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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10 MICHAEL JACQUES,

11 Plaintiff,

12 v.

13 J. LOPEZ, JR., et al.,

14 Defendants.

Case No. 1:16-cv-01289-DAD-SAB (PC)

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR AN ORDER FOR
DEPOSITION UPON WRITTEN
QUESTIONS

[ECF Nos. 20, 21, 22]

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17 **I.**

18 **INTRODUCTION**

19 Plaintiff Michael Jacques is proceeding pro se and in forma pauperis in this civil rights
20 action pursuant to 42 U.S.C. § 1983.

21 Currently before the Court is Plaintiff's motion for an order for deposition upon written
22 questions, (ECF No. 22), and his declaration in support, (ECF No. 21). Defendant filed an
23 opposition on July 31, 2018. (ECF No. 24.) The time to file any reply has passed, and none has
24 been filed. The motion is deemed submitted. Local Rule 230(l).

25 **II.**

26 **RELEVANT BACKGROUND**

27 On October 11, 2017, the Court issued a discovery and scheduling order. (ECF No. 20.)
28 Pursuant to that order, all discovery closed on June 11, 2018. (Id.) As noted above, Plaintiff

1 filed a motion for an order for deposition upon written questions, and a declaration in support,
2 both dated June 28, 2018. (ECF Nos. 21, 22.)

3 In his motion, Plaintiff states that he seeks information, documents and records from
4 various non-party witnesses, and seeks an order to take depositions upon written questions.
5 Plaintiff also declares that beginning in October 2017, there was roof damage and flooding from
6 rain at his institution that destroyed legal records and discovery documents that he was working
7 on. Plaintiff discovered the extent of the destruction after a cell move in the summer of 2018,
8 and informed defense counsel. As a result, Plaintiff was unable to complete discovery within the
9 applicable deadlines.¹

10 In opposition, Defendants state that Plaintiff's deposition was originally noticed for May
11 31, 2018, at which time he informed counsel that he could not go forward because all his legal
12 paperwork had been lost in a flood. Plaintiff requested copies of all documents filed in the
13 matter, and counsel complied. Plaintiff's deposition was taken the following week.

14 Later, on June 28, 2018, Plaintiff served a Request for Tangible Things and a Request for
15 Production of Documents. Plaintiff re-served those requests on July 23, 2018, stating that he had
16 been rushed on the first set, and the new set was more precise and clear. In addition, Plaintiff
17 served a Request for Interrogatories on all Defendants. Defendants do not oppose responding to
18 Plaintiff's requests, but require additional time to prepare responses.

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21 ¹ Plaintiff also states in his declaration that Correctional Officer J. Gonzalez was involved
22 in the events at issue and that he, along with Defendant Lopez, "initiated the assault and
23 excessive force against Plaintiff." (Pl.'s Decl., ECF No. 21 at 7.) Plaintiff further contends that
Officer Gonzalez should be a defendant in this action.

24 Although Plaintiff named Correctional Officer J. Gonzalez as a defendant in his
25 complaint, he made no allegations that Officer Gonzalez used any force against him, or that he
26 was involved in the use of force with Defendant Lopez. (Compl., ECF No. 1, at 15.) Due to the
27 insufficient factual allegations showing any violation of his constitutional rights by Officer
28 Gonzalez, the Court found no cognizable claim against him. (ECF Nos. 9, 13.) Officer
Gonzalez is not a party to this action. Plaintiff has not sought to amend his complaint to add any
allegations against Officer Gonzalez, or shown any good cause as to why such allegations have
not been brought in the nearly two years that this case has been pending.

1 Defendants do oppose Plaintiff's current request to take a deposition on written questions
2 and to obtain unspecified information, documents, and records from non-parties. Defendants
3 argue that Plaintiff has not shown good cause for such late discovery.

4 III.

5 DISCUSSION

6 Under Federal Rule of Civil Procedure 16(b)(4), a discovery and scheduling order may be
7 modified only for good cause, and with the court's approval. Rule 16(b)'s "good cause"
8 standard primarily considers the diligence of the party seeking the amendment. The court may
9 modify the pretrial schedule "if it cannot reasonably be met despite the diligence of the party
10 seeking the extension." Fed. R. Civ. P. 16 advisory committee's notes (1983 amendment);
11 Harrison Beverage Co. v. Dribeck Importers, Inc., 133 F.R.D. 463, 469 (D.N.J. 1990); Amcast
12 Indus. Corp. v. Detrex Corp., 132 F.R.D. 213, 217 (N.D. Ind. 1990); 6A Wright, Miller & Kane,
13 Federal Practice and Procedure § 1522.1 at 231 (2d ed. 1990) ("good cause" means scheduling
14 deadlines cannot be met despite party's diligence).

15 The Court first addresses Plaintiff's Requests for Tangible Things, Requests for
16 Production of Documents, and Interrogatories served on Defendants. As noted above,
17 Defendants do not oppose responding to these discovery requests, although they seek additional
18 time to respond. Accordingly, the Court finds good cause to extend the discovery deadline to
19 allow for responses to these discovery requests. Recently, the Court granted an extension of the
20 dispositive motion deadline to allow for the parties to focus on upcoming settlement
21 negotiations. Therefore, the Court will extend the discovery response due date until after the
22 settlement conference in this matter.

23 However, the Court does not find good cause to allow an extension of the discovery
24 deadline for Plaintiff to conduct discovery on non-parties. Plaintiff has not shown diligence in
25 conducting such discovery. By all appearances, Plaintiff was not working on conducting
26 discovery in this case from the time the discovery and scheduling order was issued in October
27 2017, until he discovered that his legal paperwork was damaged or lost due to flooding several
28 months later. Plaintiff then showed some diligence in attempting to work with defense counsel

1 on obtaining replacement documents and working on propounding discovery requests on
2 Defendants, as discussed above. Nevertheless, Plaintiff made no motion to the Court seeking
3 any extension of the discovery deadline, or showing any good cause for his failure to conduct
4 discovery on non-parties. Plaintiff has also not explained the extent and scope of the additional
5 discovery that he seeks to conduct, from what non-parties, nor any explanation as to why he
6 cannot obtain the information from Defendants. Therefore, that request will be denied.

7 **IV.**

8 **CONCLUSION**

9 For the reasons explained above, it is HEREBY ORDERED that:

10 1. Plaintiff's motion for an order for deposition upon written questions and request
11 regarding discovery (ECF Nos. 21, 22) is granted in part and denied in part, as discussed above;

12 2. The discovery deadline in this case is extended for the sole purpose of allowing
13 Defendants to respond to Plaintiff's previously-served discovery requests. Defendants'
14 responses to Plaintiff's Requests for Tangible Things, Requests for Production of Documents,
15 and Interrogatories served on Defendants are due on or before **November 2, 2018**; and

16 3. Plaintiff's request to extend the discovery deadline to allow him to conduct
17 discovery on unnamed non-parties is denied.

18 IT IS SO ORDERED.

19 Dated: **August 21, 2018**

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21 UNITED STATES MAGISTRATE JUDGE