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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 STEWART MANAGO,

12 Plaintiff,

13 vs.

14 D. DAVEY, et al.,

15 Defendants.
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1:16-cv-00399-LJO-GSA-PC

**ORDER GRANTING DEFENDANTS'
MOTION TO MODIFY SCHEDULING
ORDER
(ECF No. 131.)**

**ORDER STAYING DEADLINES FOR
DISCOVERY AND FOR FILING
DISPOSITIVE MOTIONS
(ECF No. 128.)**

DEADLINES STAYED:

Discovery Deadline

Dispositive Motions Deadline

**ORDER REQUIRING PARTIES TO
INFORM THE COURT OF STATUS OF
THIS CASE, AS INSTRUCTED BY THIS
ORDER**

24 **I. BACKGROUND**

25 Stewart Manago (“Plaintiff”) is a prisoner proceeding *pro se* and *in forma pauperis* with
26 this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
27 commencing this action on March 24, 2016. (ECF No. 1.) This case now proceeds with the
28 First Amended Complaint filed on April 18, 2016, against defendants J. Acevedo, D. Davey, A.

1 Maxfield, E. Razo, M.V. Sexton, A. Valdez, and J. Vanderpoel (collectively, “Defendants”), on
2 Plaintiff’s First Amendment retaliation claims. (ECF No. 13.)

3 On August 9, 2016, the court issued a discovery and scheduling Order establishing
4 pretrial deadlines for the parties, including a deadline of January 6, 2017, for the parties to
5 complete discovery, including the filing of motions to compel, and a deadline of March 7,
6 2017, for the filing of pretrial dispositive motions. (ECF No. 45.) On December 9, 2016, the
7 court extended the discovery deadline to March 7, 2017, and the dispositive motions deadline
8 to May 6, 2017. (ECF No. 70.) On May 22, 2017, the court extended the discovery deadline to
9 July 7, 2017, and the dispositive motions deadline to September 8, 2017. (ECF No. 85.) On
10 July 28, 2017, the court extended the discovery deadline to October 6, 2017, and the dispositive
11 motions deadline to December 6, 2017. (ECF No. 89.)

12 On November 25, 2017, the court stayed all proceedings in this case pending resolution
13 of the settlement conference scheduled for January 18, 2018. (ECF No. 98.) On December 12,
14 2017, the settlement conference was vacated, the stay was lifted, the discovery deadline was set
15 for February 28, 2018, and the dispositive motions deadline was set for April 30, 2018. (ECF
16 No. 102.) On February 16, 2018, the discovery deadline was extended to May 29, 2018, and
17 the dispositive motions deadline was extended to July 29, 2018. (ECF No. 108.)

18 On April 23, 2018, the court deferred the scheduling of a new settlement conference
19 until Plaintiff’s pending criminal trial in San Bernardino County Superior Court was resolved.
20 (ECF No. 115.) On May 1, 2018, the court stayed the deadlines for discovery and for the filing
21 of dispositive motions pending resolution of a settlement conference to be scheduled. (ECF
22 No. 118.) On September 14, 2018, the court scheduled a settlement conference to take place on
23 November 6, 2018. (ECF No. 121.) On November 5, 2018, the settlement conference was
24 vacated and a new discovery deadline was set for January 29, 2019, and the dispositive motions
25 deadline was extended to March 29, 2019. (ECF No. 128.)

26 On December 13, 2018, Defendants filed a motion to modify the scheduling order to
27 either extend or postpone the deadlines therein. (ECF No. 131.) Plaintiff has not filed an
28 opposition and the time for filing an opposition has expired. L.R. 230(I).

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

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

11 Defendants request a ninety-day extension of the discovery deadline for Defendants
12 only, and a ninety-day extension of the dispositive motions deadline. Alternatively, Defendants
13 request a stay of the deadlines pending resolution of Plaintiff’s criminal proceedings.

14 Defendants seek an extension of the discovery deadline to allow Plaintiff to provide his
15 responses to Defendants’ discovery requests, and to allow Defendants to review Plaintiff’s
16 responses; to prepare a further motion to compel, if necessary; and to prepare to take Plaintiff’s
17 deposition.¹ Without the benefit of Plaintiff’s responses defense counsel cannot adequately
18 evaluate Plaintiff’s position, prepare for Plaintiff’s deposition, or prepare a motion for summary
19 judgment that could potentially dispose of the case in its entirety. (Decl. of De La Torre-
20 Fennell, ¶¶ 11-12.) Defendants provide evidence that that they have been diligent in attending
21 to the matters in this case, and they argue that they will be prejudiced if the deadlines are not
22 modified because Defendants will not able to adequately prepare for and take Plaintiff’s
23 deposition, or otherwise defend their position in the amount of time remaining under the
24 current Discovery and Scheduling Order. (Id., ¶¶ 3-12.).

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28 ¹ On March 29, 2018, the court granted Plaintiff a sixty-day extension of time in which to
provide responses to Defendants’ discovery requests. (ECF No. 11.) Defense counsel reports that Plaintiff has not
provided any responses in compliance with the court’s orders. (Decl. of A. De La Torre-Fennell ¶9.)

1 **Discussion**

2 The court record for this case reflects that Plaintiff’s state court criminal matters have
3 not been resolved, that Plaintiff is being held at a San Bernardino Jail facility without access to
4 his legal paperwork, and it is unknown when these conditions will change. The court finds that
5 Defendants have shown that even with the exercise of due diligence they cannot meet the
6 deadlines established in the court’s current scheduling order. Therefore, the court finds good
7 cause to grant Defendants’ motion to modify the scheduling order.

8 In light of the uncertainty about when Plaintiff’s state court criminal matters shall be
9 resolved, when Plaintiff shall be returned to CDCR custody, and when a settlement conference
10 may be rescheduled in this case, the court finds good cause to stay all of the deadlines in the
11 court’s scheduling order until one or more of these conditions changes. As ordered on
12 November 5, 2018, Defendants shall advise the court if and when a settlement conference may
13 be re-scheduled in this case. (ECF No. 127 at 2.) Plaintiff shall be required to inform the court
14 when his state criminal case has been resolved, and when he has been returned to CDCR
15 custody.

16 **III. CONCLUSION**

17 Based on the foregoing, and good cause appearing, IT IS HEREBY ORDERED that:

- 18 1. The deadlines for discovery and the filing of dispositive motions in the court’s
19 scheduling order issued on November 6, 2018, are STAYED pending the
20 resolution of Plaintiff’s state criminal case matters, Plaintiff’s return to CDCR
21 custody, the scheduling of a settlement conference in this case, or any other
22 reason the court finds good cause to lift the stay;
- 23 2. The parties are excused from serving discovery requests, providing responses to
24 each other’s discovery requests, or holding depositions until the stay is lifted;
- 25 3. Defendants shall advise the court if and when a settlement conference may be
26 re-scheduled in this case;
- 27 4. Plaintiff shall inform the court in writing when his state criminal matters have
28 been resolved, and when he has been returned to CDCR custody; and

