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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LAMAR SINGLETON, SR.,

12 Plaintiff,

13 vs.

14 DR. FORTUNE, et al.,

15 Defendants.
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1:17-cv-00124-DAD-GSA-PC

ORDER GRANTING MOTION TO
MODIFY SCHEDULING ORDER
(ECF No. 53.)

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

New Discovery Deadline: 12/29/17

New Dispositive Motions Deadline: 01/31/18

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21 **I. BACKGROUND**

22 Lamar Singleton, Jr., (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
23 *pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case now proceeds
24 with the First Amended Complaint filed on February 19, 2016, against defendant Fortune
25 (“Defendant”) on Plaintiff’s medical claim pursuant to the Eighth Amendment. (ECF No. 25.)

26 On March 17, 2017, the court issued a Discovery and Scheduling Order establishing
27 pretrial deadlines for the parties, including a deadline of August 17, 2017, for the parties to
28 complete discovery, including the filing of motions to compel, and a deadline of October 16,

1 2017, for the filing of pretrial dispositive motions. (ECF No. 43.) On June 21, 2017, Plaintiff
2 filed a motion to modify the scheduling order to extend the discovery deadline for sixty days.
3 (ECF No. 47.) On August 7, 2017, Plaintiff's motion was granted, extending the discovery
4 deadline to October 30, 2017, and the dispositive motions deadline to December 29, 2017.
5 (ECF Nos. 47, 48.)

6 On October 23, 2017, Defendant filed a motion to stay the current deadlines until after
7 Plaintiff's motion for counsel is resolved, or to modify the scheduling order. (ECF No. 53.)
8 Plaintiff has not opposed the motion.

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

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

19 Defendant requests that the court stay the deadlines set in the August 7, 2017 order until
20 after ruling on Plaintiff's motion to appoint counsel, or to modify the August 7, 2017
21 scheduling order and reset the currently pending deadline for completion of discovery from
22 October 30, 2017, to December 29, 2017, and to reset the currently pending deadline for
23 dispositive motions from December 29, 2017, to January 31, 2018. Defense counsel, Deputy
24 Attorney General Vickie Whitney (Counsel), asserts that she was assigned to this case on or
25 about August 13, 2017, upon the departure of former defense counsel. (Whitney Decl. ¶1.) On
26 August 13, 2017, using Plaintiff's signed release, Counsel requested Plaintiff's medical records
27 from California State Prison, Los Angeles County. (Id. ¶2.) Counsel reviewed the status of
28 discovery, found that Plaintiff's discovery responses were deficient, and sent Plaintiff a meet

1 and confer letter giving Plaintiff until September 5, 2017 to provide further and complete
2 responses. (Id. ¶¶3, 4.) Plaintiff did not respond to the letter, and on September 29, 2017,
3 Counsel filed a motion to compel. (Id. ¶4.) As of October 23, 2017, Plaintiff had not
4 propounded any discovery or responded to the motion to compel. (Id.) On October 20, 2017,
5 Plaintiff filed a motion for appointment of counsel, but did not mention his failure to provide
6 discovery responses, to respond to defense counsel’s letter, or to respond to the motion to
7 compel. (Id. ¶6.) Counsel seeks additional time to complete discovery, including the taking of
8 Plaintiff’s deposition. (Id. ¶¶7, 8, 9.)

9 **III. DISCUSSION**

10 Plaintiff’s motion for appointment of counsel was denied by the court on October 25,
11 2017, rendering Defendant’s motion to stay the current deadlines moot. However, the court
12 finds that defense counsel has shown that even with the exercise of due diligence, she cannot
13 meet the deadlines established in the court’s Discovery and Scheduling Order. Therefore, the
14 court finds good cause to extend the discovery deadline and the dispositive motions deadlines
15 for all parties to this action.

16 Good cause appearing, the discovery deadline shall be extended to **December 29, 2017**,
17 for all parties to this action, and the dispositive motions deadlines shall be extended to **January**
18 **31, 2018**, for all parties to this action. Any further requests for extension of deadlines should
19 be filed before the expiration of the existing deadlines.

20 **III. CONCLUSION**

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

- 22 1. Defendant’s motion to stay deadlines or modify the court’s Discovery and
23 Scheduling Order, filed on October 23, 2017, is GRANTED;
- 24 2. The deadline for the completion of discovery, including the filing of motions to
25 compel, is extended from October 30, 2017, to **December 29, 2017**, for all
26 parties to this action;
- 27 3. The deadline for filing and serving pretrial dispositive motions is extended from
28 December 29, 2017, to **January 31, 2018**, for all parties to this action; and

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4. All other provisions of the Court's March 17, 2017, Discovery and Scheduling Order remain the same.

IT IS SO ORDERED.

Dated: November 27, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE