

1 BENJAMIN B. WAGNER
 United States Attorney
 2 EDWARD A. OLSEN
 Assistant United States Attorney
 3 501 I Street, Suite 10-100
 Sacramento, California 95814
 4 (916) 554-2821
 (916) 554-2900 (FAX)
 5 Attorneys for the Secretary of the Air Force
 6

7
 8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA
 10

11 KAREN M. TAYLOR,
 12 Plaintiff,
 13 v.
 14 THE HONORABLE MICHAEL B.
 DONLEY, SECRETARY OF THE AIR
 15 FORCE
 16 Defendant.
 17

CASE NO. 2:08-CV-869-JAM-DAD PS
**MOTION TO MODIFY PRE-TRIAL
 SCHEDULING ORDER; AND ORDER**
[Fed. R. Civ. P. 16]

18 Defendant Michael Donley, Secretary of the Air Force (“Secretary”), hereby respectfully moves
 19 to modify the Pretrial Scheduling Order.
 20

21 **I. FACTS IN SUPPORT OF THE MOTION**

22 On March 4, 2009, Karen Taylor, proceeding in *propria persona*, filed a Second Amended
 23 Complaint asserting claims against the Secretary under various federal statutes and theories of liability,
 24 including Title VII of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. The Secretary
 25 filed an Answer with respect to the Title VII and Rehabilitation Act claims, and filed a motion to
 26 dismiss the remaining claims. On March 26, 2010, the Court entered an order granting the Secretary’s
 27 motion to dismiss and setting the matter for a Status (Pretrial-Scheduling) Conference. Docket Entry
 28 (“D.E.”) Nos. 43, 44, 45.

1 On May 7, 2010, the parties appeared before this Court for a Status (Pre-Trial Scheduling)
2 Conference. D.E. 48. On May 11, 2010, the Court issued its pretrial scheduling order setting forth the
3 following schedule:

4	Deadline for designation of Plaintiff's experts:	November 5, 2010
5	Deadline for designation of Defendant's experts:	November 19, 2010
6	Deadline for designation of rebuttal experts:	December 3, 2010
7	Close of discovery:	January 14, 2011
8	Deadline for pretrial motions to be heard:	March 4, 2011
9	Pretrial conference:	June 17, 2011
10	Trial:	August 15, 2011

11 D.E. 49.

12 On November 2, 2010, Plaintiff filed a document that listed 18 individuals who she intends to
13 call as expert witnesses. D.E. 50.

14 On November 17, 2010, the undersigned counsel substituted in as counsel for record in place of
15 Assistant United States Attorney Todd Pickles. From approximately May 2010 to the present, Mr.
16 Pickles has been actively engaged in litigating numerous cases, which have severely limited his
17 availability to actively engage in and complete discovery in the present action. *See* Declaration of Todd
18 Pickles, ¶¶ 2-3. Mr. Pickles has also been in the process of transitioning to a position in the criminal
19 unit. *Id.*, ¶ 4. Much of this situation was not foreseen by Mr. Pickles at the time he participated in the
20 pretrial conference. *Id.* at ¶ 5. The undersigned is taking over primary responsibility for this case, and
21 needs time to prepare for the defense of this action.

22 **II. LEGAL STANDARD**

23 A pretrial scheduling order may be modified by the court upon a showing of good cause.
24 Fed. R. Civ. P. 16(b)(4). The good cause standard primarily involves the diligence of the party seeking
25 the modification, including participation in setting the schedule, efforts to abide by the schedule, and
26 seeking modification of the schedule once it appears no longer workable. *See, e.g., Johnson v.*
27 *Mammoth Recreations, Inc*, 975 F.2d 604, 609 (9th Cir. 1992).

28 //

1 **III. ARGUMENT**

2 There is good cause to modify the scheduling order in this case. As noted, there is new counsel
3 of record for the Secretary who needs time to prepare to defend the action, including taking the
4 deposition of Plaintiff and potentially designating and deposing experts. Although the time to complete
5 discovery has not yet concluded, it is most efficient to permit the Secretary to take Plaintiff's deposition
6 before determining whether it needs to retain and/or designate potential experts, all of which may
7 require the expenditure of public resources. Unfortunately, former counsel's schedule severely limited
8 his ability to complete discovery as intended, primarily because of situations unforeseen at the time the
9 schedule was set. Moreover, it could not have been reasonably foreseen that Plaintiff would designate
10 eighteen individuals from whom she indicates she may attempt to elicit expert testimony. Their
11 disclosure might necessitate additional discovery or at least requires additional time to prepare for
12 Plaintiff's deposition. Moreover, the Secretary has moved to modify the schedule before the close of
13 discovery and before the time to designate experts within the tight time period under the schedule, and
14 has done so after Plaintiff identified 18 individuals in her disclosures which were served only on
15 November 3, 2010.

16 Accordingly, there is good cause to modify the schedule. Further, the schedule can be modified
17 to avoid any prejudice to Plaintiff or otherwise affect the Court. In particular, the Secretary proposes
18 that the pretrial and trial dates remain unaltered. Further, the Secretary proposes that the deadline for
19 defendants to designate experts be moved to January 21, 2011; that the discovery cut-off be moved to
20 February 18, 2011; and that the dispositive motion hearing deadline be moved to April 8, 2011. This
21 would permit the Secretary to take discovery and move for summary judgment without needing to
22 vacate or move remaining dates.

23 //

24 //

25 //

26 //

27 //

28 //

1 **IV. CONCLUSION**

2 For the reasons stated above, Defendant respectfully asks this Court to modify the pretrial
3 scheduling order.

4 Respectfully submitted,

5 BENJAMIN B. WAGNER
6 United States Attorney

7 Date: November 19, 2010

8 /s/ Edward Olsen
By: EDWARD OLSEN
Assistant United States Attorney

9 Attorneys for Secretary of the Air Force

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **ORDER**

2 Good cause appearing, IT IS HEREBY ORDERED that:

3 1. Defendant's November 19, 2010 motion to modify pre-trial scheduling order (Doc. No.
4 52) is granted.

5 2. The court's May 11, 2010 status (pretrial scheduling) order (Doc. No. 49) is modified to
6 extend the deadlines for defendant's disclosure of expert witnesses; close of discovery; and deadline for
7 hearings on pretrial motions, to the following dates:

8 The deadline for defendant to designate experts is January 21, 2011;

9 All discovery shall be completed by February 18, 2011;

10 All law and motion shall be completed by April 8, 2011.

11 2. All remaining dates and deadlines as set by the May 11, 2010 status (pretrial scheduling)
12 order remain as set and are otherwise unaffected by this order.

13 DATED: November 30, 2010.

14 
15 _____
16 DALE A. DROZD
17 UNITED STATES MAGISTRATE JUDGE

18 Ddad1\orders.pro se\taylor0869.org.grmotmod
19
20
21
22
23
24
25
26
27
28