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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT DEWAYNE BOSLEY, JR.,

Plaintiff,

v.

M. VELASCO, et al.,

Defendants.

Case No. 1:14-cv-00049-MJS (PC)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR EXTENSION OF TIME TO
FILE PRETRIAL STATEMENT**

(ECF No. 77)

Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The action proceeds on Plaintiff's Second Amended Complaint charging Defendant Velasco with excessive force in violation of the Fourteenth Amendment. This matter is set for a trial on January 18, 2017, and a telephonic trial confirmation hearing is set for November 17, 2016.

Pursuant to the Second Scheduling Order (ECF No. 75), Plaintiff's Pretrial Statement was due on or before October 14, 2016.¹ Plaintiff has now moved for an unspecified extension of time to file his pretrial statement on the ground that he has been housed at a maximum security prison that is currently on lockdown. (ECF No. 77.)

¹ Defendant filed a timely pretrial statement November 4, 2016. (ECF No. 84.)

1 Confusingly, Plaintiff claims that he has been housed at this facility “since October 24,
2 2016” and that he is awaiting a transfer to another institution, but he also claims that he
3 is scheduled for “release 10-24-16.” On the same date that Plaintiff filed this motion, he
4 also filed a 25-page motion for appointment of counsel with attached exhibits, which
5 was denied (see ECF Nos. 78, 81), and a 3-page motion for the attendance of
6 witnesses, which will be addressed in a separate order (ECF No. 79).

7 Modification of a scheduling order requires a showing of good cause, Fed. R.
8 Civ. P. 16(b), and good cause requires a showing of due diligence, Johnson v.
9 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good
10 cause, the party seeking the modification of a scheduling order must generally show
11 that even with the exercise of due diligence, they cannot meet the requirement of the
12 order. Id. The court may also consider the prejudice to the party opposing the
13 modification. Id. If the party seeking to amend the scheduling order fails to show due
14 diligence the inquiry should end and the court should not grant the motion to modify.
15 Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

16 The Court is not convinced that Plaintiff has shown good cause for a modification
17 of the Second Scheduling Order. The filing of his motion to appoint counsel and motion
18 for the attendance of witnesses indicates Plaintiff is able to seek relief in this Court and
19 to respond to court orders, notwithstanding the lockdown. Nonetheless, in an
20 abundance of caution, Plaintiff’s will be granted a short extension of time to file his
21 pretrial statement.

22 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion for extension of
23 time (ECF No. 77) is GRANTED. Plaintiff shall file his pretrial statement on or before
24 November 16, 2016.
25 IT IS SO ORDERED.

26 Dated: November 7, 2016

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