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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK BUMPUS,
Plaintiff,
v.
A. NANGALAMA, et al.,
Defendants.

No. 2:12-cv-1102 GEB DB P
ORDER

Plaintiff is a state prisoner proceeding with counsel in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on plaintiff’s original complaint on an Eighth Amendment medical indifference claim against defendants Dr. Nangalama, Dr. Dhillon, Dr. Sahota, LVN Cox, LVN Teachow, and A. Deem. Pending before the court is the parties’ joint stipulation to modify the pretrial scheduling order. (ECF No. 58.) For the reasons set forth below, this request will be denied.

A. Procedural History

Before turning to the parties’ request, the court finds it necessary to briefly review the procedural history of this case. Plaintiff initiated this action several years ago on April 25, 2012. Following resolution of the defendants’ motion to dismiss, a discovery and scheduling order (“DSO”) issued on February 20, 2014, setting the discovery deadline for June 13, 2014, and the dispositive motion deadline for September 5, 2014. (ECF No. 35.) The DSO was then extended by six months on May 2, 2014, on request of the defendants. (ECF No. 39.) The discovery

1 deadline was continued to December 15, 2014, and the dispositive motion deadline was continued
2 to March 5, 2015.

3 During this open discovery period, plaintiff filed multiple requests for appointment of
4 counsel. His final request was granted on September 15, 2015, and counsel was ultimately
5 appointed on April 4, 2017. In light of this recent appointment, the DSO was modified once again
6 on April 13, 2017. (ECF No. 56.) The current discovery deadline is October 4, 2017, and the
7 dispositive motion deadline is December 8, 2017.

8 **B. Legal Standards**

9 Once a scheduling order has been filed pursuant to Federal Rule of Civil Procedure 16, the
10 “schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P.
11 16(b)(4). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party
12 seeking the amendment.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.
13 1992). If the moving party fails to demonstrate diligence, “the inquiry should end.” Id. For
14 example, good cause may be found where the moving party shows it assisted the court with
15 creating a workable scheduling order, that it is unable to comply with the scheduling order’s
16 deadlines due to matters not reasonably foreseeable at the time the scheduling order issued, and
17 that it was diligent in seeking a modification once it became apparent it could not comply with the
18 scheduling order. Jackson v. Laureate, Inc., 186 F.R.D. 605, 608 (E.D. Cal. 1999) (citations
19 omitted).

20 **C. Discussion**

21 It is evident from the foregoing that the discovery period in this case has been lengthy: an
22 initial 10-month period when plaintiff was proceeding in pro per followed by a 6-month period
23 after the appointment of counsel. Despite the fact that this latter 6-month discovery period was
24 ordered precisely because of plaintiff’s counsel’s appointment, the parties again cite to counsel’s
25 “recent” appearance as one of the primary reasons for yet another 6-month modification of the
26 DSO. They also cite to the “recent appearance[.]” of defense counsel, who substituted in as
27 counsel of record on July 25, 2017, “scheduling issues, the challenges accompanying Plaintiff’s
28 incarceration, and the substantial number of defendants....” J. Stip. ¶ 3.

