

1 KAMALA D. HARRIS, State Bar No. 146672
 Attorney General of California
 2 CHRISTOPHER J. BECKER, State Bar No. 230529
 Supervising Deputy Attorney General
 3 DIANA ESQUIVEL, State Bar No. 202954
 Deputy Attorney General
 4 1300 I Street, Suite 125
 P.O. Box 944255
 5 Sacramento, CA 94244-2550
 Telephone: (916) 445-4928
 6 Facsimile: (916) 324-5205
 E-mail: Diana.Esquivel@doj.ca.gov

7 *Attorneys for Defendants Babich, Baughman,*
 8 *Castro, Diggs, Haas, Holmes, C.J. Peterson, D.*
 9 *Peterson, Reyes, and Wright*

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA
 12 SACRAMENTO DIVISION

14 **ANDREW R. LOPEZ,**
 15
 16 Plaintiff,
 17
 18 **v.**
 19 **D. PETERSON, et al.,**
 20 Defendants.

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

**STIPULATION AND PROPOSED
 ORDER TO MODIFY SCHEDULING
 ORDER TO EXTEND THE DEADLINE
 TO FILE DISPOSITIVE MOTIONS**

21 Under Federal Rules of Civil Procedure 16(b)(4) and Local Rule 143, the parties, through
 22 their counsel of record (limited purpose counsel for Plaintiff), agree to and request a modification
 23 of the Scheduling Order to extend the deadline to file dispositive motions by forty-five days, up to
 24 and including September 11, 2015. Good cause exists to grant this stipulation because defense
 25 counsel is preparing for trial and will be unable to complete Defendants' intended summary-
 26 judgment motion by the current deadline.

27 A scheduling order may be modified only upon a showing of good cause and by leave of
 28 Court. Fed. R. Civ. P. 6(b)(1)(A), 16(b)(4); *see, e.g., Johnson v. Mammoth Recreations, Inc.*, 975

1 F.2d 604, 609 (describing the factors a court should consider in ruling on such a motion). In
2 considering whether a party moving for a schedule modification has good cause, the Court
3 primarily focuses on the diligence of the party seeking the modification. *Johnson*, 975 F.2d at
4 609 (citing Fed. R. Civ. P. 16 advisory committee’s notes of 1983 amendment). “The district
5 court may modify the pretrial schedule ‘if it cannot reasonably be met despite the diligence of the
6 party seeking the amendment.’” *Id.* (quoting Fed. R. Civ. P. 16 advisory committee notes of 1983
7 amendment).

8 In December 2013, the Court issued a Scheduling Order in this matter. (ECF No. 371.) On
9 July 8, 2014, the Court appointed Robert Navarro from the Court’s pro bono attorney panel to
10 represent Plaintiff for the limited purpose of conducting discovery. (ECF No. 403.) Based on the
11 appointment of Mr. Navarro and the need for additional time to conduct discovery, the parties
12 agreed to and requested an extension of the scheduling deadlines, including the deadline to file
13 dispositive motions. (ECF No. 413.) The Court granted the parties’ request, and continued the
14 discovery deadline to March 27, 2015 and the dispositive-motion deadline to July 31, 2015.
15 (ECF No. 414.) On February 3, 2015, Plaintiff filed a motion to compel Defendant Holmes’s
16 further responses to a production request. (ECF No. 417.) The Court has not yet ruled on that
17 discovery motion.

18 Defendants require an extension to file their motion for summary judgment because their
19 counsel will not be able to complete the motion by the current deadline. Counsel has spent the
20 majority of the month of July preparing for trial in *Lemire v. CDCR* (E.D. Cal. No. 2:08-cv-0455
21 GEB-EFB); trial is scheduled to start on August 4, 2015, before Judge Burrell, and is expected to
22 last two to three weeks. *Lemire* is a factually and legal complex case that has consumed much of
23 defense counsel’s time and required that she be out of the office preparing witnesses and parties
24 for trial. Further, the Court has not yet ruled on Plaintiff’s pending discovery motion, which may
25 be a basis for Plaintiff to oppose or seek a continuance, under Federal Rule of Civil Procedure
26 56(d), of Defendants’ intended summary-judgment motion. Good cause therefore exists to
27 modify the Scheduling Order and extend the deadline to file dispositive motions for forty-five
28

1 days. The requested extension will allow defense counsel to complete the motion due here and
2 will give the Court additional time to rule on the pending discovery motion.

3 IT IS SO STIPULATED.
4

5 Dated: July 30, 2015

Respectfully submitted,

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

9 */s/ Diana Esquivel*

10 DIANA ESQUIVEL
11 Deputy Attorney General
Attorneys for Defendants

12 Dated: July 30, 2015

/s/ Robert Navarro

14 ROBERT NAVARRO
15 Limited-Purpose Attorney for Plaintiff

16 **ORDER**

17 Based on the parties' stipulation and good cause appearing, it is ordered that the parties'
18 stipulated request to modify the Scheduling Order is granted.

19 Dispositive motions shall be filed on or before September 11, 2015.

20 IT IS SO ORDERED.

21 Dated: August 3, 2015.



22
23 Edmund F. Brennan
24 United States Magistrate Judge
25
26
27
28