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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

GEORGE B. STRONG,

Plaintiff,

vs.

KENNETH ELLIOT,

Defendants.

1:09-cv-00583-AWI-JLT (PC)

ORDER GRANTING DEFENDANT'S  
MOTION TO MODIFY THE  
SCHEDULING ORDER

(Doc. 38)

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Before the Court is Defendant's motion to amend the scheduling order to extend the October 23, 2011, discovery deadline to October 30, 2011. For the reasons discussed below, the Court will GRANT the motion.

**I. Background**

On October 20, 2011, defendant filed a motion to modify the Court's February 23, 2011 scheduling order to extend the October 23, 2011, discovery deadline for seven days to October 30, 2011. (Doc. 38). Defendant assert that this extension is necessary to allow defendant to depose Plaintiff, scheduled to be completed on October 28, 2011. (Id. at 1). Defendant states that he has been unable to complete the deposition due to a dispute regarding the deposition's location which has since been resolved. (Id. at 3).

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1 **II. Analysis**

2 Pursuant to Fed. R. Civ. P. 16(b)(3), a case schedule may be modified only for good  
3 cause and only with the judge’s consent. Fed. R. Civ. P. 16(b). In Johnson v. Mammoth  
4 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992), the Court explained,

5 . . . Rule 16(b)’s “good cause” standard primarily concerns the diligence of the  
6 party seeking the amendment. The district court may modify the pretrial schedule  
7 “if it cannot reasonably be met despite the diligence of the party seeking the  
8 extension.” Fed.R.Civ.P. 16 advisory committee’s notes (1983 amendment) . .  
9 .[T]he focus of the inquiry is upon the moving party’s reasons for seeking  
10 modification. . . . If that party was not diligent, the inquiry should end.

11 Parties must “diligently attempt to adhere to that schedule throughout the subsequent  
12 course of the litigation.” Jackson v. Laureate, Inc., 186 F.R.D. 605, 607 (E.D. Cal. 1999); see  
13 Marcum v. Zimmer, 163 F.R.D. 250, 254 (S.D. W.Va. 1995). In part, the “good cause” standard  
14 requires the parties to demonstrate that “noncompliance with a Rule 16 deadline occurred or will  
15 occur, notwithstanding her diligent efforts to comply . . .” Jackson, 186 F.R.D. at 608, emphasis  
16 added.

17 Here, Defendant asserts that delay in accomplishing the deposition occurred as a result of  
18 a dispute regarding the location of the deposition. (Doc. 38 at 3). In August 2011, Plaintiff filed  
19 a motion to compel Defendant to pay for the expense of Plaintiff’s appearance at his deposition  
20 in Sacramento as Plaintiff resides in Victorville, California and stated that he could not afford the  
21 costs of travel to complete his deposition. (Doc. 31 at 2). On September 8, 2011, the Court  
22 ordered that Plaintiff’s deposition be taken in Bakersfield, California and additionally ordered  
23 Defendant to secure a location for the deposition in Bakersfield. (Doc. 36).

24 In the instant motion, Defendant explains that delays due to scheduling conflicts as well  
25 as Plaintiff’s need to obtain permission from his parole officer for travel to Bakersfield have  
26 prevented the timely completion of the deposition. Additionally, Plaintiff has filed no objection  
27 to his deposition being taken out of time.

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1           Accordingly, good cause appearing, it is HEREBY ORDERED that Defendant's October  
2 20, 2011 motion is **GRANTED**.

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4 IT IS SO ORDERED.

5 Dated: October 31, 2011

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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