
15 Defendants do not appear to intend to rely on the contracts as they describe them as
16 “irrelevant documents with no connection to the litigation[.]” (Defs.’ Mot. 6, ECF No.
17 27.) That Defendants produced the CDCR contract pertaining to the Boston Avenue
18 facility on April 12, 2022, (see Pl.’s Mot. 8, ECF No. 24), does not necessitate a finding
19 that the contract should have been produced as part of their initial disclosures. Because
20 Defendants served objections to set two of Plaintiff’s document requests, (see Defs.’
21 Opp’n Attach. #1 Gleason Decl. Ex. D, at 38-44 [obj’s. to reqs. for produc.], ECF No. 27),
22 which specifically sought Defendants’ contracts with the CDCR, it does not appear that
23 Defendants produced the contract in response to these document requests. Rather, the
24 Court surmises that they produced the contract to reach a compromise with Plaintiff
25 regarding the current discovery dispute, pursuant to Rule 26(e), or for some other reason.
26 See Fed. R. Civ. P. 26(e) (providing that if a party learns that its disclosures are
27 incomplete or inaccurate, it has a duty to supplement them “in a timely manner”). Based
28 on the information currently before the Court, no showing has been made that Defendants

1 failed to comply with the initial disclosure requirements under Rule 26. Thus, this cannot
2 serve as a basis for granting Plaintiff's request for a continuance of the written and fact
3 discovery deadlines.

4 The Court further finds that the production of the CDCR contract for the Boston
5 Avenue facility on April 12, 2022, one month before the fact discovery cutoff of May 12,
6 2022, should have provided Plaintiff's counsel with ample time to review the contract
7 prior to the remaining depositions in the case. As for the depositions taken by Plaintiff
8 before production of the contract, Edwards has made no showing that a continuance of
9 the fact discovery cutoff would remedy this situation. He does not, for example, claim
10 that any specific depositions need to be reconvened for the purpose of questioning prior
11 deponents about the CDCR contract(s).


12 Therefore, based on the foregoing, Plaintiff's request for a continuance of the
13 written and fact discovery deadlines is **DENIED**.

14 **IV. CONCLUSION**

15 For the reasons set forth above, Plaintiff's Motion to Continue Fact Discovery and
16 Written Discovery [ECF No. 24] is **DENIED**. Other than the depositions permitted by
17 the Court's May 23, 2022 Order granting the parties' Joint Motion to Conduct Fact
18 Witness Depositions After Discovery Cut-off, (see ECF No. 31), no further fact
19 discovery is permitted.

20 **IT IS SO ORDERED.**

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22 Dated: May 26, 2022

23 
24 Hon. Ruben B. Brooks
25 United States Magistrate Judge
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