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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA,
9 SACRAMENTO DIVISION

10
11 ANDREW R. LOPEZ,

12 Plaintiff,

13 v.

14 D. PETERSON, et al.,

15 Defendants.
16

No. 2:98-cv-2111 LKK-EFB (PC)

**STIPULATION AND [PROPOSED]
ORDER REVISING SCHEDULING
ORDER**

17 Under Federal Rules of Civil Procedure 16(b)(4) and Local Rule 143, the
18 parties, through their counsel of record, agree to a revision of the scheduling order
19 previously set out in the joint status report filed August 19, 2014. Doc. 410. Good
20 cause exists to grant this stipulation because plaintiff's counsel until just recently
21 had responsibilities in two ongoing medical issues, was several times out of state
22 regarding one of these situations, and has appointed work in which he prepares
23 and files briefing.

24 A scheduling order may be modified only upon a showing of good cause and
25 by leave of Court. Fed.R.Civ.P. 6(b)(1)(A), 16(b)(4); see, e.g., *Johnson v. Mam-*
26 *moth Recreations, Inc.*, 975 F.2d 604, 609 (describing the factors a court should
27 consider in ruling on such a motion). In considering whether a party moving for a
28 schedule modification has good cause, the Court primarily focuses on the diligence

1 of the party seeking the modification. *Johnson*, 975 F.2d at 609 (citing Fed.R.Civ.P.
2 16 advisory committee's notes of 1983 amendment). "The district court may modify
3 the pretrial schedule 'if it cannot reasonably be met despite the diligence of the
4 party seeking the amendment.'" *Id.* (quoting Fed.R.Civ.P. 16 advisory committee
5 notes of 1983 amendment).

6 Plaintiff's appointed counsel, Robert Navarro, is the power of attorney and
7 medical advocate for a family member, Susan Richardson, who has been under-
8 going cancer treatment since early Summer 2014. In August, after some chemo-
9 therapy sessions, Ms. Richardson was transferred to Sierra Medical Center in El
10 Paso, Texas, and was in a coma for several days. Counsel flew to El Paso and
11 spent five days to attend to her situation. Ms. Richardson was unable to speak,
12 walk or perform any ordinary tasks of normal self care. When Ms. Richardson im-
13 proved slightly, she was returned to a nursing facility in Silver City, New Mexico.
14 She continued to struggle with speech and mobility. She underwent a long recup-
15 eration in a nursing home and was required to master certain levels of mobility and
16 strength before she could be returned home and allowed to recommence additional
17 cancer treatment. She is currently undergoing renewed chemotherapy.

18 Secondly, counsel's best friend, Thomas Quinn, last year and early this year
19 underwent treatment for parotid (salivary) gland cancer, and counsel was an
20 integral part of his support team. In September 2014, Mr. Quinn was diagnosed as
21 having an aggressive recurrence of that cancer. Plaintiff's counsel accompanied
22 Mr. Quinn on two separate occasions for a total of approximately five days to the
23 Bay Area for numerous appointments, consultations and therapy treatments, and
24 assists Mr. Quinn with his medical care locally in Fresno. See attached letters
25 regarding medical issues.

26 Additionally, because of these medical situations, appellant's state appointed
27 appellate work was behind schedule. In the last 30 days, counsel has filed briefs
28 in *People v. Aleman*, Fifth District Court of Appeal, F067671; *People v. Bailey*,

1 Third District Court of Appeal, C076863; *People v. Crowley*, Third District Court of
2 Appeal, C077457; *People v. Williams*, Fifth District Court of Appeal, F069352;
3 *People v. Williams*, Fifth District Court of Appeal, F069253; and *People v. Franco*,
4 Fifth District Court of Appeal.

5 Further, counsel has two other cases in which he represents Mr. Lopez. In
6 *Lopez v. Cook, et al.*, 2:0-cv-1605 KJM DAD, Ms. Esquivel is also defense counsel.
7 Beginning in September, 2014, the parties litigated cross-motions for summary
8 judgment which were fully briefed on October 24, and heard on November 17. See
9 2:0-cv-1605, Doc. 392, 398, 401, 404. The parties are currently awaiting a
10 decision from District Judge Mueller. In addition, in *Lopez v. Schwarzenegger*,
11 2:09-cv-01760 MCE AC, plaintiff must file dispositive motions on January 15, 2015.

12 Because of the above-listed obligations, Plaintiff's counsel has not been
13 able to conduct the necessary discovery in this case. The parties agree and
14 request that the Scheduling Order be modified as follows:

15 Fact Discovery to close on March 27, 2015

16 Expert Disclosures under Rule 26 to be made no later than April 30, 2015

17 Expert Discovery to close on June 5, 2015

18 Dispositive motions to be filed no later than July 31, 2015

19 The parties have agreed to meet and confer regarding the disputed discovery by
20 December 15, 2014. If after informal discussion plaintiff believes it appropriate,
21 he will file a notice of motion by no later than December 17, and the parties will
22 brief the discovery motion as required under Local Rule 251. Unless the
23 Magistrate Judge requires a hearing, the parties agree to submit the motion on the
24 briefing. The parties have further agreed to tentatively conduct party depositions
25 from February 2 to 13, 2015. Based on these agreements, the parties believe
26 they will be able to complete discovery by the proposed extension dates.

27 IT IS SO STIPULATED.

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1 Dated: December 5, 2014

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/s/ Robert Navarro
ROBERT NAVARRO
Attorneys for Andrew Rick Lopez

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Dated: December 5, 2014

KAMALA D. HARRIS
Attorney General of California
CHRISTOPHER J. BECKER
Supervising Deputy Attorney General

By: */s/ Diana Esquivel*
DIANA ESQUIVEL
Deputy Attorney General
Attorneys for Defendants


ORDER

Based on the parties' stipulation and good cause appearing, it is ordered that:

- Fact Discovery to close on March 27, 2015
- Expert Disclosures under Rule 26 to be made no later than April 30, 2015
- Expert Discovery to close on June 5, 2015
- Dispositive motions to be filed no later than July 31, 2015

IT IS SO ORDERED.

Dated: December 9 , 2014


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE