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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEWART MANAGO,
Plaintiff,
vs.
D. DAVEY, et al.,
Defendants.

1:16-cv-00399-LJO-GSA-PC
ORDER GRANTING MOTION TO
MODIFY SCHEDULING ORDER
(ECF No. 104.)
ORDER EXTENDING DISCOVERY
DEADLINE AND DEADLINE TO FILE
DISPOSITIVE MOTIONS FOR ALL
PARTIES
New Discovery Deadline: 05/29/18
New Dispositive Motions Deadline: 07/29/18

I. BACKGROUND

Stewart Manago (“Plaintiff”) is a prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on March 24, 2016. (ECF No. 1.) This case now proceeds with the First Amended Complaint filed on April 18, 2016, against defendants J. Acevedo, D. Davey, A. Maxfield, E. Razo, M.V. Sexton, A. Valdez, and J. Vanderpoel (collectively, “Defendants”), on Plaintiff’s First Amendment retaliation claims. (ECF No. 13.) This case is currently in the discovery phase.

1 On August 9, 2016, the Court issued a Discovery and Scheduling Order establishing
2 pretrial deadlines for the parties, including a deadline of January 6, 2017, for the parties to
3 complete discovery, including the filing of motions to compel, and a deadline of March 7,
4 2017, for the filing of pretrial dispositive motions. (ECF No. 45.) These deadlines have been
5 extended more than once by the court, resulting in a discovery deadline of February 28, 2018,
6 and a dispositive motions deadline of April 30, 2018. (ECF Nos. 70, 85, 89, 102.)

7 On January 11, 2018, Defendants filed a motion to modify the scheduling order to
8 extend the deadlines. (ECF No. 104.) Plaintiff has not filed a response to the motion. The
9 motion is now submitted to the court. Local Rule 230 (*l*).

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

11 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.
12 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,
13 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the
14 modification of a scheduling order must generally show that even with the exercise of due
15 diligence, they cannot meet the requirement of the order. Id. The court may also consider the
16 prejudice to the party opposing the modification. Id. If the party seeking to amend the
17 scheduling order fails to show due diligence the inquiry should end and the Court should not
18 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087
19 (9th Cir. 2002).

20 Defendants request a ninety-day extension of the discovery deadline and the dispositive
21 motions deadline, until May 29, 2018, and July 29, 2018, respectively. Defense counsel filed a
22 declaration dated January 11, 2018, in which she sets forth Defendants' diligence in attending
23 to the matters in this case. (ECF No. 104-1.) The court finds that Defendants have shown that
24 even with the exercise of due diligence they cannot meet the deadlines established in the
25 court's previous Discovery and Scheduling Order. Plaintiff has not opposed Defendants'
26 motion to modify the scheduling order. Therefore, the court finds good cause to extend the
27 deadlines for all parties to this action.

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1 Good cause appearing, the discovery deadline shall be extended to **May 29, 2018**, for
2 all parties to this action, and the dispositive motions deadlines shall be extended to **July 29,**
3 **2018**, for all parties to this action. Any further requests for extension of deadlines should be
4 filed before the expiration of the existing deadlines.

5 **III. CONCLUSION**

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

- 7 1. Defendants' motion to modify the Court's Discovery and Scheduling Order,
8 filed on January 11, 2018, is GRANTED;
- 9 2. The deadline for the completion of discovery, including the filing of motions to
10 compel, is extended from February 28, 2018, to **May 29, 2018**, for all parties to
11 this action;
- 12 3. The deadline for filing and serving pretrial dispositive motions is extended from
13 April 30, 2018, to **July 29, 2018**, for all parties to this action; and
- 14 4. All other provisions of the Court's August 9, 2016, Discovery and Scheduling
15 Order remain the same.

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17 IT IS SO ORDERED.

18 Dated: **February 16, 2018**

19 **/s/ Gary S. Austin**
20 UNITED STATES MAGISTRATE JUDGE
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