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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Richard Lowe,

10 Plaintiff,

11 v.

12 Charles L Ryan, et al.,

13 Defendants.
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No. CV-18-01140-PHX-DJH (ESW)

ORDER

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16 Pending before the Court is Defendants' Motion to Quash Plaintiff's Notice for
17 Written Deposition (Doc. 76) and Plaintiff's responses filed as "Plaintiff's Reply's to the
18 Defendants' Motion to Quash Plaintiff's Notice for Written Deposition (Docs.79, 87). No
19 reply has been filed, and the time to do so has passed.

20 Defendants request that the Court quash Plaintiff's Notice for Written Deposition
21 upon Defendants ("Plaintiff's Notice") as untimely. Defendants correctly note that
22 discovery in this case closed on January 2, 2019 (Doc. 14 at 2). Plaintiff's Notice therefore
23 may be denied as untimely as it was filed after the January 2, 2019 discovery deadline.
24 (Doc. 14 at 2). *See U.S. Dominator, Inc. v. Factory Ship Robert E. Resoff*, 768 F.2d 1099,
25 1104 (9th Cir. 1985) (holding that a district court properly denied a motion as untimely
26 where it was filed after the applicable scheduling order deadline and the movant "never
27 requested a modification" of the scheduling order), *superseded by statute on other grounds*
28 *as recognized in Simpson v. Lear Astronics Corp.*, 77 F.3d 1170 (9th Cir. 1996). Plaintiff

1 argues that extraordinary circumstances exist supporting his late discovery requests.
2 Plaintiff posits that his incarceration and limited access to the internet are extraordinary
3 circumstances supporting written deposition questions to Defendants.

4 The Court has broad discretion in supervising the pretrial phase of litigation. *See*
5 *Zivhovic v. Southern California Edison Co.*, 302 F.3d 1080 (9th Cir. 2002). Under Rule
6 16(b) of the Federal Rules of Civil Procedure, a district court is required to establish a
7 schedule that sets pretrial deadlines. A Rule 16 scheduling order may be “modified only
8 for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). This is because
9 “[a] scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly
10 disregarded by counsel without peril.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
11 604, 610 (9th Cir. 1992) (citation and internal quotations marks omitted). “Disregard of
12 the order would undermine the court’s ability to control its docket, disrupt the agreed-upon
13 course of the litigation, and reward the indolent and the cavalier.” *Id.* Rule 16(b)’s ‘good
14 cause’ standard primarily considers the diligence of the party seeking the amendment. *Id.*
15 at 609. If the movant “was not diligent, the inquiry should end.” *Id.* “Moreover,
16 carelessness is not compatible with a finding of diligence and offers no reason for a grant
17 of relief.” *Id.*

18 If a pretrial schedule cannot be met despite the diligence of the party seeking an
19 extension of time, the Court may modify its scheduling order. *See* MILLER & KANE,
20 FEDERAL PRACTICE AND PROCEDURE § 1522.1 at 231 (2d ed. 1990) (good cause means
21 scheduling deadlines cannot be met despite party’s diligence). “Although the existence or
22 degree of prejudice to the party opposing the modification might supply additional reasons
23 to deny a motion, the focus of the inquiry is upon the moving party’s reasons for seeking
24 modification. Moreover, where a motion is made to extend a deadline after the deadline
25 has expired, the movant must show excusable neglect. *See* Fed. R. Civ. P. 6(b)(1)(B).

26 Although pro se litigants are given leniency in evaluating compliance with the
27 technical Rules of Civil Procedure, the rules still apply to pro se litigants. *Draper v. Combs*,
28 792 F.2d 915, 924 (9th Cir. 1986) (“We recognize that the plaintiff represented himself and

1 therefore, in evaluating his compliance with the technical rules of civil procedure, we treat
2 him with great leniency.”); *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (“Although
3 we construe pleadings liberally in their favor, pro se litigants are bound by the rules of
4 procedure.”).

5 The Court finds that Plaintiff has not shown the diligence required for a finding of
6 “good cause.” Plaintiff’s request for written depositions were made after the discovery
7 deadlines have passed. Plaintiff has not shown excusable neglect justifying his delay and
8 supporting a late modification. *See Pioneer Inv. Servs. v. Brunswick Assocs. Ltd.*, 507 U.S.
9 380, 392 (1993) (stating that “inadvertence, ignorance of the rules, or mistakes construing
10 the rules do not usually constitute ‘excusable’ neglect”). In addition, because Plaintiff has
11 failed to show good cause to extend the generous deadlines set forth in the Court’s
12 Scheduling Order or excusable neglect for extending those deadlines he already has missed,
13 this ends the Court’s inquiry into whether an extension should be granted. *See Coleman v.*
14 *Quaker Oats Co.*, 232 F.3d 1271, 1295 (9th Cir. 2000).

15 For the reasons set forth herein,

16 **IT IS ORDERED** granting Defendants’ Motion to Quash Plaintiff’s Notice for
17 Written Deposition (Doc. 76).

18 Dated this 8th day of March, 2019.

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23 Honorable Eileen S. Willett
24 United States Magistrate Judge
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