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GEORGE FETTER,

Plaintiff,

v.

PLACER COUNTY SHERIFF,  
EDWARD N. BONNER; et al.,

Defendants.

No. 2:12-cv-02235-MCE-EFB

**ORDER**

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Presently before the Court is Defendant California Forensic Medical Group, Inc.'s ("CFMG") Motion for 60-Day Extension of Time. ECF No. 87. CFMG asks the Court to amend the operative March 4, 2016 Pretrial Scheduling Order ("PTSO"), ECF No. 75, to extend the time for filing dispositive motions by at least sixty (60) days. The motion is unopposed by any party.

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Once a district court has issued a PTSO pursuant to Federal Rule of Civil Procedure 16, that Rule's standards control. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607–08 (9th Cir. 1992). Prior to the final pretrial conference in this matter the Court can modify its PTSO upon a showing of "good cause." See Fed. R. Civ. P. 16(b).

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"Unlike Rule 15(a)'s liberal amendment policy, which focuses on the bad faith of the party seeking to interpose an amendment and the prejudice to the opposing party,

1 Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking  
2 the amendment." Johnson, 975 F.2d at 609. In explaining this standard, the Ninth  
3 Circuit has stated:

4 A district court may modify the pretrial schedule 'if it cannot  
5 reasonably be met despite the diligence of the party seeking  
6 the extension.' Moreover, carelessness is not compatible  
7 with a finding of diligence and offers no reason for granting of  
8 relief. Although the existence or degree of prejudice to the  
party opposing the modification might supply additional  
reasons to deny a motion, the focus of the inquiry is upon the  
moving party's reasons for seeking modifications. If that  
party was not diligent, the inquiry should end.

9 Id. (citations omitted).

10 Two expert witnesses—one retained by Plaintiff George Fetter and one retained  
11 by CFMG—have been unavailable to give depositions due to their absence from the  
12 State of California. The parties have been unable to set the date of the deposition of  
13 Plaintiff's retained expert, Dr. Ellison, because Dr. Ellison was not due to return from his  
14 medical office in Arizona until the last week in September. Similarly, the deposition of  
15 CFMG's retained expert, Dr. Wager, could only be set for September 30 due to his  
16 absence from California.

17 CFMG, therefore, moved to extend the time to file dispositive motions by at least  
18 sixty (60) days so that both Plaintiff and CFMG would have time to evaluate the  
19 depositions of Drs. Ellison and Wagner before deciding whether to make motions for  
20 summary judgment. In the time since CFMG moved to modify the PTSO, it has filed a  
21 motion for Partial Summary Judgment, ECF No. 93, in accordance with the current  
22 PTSO. In that motion, CFMG "does not seek to address . . . many of the plaintiff's  
23 purported state law claims since final and complete discovery of expert witness's  
24 opinions . . . has not yet been completed due to problems with scheduling the  
25 completion of those deposition[s]." Mem. of P & A in Supp. of CFMG's Mot. for Partial  
26 Summ. J. 2:12–16, ECF 93-3.

27 CFMG has shown good cause to amend the PTSO. Both Plaintiff and CFMG  
28 have been unable to obtain depositions of expert witnesses not for lack of diligence, but

1 due to the expert witnesses' unavailability. Furthermore, CFMG's co-defendants Edward  
2 N. Bonner, the County of Placer, and the Placer County Sheriff's Office have filed a  
3 Statement of Non-Opposition to the motion, stating that they "will not be prejudiced by  
4 the extension, and instead believe it may clarify the issues for trial." Stmt. of Non-Opp'n  
5 2:1-2, ECF No. 95.

6 Accordingly, CFMG's Motion for 60-Day Extension is GRANTED. The last day to  
7 hear dispositive motions is amended to **January 12, 2017**. All papers should be filed in  
8 conformity with the Local Rules. However, with respect to Motions for Summary  
9 Judgment only, the parties shall comply with the following filing deadlines:

10	Motion for Summary Judgment	filed at least 8 weeks prior to hearing
11	Opposition and any cross-motion	filed at least 5 weeks prior to hearing
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13	Reply and opposition to cross-motion	filed at least 3 weeks prior to hearing
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15	Reply to cross-motion	filed at least 1 week prior to hearing

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17 IT IS SO ORDERED.

18 Dated: October 5, 2016

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21 MORRISON C. ENGLAND, JR.  
22 UNITED STATES DISTRICT JUDGE  
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