

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

JASON LEROY COOPER,
Plaintiff,
v.
EDMUND G. BROWN, JR., et al.,
Defendants.

1:15-cv-00908-DAD-GSA-PC

**ORDER GRANTING PLAINTIFF’S REQUEST
FOR MODIFICATION OF THE DISCOVERY
AND SCHEDULING ORDER
(ECF No. 30.)**

**ORDER EXTENDING DISCOVERY DEADLINE
AND DEADLINE TO FILE DISPOSITIVE
MOTIONS FOR ALL PARTIES**

New Discovery Deadline: 09/ 14/18

New Dispositive Motions Deadline: 11/14/18

**ORDER FOR DEFENDANT CHOKATOS TO
RESPOND TO PLAINTIFF’S DISCOVERY
REQUESTS WITHIN THIRTY DAYS**

I. BACKGROUND

Plaintiff Jason Leroy Cooper (“Plaintiff”) is a 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 second amended complaint filed on July 7, 2017, against defendant Dr. Chakatos, based on Plaintiff’s medical claim under the Eighth Amendment. (ECF No. 19.)

On October 12, 2017, the court issued a Discovery and Scheduling Order establishing pretrial deadlines for the parties, including a deadline of March 12, 2018, for the parties to

1 complete discovery, including the filing of motions to compel, and a deadline of May 14, 2018,
2 for the filing of pretrial dispositive motions. (ECF No. 25.)

3 On March 19, 2018, Plaintiff filed a motion to modify the Discovery and Scheduling
4 Order to extend the deadlines. (ECF No. 30.) Defendant has not filed an opposition, and the
5 time for opposition has passed. Local Rule 230(I).

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

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

16 Plaintiff asserts and offers evidence that he did not receive the court's Discovery and
17 Scheduling Order after it was served by the court on October 12, 2017, until defense counsel
18 sent him a copy on or about January 18, 2018. As a result of the delay in receiving the order,
19 Plaintiff asserts that he was unable to serve his discovery requests during the time period
20 required by the court's order.¹ Plaintiff asserts that on January 31, 2018, he served on
21 Defendant discovery requests consisting of interrogatories, requests for admissions, and
22 requests for production of documents, and on February 28, 2018, Defendant mailed responses
23 objecting to all of Plaintiff's discovery requests because they had not been timely served.

24 The court finds that Plaintiff has shown that even with the exercise of due diligence, he
25 cannot meet the deadlines established in the court's Discovery and Scheduling Order.

26 ///

27 _____
28 ¹ The court's Discovery and Scheduling Order requires the parties to serve discovery requests at
least 60 calendar days before the discovery deadline. (ECF No. 25 at 2:6.)

1 Therefore, the court finds good cause to extend the discovery and dispositive motions deadlines
2 for all parties to this action.

3 Good cause appearing, the discovery deadline shall be extended to September 14, 2018,
4 for all parties to this action, and the dispositive motions deadline shall be extended to
5 November 14, 2018, for all parties to this action. Any further requests for extension of
6 deadlines should be filed before the expiration of the existing deadlines.

7 **III. CONCLUSION**

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

- 9 1. Plaintiff's motion to modify the court's Discovery and Scheduling Order, filed
10 on March 19, 2018, is GRANTED;
- 11 2. The deadline for the completion of discovery, including the filing of motions to
12 compel, is extended from March 12, 2018, to **September 14, 2018**, for all
13 parties to this action;
- 14 3. The deadline for filing and serving pretrial dispositive motions is extended from
15 May 14, 2018, to **November 14, 2018**, for all parties to this action; and
- 16 4. All other provisions of the court's October 12, 2017, Discovery and Scheduling
17 Order remain the same.

18
19 IT IS SO ORDERED.

20 Dated: **April 11, 2018**

/s/ Gary S. Austin
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25
26
27
28