

1 several torts including negligence, intentional infliction of emotional distress, breach of contract, breach
2 of fiduciary duty, defamation, libel, slander, and personal injury.

3 On April 10, 2012, the action was transferred from the Southern District of Georgia to the
4 Eastern District of California (Doc. 3), thereby initiating the action before this Court. Because Plaintiff
5 requested to proceed *in forma pauperis*, the Court screened Plaintiff's complaint pursuant to 28 U.S.C.
6 § 1915 to determine whether he stated cognizable claims on April 27, 2012. (Doc. 3). The Court found
7 Plaintiff stated cognizable claims for negligence and defamation only, and he informed the Court that
8 he wished to proceed on these claims on May 9, 2012. (Doc. 10). Defendants filed their answer to the
9 complaint on August 6, 2012. (Doc. 18).

10 On January 4, 2013, Plaintiff filed a "Scheduling Report." (Doc. 29). In this statement, Plaintiff
11 reported he "expects to be released at the earliest in November, 2013 if he is given six months halfway
12 house confinement." (*Id.* at 14). Plaintiff explained if he was not given a halfway house confinement,
13 he would "not be released until sometime in May, 2014." (*Id.*) Plaintiff asserted that "as a result of his
14 continued incarceration[,] attendance at trial could not be before June, 2014." (*Id.*) At the scheduling
15 conference held on January 23, 2013, the Court explained it could order Plaintiff be produced for trial.
16 Therefore, the pre-trial conference was set for November 1, 2013, with the trial commencing December
17 10, 2013. (Doc. 32 at 1).

18 On August 12, 2013, Plaintiff filed the motion now before the Court, asserting he will begin a
19 six-month placement at a halfway house on November 14, 2013, though he "will remain in the custody
20 of the Bureau of Prisons until May 14, 2014." (Doc. 77 at 2). Plaintiff requests (1) a stay of the
21 proceedings from November 4, 2013 through December 10, 2013; and (2) postponement of the trial
22 until June 2014. (*Id.* at 7).

23 **II. Motion to Stay**

24 **A. Legal Standards**

25 The Supreme Court explained the "power to stay proceedings is incidental to the power inherent
26 in every court to control the disposition of the causes on its docket with economy of time and effort for
27 itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254-255 (1936). To
28 evaluate whether to stay an action, the Court must weigh competing interests that will be affected

1 by the grant or refusal to grant a stay, including: (1) the possible damage which may result from the
2 granting of a stay; (2) the hardship or inequity which a party may suffer in being required to go
3 forward; and (3) the orderly course of justice measured in terms of simplifying or complicating of
4 issues, proof, and questions of law which could be expected to result from a stay. *CMAX, Inc. v. Hall*,
5 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*, 299 U.S. at 254-55)).

6 The party seeking a stay “bears the burden of establishing its need.” *Clinton v. Jones*, 520 U.S.
7 681, 708 (1997) (citing *Landis*, 299 U.S. at 255). The Supreme Court explained, “If there is even a fair
8 possibility that the stay . . . will work damage to some one else,” the party seeking the stay “must make
9 out a clear case of hardship or inequity.” *Landis*, 299 U.S. at 255. The decision whether to grant or
10 deny a stay is committed to the discretion of the Court. *Dependable Highway Express, Inc. v.*
11 *Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

12 **B. Discussion and Analysis**

13 Plaintiff asserts he has “a halfway house release date of November 14, 2013 to the Volunteers
14 of America Corporation (VOAC) in Baltimore, MD.” (Doc. 77 at 1). According to Plaintiff, upon his
15 arrival at VOCA, he will “be confined with no movement outside the premises for a minimum of two
16 weeks.” (*Id.* at 2) (emphasis omitted). Plaintiff reports he “will have no access to his case materials
17 which must be shipped home prior to departure from Georgia until such time as he is permitted limited
18 movement from VOAC.” (*Id.*) He “plans on shipping the materials on November 4, 2013 and hopes
19 he can access them around December 10, 2013.” (*Id.* at 5). In an effort “to ensure no deadlines or
20 responses are overlooked,” Plaintiff requests “a stay from November 4, 2013 through December 10,
21 2013.” (*Id.*)

22 Notably, no deadlines have been set by the Court for the period at issue, although the trial date
23 is set for December 10, 2013. Given the procedural posture of the case—where discovery is closed
24 aside from the exceptions ordered by the Court and the deadline for dispositive motions is quickly
25 approaching—Plaintiff’s request for a stay in the action is premature. Moreover, Plaintiff has not borne
26 the burden of establishing a need for a stay, given the speculative nature of the dates alleged by Plaintiff
27 for mailing and receiving his legal documents. Accordingly, Plaintiff’s motion for a stay of the
28 proceedings between November 4, 2013 and December 10, 2013 is **DENIED**.

