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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY L. ROBINSON,
Plaintiff,
vs.
DAVE DAVEY, et al.,
Defendants.

1:17-cv-01524-DAD-GSA-PC

**ORDER GRANTING DEFENDANTS’
THIRD MOTION TO MODIFY
SCHEDULING ORDER
(ECF No. 83.)**

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

New Discovery Deadline: November 1, 2021

New Dispositive Motions Deadline: January 3, 2022

I. BACKGROUND

Anthony L. Robinson (“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 on Plaintiff’s First Amended Complaint filed on July 2, 2018 against defendant C/O H. German for use of excessive force, and against defendants Sgt. A. Peterson and S. Thomas-Beltran¹ (LVN) for providing inadequate medical care in violation of the Eighth Amendment. (ECF No. 24.)

On January 2, 2020, the court issued a Discovery and Scheduling Order establishing pretrial deadlines for the parties, including a discovery deadline of July 2, 2020, and a dispositive motions deadline of September 2, 2020. (ECF No. 61.) On April 15, 2020, the court granted defendants Peterson and German’s motion to modify the Scheduling Order extending the

¹ Sued as S. Gonzales-Thompson.

1 discovery deadline to October 2, 2020, and the dispositive motions deadline to December 2, 2020,
2 for all parties to this action. (ECF No. 64.) On August 3, 2020, defendants Peterson and German
3 filed another motion to modify the Scheduling Order. (ECF No. 70.) Thereafter, on August 10,
4 2020, the court again granted defendants Peterson and German's motion to modify the
5 Scheduling Order, extending the discovery deadline to April 2, 2021, and the dispositive motions
6 deadline to June 2, 2021, for all parties to this action. (ECF No. 71.) On February 22, 2021,
7 Plaintiff filed a motion to modify the Scheduling Order. (ECF No. 78.) On March 19, 2021, the
8 court granted Plaintiff's motion to modify the Scheduling Order extending the discovery deadline
9 to August 2, 2021, and the dispositive motions deadline to October 4, 2021, for all parties to this
10 action. (ECF No. 79.)

11 On August 2, 2021, defendants Peterson, German, and Gonzales-Thompson
12 ("Defendants") filed a third motion to modify the Scheduling Order. (ECF No. 83.)

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

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

22 Defendants request the court to extend the deadline to conduct discovery and the deadline
23 to file dispositive motions by 90 days each due to the COVID-19 crisis. Defense counsel has not
24 been able to depose Plaintiff. In addition, Defendants have not received any responses to
25 Defendants' discovery requests or written correspondence. (Decl. of David E. Kuchinsky, ECF
26 No. 83-1 ¶ 4.) Good cause appearing, the deadline to conduct discovery shall be extended to
27 November 1, 2021, and the deadline to file dispositive motions shall be extended to January 3,
28 2022.

1 Defense counsel has also notified the court that on July 9, 2021, he received a copy of
2 Plaintiff's Second Motion for Request of Extension of Time of Discovery Deadline, which for
3 an unknown reason was never filed with the court. (Id. ¶ 5 & Exh. B.) In the motion Plaintiff
4 requests a 60-day extension of time to respond to Defendants' outstanding discovery requests, as
5 well as a 60-day extension of the discovery and dispositive motion deadlines. (Id.) Defendants
6 request that the court allow Plaintiff an additional 60 days to respond to Defendants' outstanding
7 discovery requests. (Id. ¶10.) Good cause appearing, Plaintiff shall be granted an additional 60
8 days to respond to Defendants' outstanding discovery requests.

9 **III. CONCLUSION**

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

- 11 1. Defendants' third motion to modify the court's Scheduling Order, filed on August
12 2, 2021, is GRANTED;
- 13 2. The deadline for the completion of discovery is extended from August 2, 2021
14 2021 to **November 1, 2021**, for all parties to this action;
- 15 3. The deadline for filing and serving pretrial dispositive motions is extended from
16 October 4, 2021 to **January 3, 2022**, for all parties to this action;
- 17 4. Plaintiff is granted an extension of time until 60 days from the date of service of
18 this order in which to serve responses to Defendants' outstanding discovery
19 requests; and
- 20 5. All other provisions of the court's January 2, 2020 Discovery and Scheduling
21 Order remain the same.

22
23 IT IS SO ORDERED.

24 Dated: August 6, 2021

/s/ Gary S. Austin
25 UNITED STATES MAGISTRATE JUDGE
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