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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 **MICHAEL IOANE, et al.,**)
10) **Case No. 1:07-cv-00620-AWI-GSA**
11 **Plaintiffs,**)
12 **v.**) **ORDER DENYING PLAINTIFFS’**
13 **KENT SPJUTE, et al.,**) **MOTION TO MODIFY**
14 **Defendants.**) **SCHEDULING ORDER**
(ECF Nos. 259, 271)

15 Plaintiffs Michael and Shelly Ioane (“Plaintiffs”) are a married couple involved in tax
16 disputes with the United States. Current defendants are Jean Nole, Jeff Hodges, and Brian
17 Applegate, federal agents who assisted in searching Plaintiffs’ residence in 2006 (“Defendants”).
18 Mr. Ioane was convicted of tax fraud conspiracy on October 3, 2011 as a result, in part, of
19 evidence that was obtained during the search. On July 21, 2014, Plaintiff Michael Ioane filed a
20 Motion requesting the Court modify a number of dates on its pretrial scheduling order. (ECF No.
21 259.) Plaintiff Shelly Ioane joined Mr. Ioane’s motion on August 1, 2014. (ECF No. 266.)
22 Defendants oppose this Motion. (ECF No. 263.) Plaintiffs also filed a request for the Court to
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1 take judicial notice of a cover letter sent to Defendants in support of the Motion.¹ (ECF No. 271.)
2 The Court has reviewed the papers and determined that this matter is suitable for decision
3 without oral argument pursuant to Local Rule 230(l). Based on a review of the pleadings,
4 Plaintiff's motions are DENIED.²

5 Federal Rule of Civil Procedure 16 requires courts to issue a scheduling order as soon as
6 practicable. A scheduling order typically limits the amount of time parties have to amend the
7 pleadings, complete discovery, and file motions. Once a scheduling order has been set, the
8 "schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P.
9 16(b)(4). "[G]ood cause primarily considers the diligence of the party seeking the amendment."
10 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Where the "moving
11 party fails to demonstrate diligence, 'the inquiry should end.'" *Sharp v. Covenant Care LLC*, 288
12 F.R.D. 465, 467 (S.D. Cal. 2012), *quoting Mammoth Recreations, Inc.*, 975 F.2d at 609.

13 Good cause can be shown "where the moving party shows it assisted the court with
14 creating a workable scheduling order, that it is unable to comply with the scheduling order's
15 deadlines due to matters not reasonably foreseeable at the time the scheduling order issued, and
16 that it was diligent in seeking a modification once it became apparent it could not comply with
17 the scheduling order." *Id.* "[I]gnorance of the law is not good cause for modification," nor does a

18 ¹ It is not entirely clear whether the request for judicial notice is meant to be in support of the present motion or
19 Plaintiffs' motion to continue the discovery cutoff date (ECF No. 219). Nonetheless, the Court has examined the
request in the review of this motion.

20 ² The Court declines to take judicial notice of the cover letter submitted by Plaintiffs. The letter, which was sent on
21 August 19, 2014, appears to describe discovery Plaintiffs produced to Defendants. It is unclear in the request what
22 facts Plaintiffs would like the Court to judicially notice. Judicial notice is only intended to govern facts that are
23 "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be
questioned." Fed. R. Evid. 201(b). Letters between the parties do not fall into either of these categories. *Melong v.*
Micronesian Claims Comm'n, 643 F.2d 10, 12 fn. 5 (D.C. Cir. 1980) (declining to judicially notice correspondence
because it is "not the type of material embraced by Rule 201(b)(2) of the Federal Rules of Evidence").

1 moving party's "incarcerated, pro se status," constitute good cause. *Gorton v. Bick*, No. 1:05-
2 CV-00354-DLB PC, 2011 WL 345855, at *2 (E.D. Cal. Feb. 1, 2011), *citing King v. Atiyeh*, 814
3 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the same rules of procedure that
4 govern other litigants").

5 Plaintiffs argue the modification of the scheduling order is justified for two reasons. First,
6 Plaintiff's incarceration has made it difficult to meet the existing deadlines. Plaintiff does not
7 identify which particular deadlines he has been unable to meet because he is in custody. Second,
8 he suggests that he is in the process of producing discovery to the Defendants and that, unless the
9 discovery cutoff dates are extended, any discovery that he produces will be late. Plaintiff also
10 attaches a list of the discovery he intends to produce, including a list of doctors supporting his
11 claims for damages, names of expert witnesses, and other evidence related to damages.

12 Defendants respond that Plaintiffs have not offered any adequate excuses for their lack of
13 diligence in meeting the established schedule and have been deliberately attempting to push
14 dates out to delay discovery in bad faith.

15 At the hearing held on May 1, 2015, Plaintiff asserted that he had produced medical
16 records in his possession and provided Defendants with a list of doctors that he planned to call
17 as expert witnesses. The Court also laid out a revised schedule for expert discovery. (ECF No.
18 307.) This revised schedule obviates the need for the requested discovery modifications.
19 Similarly, Plaintiffs' requests to continue the pretrial and trial dates are unnecessary because
20 those dates were vacated after the Motion was filed. (ECF No. 274.) Finally, Plaintiffs have not
21 demonstrated good cause for modification of the scheduling order with respect to any other
22 dates. As indicated above, the mere fact that Plaintiff is incarcerated does not constitute good
23 cause for the modification of a scheduling order. As a result, there is no valid explanation for

1 Plaintiffs' lack of diligence in meeting the scheduled deadlines. The inquiry ends and the Motion
2 must be denied.

3 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Modify Scheduling
4 Conference Order (ECF No. 259) and Request for Judicial Notice in Support of Motion to
5 Continue Discovery Cut-off (ECF No. 271) are DENIED.

6 IT IS SO ORDERED.

7 Dated: May 16, 2015

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE