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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BERNARD MARTINEZ,
Plaintiff,
v.
DR. L. A. DELIO, et al.,
Defendants.

CASE NO. 1:11-cv-01088-LJO-MJS (PC)

ORDER GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFF'S MOTION TO EXTEND DISCOVERY CUT-OFF DATE AND MOTION CLARIFYING DUE DILIGENCE

(ECF Nos. 73 & 75)

I. PROCEDURAL HISTORY

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This matter proceeds against Defendants Martha Ruiz, Sonia Martinez, and T. Nguyen on an Eighth Amendment medical indifference claim.¹

Before the Court is Plaintiff's motion for enlargement of the discovery order. (ECF No. 73.) Defendants oppose the motion. (ECF No. 74.) Plaintiff filed a motion clarifying

¹ Defendant Nguyen has not yet been served.

1 his due diligence in opposition to Defendants' opposition. (ECF No. 75.) The Court will
2 construe Plaintiff's opposition motion as a reply. The matter is deemed submitted. Local
3 Rule 230(l).

4 **II. MOTION TO EXTEND DISCOVERY CUT-OFF DATE**

5 The Court set May 4, 2015 as the discovery deadline in this case. (ECF No. 54.)
6 Plaintiff seeks an extension of 150 days to conduct discovery.

7 Federal Rule of Civil Procedure 16(b)(4) allows the Court to modify its scheduling
8 order for good cause. The "good cause" standard focuses primarily on the diligence of
9 the party seeking the amendment. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
10 604, 609 (9th Cir.1992). "[C]arelessness is not compatible with a finding of diligence and
11 offers no reason for a grant of relief." *Id.* "Although the existence or degree of prejudice
12 to the party opposing the modification might supply additional reasons to deny a motion,
13 the focus of the inquiry is upon the moving party's reasons for seeking modification." *Id.*
14 The Court has wide discretion to extend time, *Jenkins v. Commonwealth Land Title Ins.*
15 *Co.*, 95 F.3d 791, 795 (9th Cir. 1996), provided a party demonstrates some justification
16 for the issuance of the enlargement order. Fed. R. Civ. P. 6(b)(1); *Ginett v. Fed.*
17 *Express Corp.*, 166 F.3d 1213 at 5* (6th Cir. 1998).

18 Plaintiff argues that he needs the additional time because he is a lay person, has
19 a low educational level, and despite seeking assistance of jailhouse lawyers, he was not
20 able to gain assistance until April 2015. Defendants argue that Plaintiff has not served
21 any discovery in the approximately eight months discovery has been open, and it
22 appears that Plaintiff failed to seek assistance from the law clerk inmate for over five of
23 those months. Plaintiff replies that he began seeking assistance after the Court entered
24 its discovery and scheduling order in September 2014, that from November 2014 to
25 January 2015 he was in administrative segregation and unable to seek assistance, and
26 that he renewed his efforts once released from segregation.

1 Parties representing themselves “must appear personally or by courtesy
2 appearance by an attorney admitted to the Bar of this Court and may not delegate that
3 duty to any other individual, including husband or wife, or any other party on the same
4 side appearing without an attorney.” Local Rule 183(a). Mr. Stone, Plaintiff’s “jailhouse
5 lawyer” or “prison paralegal,” is not an attorney and he is precluded from filing or
6 litigating cases on the behalf of anyone but himself. *Johns v. Cnty. of San Diego*, 114
7 F.3d 874, 877 (9th Cir. 1997); *C. E. Pope Equity Trust v. United States*, 818 F.2d 696,
8 697 (9th Cir. 1987). Put simply, although he may be assisting Plaintiff in this case, Mr.
9 Stone’s unavailability or the general unavailability of other jailhouse lawyers does not
10 provide good cause for extending the time for Plaintiff to conduct discovery.

11 However, since the discovery deadline has now passed and the Court has given
12 Plaintiff an extension until May 16, 2015 to amend his pleadings and there is still one
13 Defendant in this case who has yet to be served, Plaintiff will be granted **a final and**
14 **limited extension of time of sixty (60) days** from the date of service of this order to
15 conduct discovery on his own behalf.

16 **III. ORDER**

17 Accordingly, it is HEREBY ORDERED that:

18 Plaintiff’s motion to extend the discovery cut-off date for 150 days (ECF
19 No. 73.) and motion clarifying due diligence (ECF No. 75.) is GRANTED, in
20 part, and DENIED, in part. Plaintiff’s motion clarifying due diligence is
21 construed as a reply to his motion to extend the discovery cut-off date.
22 Plaintiff is GRANTED **a final imited extension of time of sixty (60) days**
23 from the date of service of this order to conduct discovery.

24
25 IT IS SO ORDERED.

26 Dated: May 15, 2015

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE