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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN HENRY HART,

Plaintiff,

No. CIV S-10-1672 KJM EFB PS

vs.

PAE GOVERNMENT SERVICES
INCORPORATED,

Defendant.

ORDER

This action is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On August 10, 2011, defendant filed an ex parte application to modify the status (pretrial scheduling) order in this action, contending that the schedule should be modified because, to date, plaintiff has failed to respond to any discovery or appear for his deposition. Dckt. No. 49; *see also* Dckt. No. 17.

Defendant notes that on August 5, 2011, the court ordered plaintiff to respond to defendant’s first request for production of documents, produce responsive documents, appear for his deposition, and pay monetary sanctions, but argues that because defendant was unable to obtain discovery from plaintiff for more than seven months, the scheduling order should be modified. Dckt. No. 49-1 at 3; *see also* Dckt. Nos. 33, 47. Defendant contends that it needs additional time to “to complete discovery, file further discovery and/or dispositive motions, and

1 to determine whether expert witnesses are necessary based on the information Plaintiff has been
2 compelled to provide in discovery (assuming Plaintiff complies with this Court’s orders),” and
3 therefore seeks to continue all of the remaining dates in this action for at least three months.
4 Dckt. No. 49-1 at 2, 6. Defendant notes that it was unable to secure a stipulation from plaintiff
5 to modify the scheduling order despite making a good faith attempt to do so. *Id.* at 6.

6 Plaintiff opposes the application, arguing that defendant’s request for an extension of
7 time, which is defendant’s second such request, is really a “stall for time.” Dckt. No. 48 at 1.

8 A Rule 16 scheduling order may be modified upon a showing of good cause. Fed. R.
9 Civ. P. 16(b). Good cause exists when the moving party demonstrates he cannot meet the
10 deadline despite exercising due diligence.¹ *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d
11 604, 609 (9th Cir. 1992). “Although the existence or degree of prejudice to the party opposing
12 the modification might supply additional reasons to deny a motion, the focus of the inquiry is
13 upon the moving party’s reasons for seeking modification.” *Id.* Here, in light of plaintiff’s
14 numerous failures to respond to defendant’s discovery requests and the amount of time defendant
15 was required to expend in order to obtain a court order compelling plaintiff to respond to those
16 requests, defendant’s ex parte application to modify the scheduling order is supported by good
17 cause and will be granted.

18 Additionally, on August 15, 2011, plaintiff filed a notice of submission of documents “in
19 compliance [with the] order for production of documents.” Dckt. No. 53. Plaintiff also
20 submitted a flash drive containing numerous documents. *Id.* Plaintiff sent the documents to the
21 court and to defendant. *Id.* at 2. However, plaintiff’s responses to defendant’s discovery
22 requests need not be filed with the court. *See* E.D. Cal. L.R. 250.3(c); *see also* Dckt. No. 47

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24 ¹ Local Rule 144, which permits matters to be heard on shortened time, provides that
25 “[a]pplications to shorten time shall set forth by affidavit of counsel the circumstances claimed
26 to justify the issuance of an order shortening time [and] will not be granted except upon affidavit
of counsel showing a satisfactory explanation for the need for the issuance of such an order and
for the failure of counsel to obtain a stipulation for the issuance of such an order from other
counsel or parties in the action.”

1 (requiring the documents to be produced to defendant). Moreover, many of the documents on
2 the flash drive appear to contain confidential, private information which must be redacted before
3 being filed on the public docket. *See* L.R. 140(a). Therefore, the Clerk of Court will be directed
4 to return the flash drive to plaintiff without filing a copy of the documents contained therein.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. Defendant's ex parte application to modify the status (pretrial scheduling) order, Dckt.
7 No. 49, is granted.

8 2. The status (pretrial scheduling) order, Dckt. No. 17, is modified as follows:

9 a. The parties shall make their expert disclosures on or before November 7, 2011,
10 as described in the January 7, 2011 status (pretrial scheduling) order.

11 b. All discovery must be completed by January 13, 2012. Motions to compel
12 discovery are to be noticed for hearing no later than December 12, 2011, as more specifically
13 described in the January 7, 2011 status (pretrial scheduling) order. As provided in that order, the
14 word "completed" means that all discovery shall have been conducted so that all depositions
15 have been taken and any disputes relative to discovery shall have been resolved by appropriate
16 order if necessary and, where discovery has been ordered, the order has been complied with.

17 c. All pretrial motions, except motions to compel discovery, shall be completed
18 on or before March 14, 2012.

19 d. The final pretrial conference is continued to June 20, 2012 at 11:00 a.m. in
20 Courtroom No. 3 before Judge Kimberly J. Mueller. The parties shall file pretrial statements in
21 accordance with Local Rules 281 and 282.

22 e. The jury trial shall commence before Judge Kimberly J. Mueller on September
23 24, 2012 at 9:00 a.m. in Courtroom No. 3.

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1 3. The Clerk of Court is directed to return to plaintiff the flash drive that plaintiff
2 submitted to the court on August 15, 2011, Dckt. No. 53, without filing a copy of the documents
3 contained therein.

4 SO ORDERED.

5 DATED: August 22, 2011.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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