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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

GEORGE MCCLURE,
Plaintiff,

v.

C. K. CHEN, et al.,
Defendants.

1:14-cv-00932-DAD-GSA-PC

**ORDER GRANTING DEFENDANTS’ MOTION
TO EXTEND DISCOVERY DEADLINE FOR
LIMITED PURPOSE
(ECF No. 75.)**

**NEW DEADLINE FOR DEFENDANTS TO FILE
MOTION TO COMPEL: JANUARY 28, 2019**

I. BACKGROUND

George McClure (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff’s First Amended Complaint filed on February 9, 2015, on Plaintiff’s medical claim under the Eighth Amendment against defendants C. K. Chen (M.D.) and C. Horton (Physician’s Assistant) (collectively, “Defendants”). (ECF No. 12.)

On January 29, 2016, the court issued a discovery and scheduling order setting out deadlines for the parties, including a deadline of July 1, 2016 to complete discovery, including the filing of motions to compel. (ECF No. 22.) On May 11, 2016, the court stayed discovery pending resolution of Defendants’ first motion for summary judgment. (ECF No. 36.) On March 28, 2017, the court denied Defendants’ first motion for summary judgment (ECF No. 46.) On

1 September 14, 2018, the court lifted the stay of discovery and issued a new discovery and
2 scheduling order setting a new discovery deadline of January 14, 2019. (ECF No. 70.)

3 On January 14, 2019, Defendants filed a motion to modify the discovery and scheduling
4 order. (ECF No. 75.)

5 **II. MOTION TO MODIFY SCHEDULING ORDER**

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

14 Defendants request an extension of the discovery deadline from January 14, 2019, to
15 January 28, 2019, to file a motion to compel. Defendants explain that they met with Plaintiff at
16 Plaintiff's deposition on December 12, 2018, and agreed that Plaintiff would provide amended
17 responses to Defendants' entire Request for Production, Set One, and Interrogatories No. 3, 4, 5,
18 6, and 8, by December 24, 2018. (Mohmoud Decl., Ex. A.) Defendants have not received these
19 amended responses. (Mohmoud Decl., ¶ 3.) Defense counsel contacted Plaintiff on January 14,
20 2019, and informed him that the amended responses had not been received. (Mohmoud Decl., ¶
21 4.) Plaintiff assured defense counsel that he had sent the amended discovery responses and now
22 the parties are in the process of exchanging the amended responses at issue in a final attempt to
23 avoid a motion to compel. (Mohmoud Decl., ¶ 4.) Plaintiff has agreed to search for any copies
24 he made of his amended responses and send them to defense counsel this week. (Mohmoud
25 Decl., ¶ 4.) In light of these circumstances, Defendants have requested that the court extend the
26 discovery deadline to allow Defendants time to file a motion to compel.

27 The court finds that Defendants have shown that even with the exercise of due diligence
28 they cannot meet the court's discovery deadline of January 14, 2019. Therefore, good cause

1 appearing, the discovery deadline shall be extended to January 28, 2019, to allow Defendants
2 time to file a motion to compel. Any further requests for extension of deadlines should be filed
3 before the expiration of the existing deadlines.

4 **III. CONCLUSION**

5 Based on the foregoing, IT IS HEREBY ORDERED that:

- 6 1. Good cause appearing, Defendants' January 14, 2019, motion to modify the
7 court's September 14, 2018, discovery and scheduling order, is GRANTED;
- 8 2. The deadline for the completion of discovery, including the filing of motions to
9 compel, is extended from January 14, 2019 to **January 28, 2019**, for the limited
10 purpose of allowing time for Defendants to file a motion to compel; and
- 11 3. All other provisions of the court's September 14, 2018, discovery and scheduling
12 order remain the same.

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14 IT IS SO ORDERED.

15 Dated: **January 18, 2019**

16 **/s/ Gary S. Austin**
17 UNITED STATES MAGISTRATE JUDGE
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