

1 On January 2, 2014, Plaintiff filed a motion to modify the Discovery and Scheduling Order to
2 extend the discovery deadline. (ECF No. 73.) On April 9, 2014, the Court partially granted Plaintiff's
3 request and extended the discovery deadline an additional fifty days to permit Plaintiff to obtain
4 responses to requests for admissions and interrogatories from Defendant McCue and to file any
5 necessary motion to compel. (ECF No. 84.)

6 On May 21, 2014, Plaintiff filed a motion to compel further responses to his requests for
7 admissions and interrogatories from Defendant McCue. (ECF No. 85.) Defendants opposed the
8 motion on June 9, 2014, and Plaintiff replied on August 19, 2014. (ECF Nos. 94, 100.) On October
9 27, 2014, the Court denied Plaintiff's motion to compel further discovery responses. (ECF No. 106.)
10 On November 21, 2014, Plaintiff filed a petition for writ of mandamus to the Ninth Circuit Court of
11 Appeals regarding the Court's denial of his motion to compel. (ECF No. 108.)

12 On December 15, 2014, Plaintiff filed letters and a subpoena, which appear to seek documents
13 from CourtCall Remote Court Appearances regarding a court call on August 22, 2008. (ECF No.
14 110.) The Court construes Plaintiff's filing as a motion for subpoena duces tecum to obtain certain
15 documents. Defendants did not file an opposition and the motion is deemed submitted. Local Rule
16 230(l).

17 **II. Motion for Subpoenas Duces Tecum**

18 Pursuant to the Discovery and Scheduling Order issued in this action, the deadline for Plaintiff
19 to complete all discovery, with the exception of interrogatories and requests for admissions directed to
20 Defendant McCue, expired on September 10, 2013. Plaintiff now seeks third-party discovery after the
21 expiration of the discovery deadline set forth in the scheduling order.

22 Pursuant to Rule 16(b), a scheduling order "may be modified only for good cause and with the
23 judge's consent." Fed. R. Civ. P. 16(b)(4). The "good cause" standard "primarily considers the
24 diligence of the party seeking the amendment." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
25 609 (9th Cir. 1992). The district court may modify the scheduling order "if it cannot reasonably be
26 met despite the diligence of the party seeking the extension." Id. If the party was not diligent, the
27 inquiry should end. Id.

1 Plaintiff has not demonstrated diligence in seeking to obtain a third-party subpoena.
2 According to the record in this matter, Plaintiff made no attempt to obtain a subpoena until December
3 2014, which is more than one year after the close of discovery. Plaintiff has not explained the delay
4 and has not established good cause to modify the scheduling order. Accordingly, Plaintiff's request
5 for a subpoena duces tecum is untimely and shall be denied.

6 **III. Conclusion and Order**

7 For the reasons stated, Plaintiff's request for a subpoena duces tecum is DENIED.
8 IT IS SO ORDERED.

9 Dated: January 14, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE