

Second Stipulation, Request to Modify the Scheduling Order, and [Proposed] Order (2:07-cv-2291 GGH

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

LEVON GRAHAM,

Plaintiff,

v.

D. L. RUNNELS, ET AL.,

Defendants.

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**SECOND STIPULATION, REQUEST TO
MODIFY THE SCHEDULING ORDER,
AND [PROPOSED] ORDER EXTENDING
DEFENDANTS' DEADLINE FOR FILING
DISPOSITIVE MOTION**

REQUEST TO MODIFY THE SCHEDULING ORDER

A scheduling order may be modified upon a showing of good cause, Fed. R. Civ. P. 16(b). Good cause exists when the deadline cannot be met despite due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

This Court previously modified the scheduling order, upon the parties' stipulation, to extend the Plaintiff's deadline for taking depositions to November 9, 2011, and Defendants' dispositive motion deadline to November 23, 2011. (ECF No. 83.)

The last three depositions, which included the testimony of two non-party witnesses, were completed on November 3 and 4, 2011. During these depositions, the parties agreed to have a representative from the California Department of Corrections (CDCR) review the transcript for testimony that presented potential safety and security concerns, and to designate those portions of the record as confidential. Defendants' counsel provided the transcripts to CDCR for review on Monday, November 7, 2011, but has not yet received the confidential designations back. Once the response is received, the transcripts must be provided to Plaintiff's counsel for approval, then submitted to the deposition reporter for finalization. The transcripts must then be provided to the deponents for review.

Defendants intend to include testimony from these deposition transcripts in their motion for summary judgment. But, because the transcripts are not yet finalized, Defendants cannot complete their dispositive motion before the current November 23, 2011 deadline.

The parties, therefore, request that the Court extend the deadline for Defendants' dispositive motion to December 22, 2011.

STIPULATION

The parties, through their respective counsel of record, stipulate that:

1. The deadline for defendants to file and/or re-notice any dispositive motion shall be extended until December 22, 2011;
2. Plaintiff's opposition to defendants' dispositive motion shall be due on or before February 2, 2012;
3. Defendants' reply in support of their dispositive motion shall be due on or before February 9, 2012; and

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4. The hearing on defendants' dispositive motion shall be held on February 16, 2012, or on a date thereafter to be set by the Court.

Dated: November 18, 2011

/s/ Brendan K. Kelleher

Brendan K. Kelleher
LATHAM & WATKINS LLP
Attorneys for Plaintiff Levon Graham

Dated: November 18, 2011

/s/ Jaime M. Ganson

Jaime M. Ganson
Deputy Attorney General
Attorney for Defendants Martin and Kopec

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ORDER

Good cause shown, the deadline for Defendants' dispositive motion is continued to December 22, 2011. Plaintiff's opposition shall be due on or before February 2, 2012. Defendants' reply shall be due on or before February 9, 2012.

IT IS SO ORDERED.

Dated: November 21, 2011

/s/ Gregory G. Hollows

The Honorable Gregory G. Hollows

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