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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY PENTON,

Plaintiff,

v.

LAYTON JOHNSON, JR., et al.,

Defendants.

No. 2:11-cv-0518 TLN KJN P

ORDER

Plaintiff’s motion to modify the scheduling order came on regularly for hearing January 10, 2023, by Zoom. Pierce A. MacConaghy, Buzz Harrison Frahn and Dawson Honey appeared for plaintiff. Nicole M. Cahill appeared for defendant L. Johnson. Upon review of the motion and the documents in support and opposition, upon hearing the arguments of counsel and good cause appearing therefor, THE COURT FINDS AND ORDERS AS FOLLOWS.

“The district court is given broad discretion in supervising the pretrial phase of litigation.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (citation and internal quotation marks omitted). Rule 16(b) provides that “[a] schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Good case requires a showing of due diligence. Johnson, 975 F.2d at 607. “The schedule may be modified ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’” Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting Johnson, 975 F.2d at 607).

1 After explaining the shortage of district judges in the Eastern District and the resulting
2 congested court dockets, counsel were informed that Judge Nunley has no earlier available trial
3 dates. Thus, plaintiff's motion to advance the trial date is denied.

4 On the other hand, the court finds defense counsel's high risk pregnancy constitutes good
5 cause to continue the jury trial date. See Cal. Clovis, Ltd. Liab. Co. v. Sierra Vista Realty Ltd.
6 Liab. Co., 2021 U.S. Dist. LEXIS 102011, at *2-3 (E.D. Cal. May 25, 2021) (finding stipulation
7 established good cause to modify scheduling order in part due to counsel's maternity leave).
8 Nevertheless, the court is cognizant that plaintiff has waited many years for his day in court.
9 Counsel estimated that trial in this matter could take three to five days.

10 Following discussion concerning defense counsel's trial schedule for October, the
11 undersigned continued the jury trial to September 18, 2023, with the understanding that if defense
12 counsel's October trial schedule cleared up, and October trial dates before the district court
13 remain available, the court would entertain a stipulation to continue the trial to a date in October.
14 That said, defense counsel was put on notice that if difficulties arise with the baby's birth or
15 maternity leave is extended for some reason, defense counsel must make arrangements to have
16 alternate counsel available to try the case because the court is not inclined to continue the trial
17 again. During her maternity leave, defense counsel should also arrange to have alternate counsel
18 available for communications with opposing counsel and trial preparation.

19 Finally, the deadlines for filing pretrial statements remain as scheduled: January 16, 2023,
20 for plaintiff; February 15, 2023, for defendant Johnson (unless the parties want to stipulate to
21 briefly extend those dates). L.R. 281.

22 Accordingly, IT IS HEREBY ORDERED that:

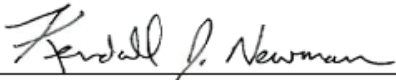
- 23 1. Plaintiff's motion to modify the scheduling order to advance the jury trial date (ECF
24 No. 296) is denied;
- 25 2. Defendant Johnson's motion to continue the trial date (ECF No. 300) is granted;
- 26 3. The final pretrial conference set for June 15, 2023, before the district court, is vacated;
- 27 4. The August 21, 2023 jury trial date is continued to September 18, 2023, at 9:00 a.m., in
28 Courtroom #2, before the Honorable Troy L. Nunley; and

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5. Final pretrial conference/trial readiness conference is set for September 7, 2023, at 2:00

p.m.

Dated: January 11, 2023


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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