1 **III. Motion to Postpone the Trial Date**

2 **A. Legal Standards**

3 Because Plaintiff seeks a postponement of the trial date previously set by the Court in its
4 Scheduling, the Court construes his motion as a motion to amend the scheduling order. Importantly,
5 scheduling orders are “not a frivolous piece of paper, idly entered, which can be cavalierly disregarded
6 by counsel without peril.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992)
7 (quoting *Gestetner Corp. v. Case Equip. Co.*, 108 F.R.D. 138, 141 (D. Maine 1985)). Once entered by
8 the court, a scheduling order “controls the course of the action unless the court modifies it.” Fed. R.
9 Civ. P. 16(d). Scheduling orders are intended to alleviate case management problems. *Johnson* , 975
10 F.2d at 610. As such, a scheduling order is “the heart of case management.” *Koplove v. Ford Motor*
11 *Co.*, 795 F.2d 15, 18 (3rd Cir. 1986).

12 Good cause must be shown for modification of the scheduling order. Fed. R. Civ. P. 16(b)(4).
13 The Ninth Circuit explained: “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of
14 the party seeking the amendment. The district court may modify the pretrial schedule if it cannot
15 reasonably be met despite the diligence of the party seeking the extension.” *Johnson*, 975 F.2d at 609
16 (internal quotation marks and citations omitted). “[T]he focus of the inquiry is upon the moving party’s
17 reasons for seeking modification.” *Id.* (citing *Gestetner Corp. v. Case Equip. Co.*, 108 F.R.D. 138, 141
18 (D. Me. 1985)). The party requesting modification of a scheduling order may be required to show:

19 (1) that [h]e was diligent in assisting the Court in creating a workable Rule 16 order, (2)
20 [his] noncompliance with a Rule 16 deadline occurred or will occur, notwithstanding
21 ...efforts to comply, because of the development of matters which could not have been
22 reasonably foreseen or anticipated at the time of the Rule 16 scheduling conference,
23 and (3) that [h]e was diligent in seeking amendment of the Rule 16 order, once it
24 become apparent that [h]e could not comply with the order.

25 *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal. 1999) (internal citations omitted).

26 **B. Discussion and Analysis**

27 Plaintiff seeks to amend the Court’s scheduling order to postpone the trial until June 2014 when
28 he is no longer in the custody of the Bureau of Prisons (“BOP”). (Doc. 77 at 2). He asserts that issuing
a writ of habeas corpus ad testifandum while he in the halfway house will result in him “being placed in
custody again as soon as he is released.” (*Id.*) Plaintiff notes that it is the BOP’s policy “to **always**

1 consider requesting a **postponement**” “when a writ is issued within twelve months of the prisoners
2 (sic) release.” (*Id.*) (emphasis in original). According to Plaintiff: “It’s very likely that on issuing the
3 writ the Plaintiff will be taken into custody and held until the trial is postponed sometime after May 14,
4 2013. Plaintiff believes there is a strong possibility he will be returned not to the halfway house in
5 Baltimore but to prison in Jesup where he will then be held until May 14, 2014.” (*Id.*)

6 Given the procedural posture of the case, through this motion Plaintiff seeks, essentially, a stay
7 of the trial date until he is released from custody. Importantly, an anticipated release from custody is
8 not a proper basis for a staying the proceedings. *See, e.g., Lewis v. Kibler*, 2013 U.S. Dist. LEXIS
9 37251 at *2 (E.D. Cal. Mar. 18, 2013); *Mitchell v. Williams*, 2012 U.S. Dist. LEXIS 161361 at *1-2
10 (E.D. Cal. Nov. 9, 2012) (denying the plaintiff’s request to stay the action “to enable him to obtain
11 assistance with ‘his social, medical and legal endeavors’ following his anticipated release from
12 custody”); *Lewis v. Kibler*, 2013 U.S. Dist. LEXIS 37251 at *2 (E.D. Cal. Mar. 18, 2013).

13 Moreover, the circumstances to which Plaintiff directs the Court’s attention are speculative at
14 best. The BOP’s policy is to *consider* requesting a postponement. There is no guarantee that the BOP
15 will request a postponement. Further, the Court declines to hypothesize as to whether such a request
16 for postponement of the trial, *if made* by the BOP, would be granted. Finally, the development of these
17 matters could “have been reasonably foreseen or anticipated at the time of the Rule 16 scheduling
18 conference.” *See Jackson*, 186 F.R.D. at 608. Though Plaintiff requested a much later trial date at the
19 time of the scheduling conference, he chose to move forward with his case after the Court refused that
20 request, despite knowing at time that when it came time for trial, he would be transported away from
21 his place of compelled housing.

22 Though the Court is sympathetic to the apparent Hobson’s choice he must make now, Plaintiff
23 chose to initiate this case when he did rather than closer to the expiration of the statute of limitations
24 and has chosen to continue to pursue it without, apparently, giving thought to dismissing it and refileing
25 it later, within the statute of limitations period. That Plaintiff speculates he may be returned to custody
26 once trial is concluded, this is a consequence of his decisions. Unfortunately, these decisions mean also
27 that the case is nearly ready for trial and Plaintiff has offered no explanation why Defendants’ are not
28 entitled to have the matter concluded expeditiously.

