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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

MIKKOS GOODMAN, Plaintiff, **v.** **COUNTY OF SAN JOAQUIN, et al.,** Defendants.	No. 2:13-cv-00538 MCE-KJN **STIPULATION AND ORDER TO MODIFY THE SCHEDULING ORDER TO EXTEND DEADLINES BY SIXTY DAYS AND TO CONTINUE THE TRIAL** Trial Date: September 14, 2015 Action Filed: March 18, 2013

Under Federal Rule of Civil Procedure 16(b)(4) and Local Rule 143, the parties, through their counsel of record, agree to and request a sixty-day extension of the scheduling deadlines and a continuance of the trial to a date after December 2015. Good cause exists to grant this stipulation because the parties require more time to complete discovery and Defendant Rodriguez has a conflict with the current trial date.

A scheduling order may be modified only upon a showing of good cause and by leave of Court. Fed. R. Civ. P. 6(b)(1)(A), 16(b)(4); *see, e.g., Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (describing the factors a court should consider in ruling on such a motion). In considering whether a party moving for a schedule modification has good cause, the Court primarily focuses on the diligence of the party seeking the modification. *Johnson*, 975 F.2d at

609 (citing Fed. R. Civ. P. 16 advisory committee's notes of 1983 amendment). "The district court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the amendment.'" *Id.* (quoting Fed. R. Civ. P. 16 advisory committee notes of 1983 amendment).

On April 10, 2014, the Court issued a Scheduling Order (ECF No. 18) setting the following deadlines:

Fact Discovery	November 14, 2014
Expert Disclosures	January 14, 2015
Last Day to Hear Dispositive Motions	May 14, 2015
Settlement Conference	May 21, 2015 at 10 a.m.
Joint Final Pretrial Conference Statement	July 2, 2015
Motions in Limine	July 2, 2015
Trial Briefs	July 9, 2015
Opposition to Motions in Limine	July 9, 2015
Reply to Opposition to Motions in Lmine:	July 16, 2015
Final Pretrial Conference	July 23, 2015 at 2 p.m.
Trial	September 14, 2015 at 9 a.m.

The parties request a sixty-day extension of all the pretrial deadlines because they require more time to complete fact discovery, which will in turn affect the remaining deadlines. The parties have exchanged and responded to written discovery. Plaintiff's deposition was completed on November 5, 2014, and the depositions of Sandra Davis and Niesha Barrell, pertinent witnesses Plaintiff identified, were completed on November 10. However, the depositions of the Defendants have not been taken due to several factors beyond counsel's control.

Plaintiff Mikkos Goodman was arrested in July 2014, and has been incarcerated at Santa Rita Jail in Dublin, California. He is being held without bail, pending attempted-murder-related charges. Because of Plaintiff's incarceration, his attorneys were unable to make him available for deposition until recently. Plaintiff's counsel have also experienced difficulty meeting with their client to discuss other case- and discovery-related matters with him. The parties obtained an

order from the Magistrate Judge that resulted in their ability to take Plaintiff's deposition at the county jail on November 5, 2014. (*See* ECF No. 25.)

The parties did not take Plaintiff's deposition sooner because, in addition to his incarceration, his attorney, Ben Nisenbaum, was in trial during the entire month of September into early October. Mr. Nisenbaum spent the majority of the summer preparing for trial. Mr. Nisenbaum's trial also prevented him from taking the Defendants' depositions.

The parties have tentatively scheduled the depositions of Robles and Rodriguez for December 5. Counsel are meeting and conferring concerning the scheduling of the depositions of the County of San Joaquin Defendants.

The parties also request a continuance of trial because Defendant Rodriguez, who is one of the primary defendants, is not available for trial in September 2015. Rodriguez is scheduled to be on vacation during the current trial date. He purchased the family out-of-state vacation almost a year before the Court issued its Scheduling Order in April 2014. Rodriguez has already paid for the vacation and cannot reschedule it without incurring substantial expense. Several months ago, Rodriguez's attorney informed all counsel of the conflict. The parties did not seek modification of the Scheduling Order at that time because they believed it more prudent to wait and see if any other scheduling deadline needed to be modified and make a single request to the Court. Due to trials Plaintiff's counsel and the attorneys for the County of Joaquin Defendants already have in late 2015, the parties request that the trial be continued to a date after December 2015 based on the Court's calendar.

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IT IS SO STIPULATED.

Dated: November 12, 2014

Respectfully submitted,

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CHRISTOPHER J. BECKER
Supervising Deputy Attorney General

/s/ Diana Esquivel

DIANA ESQUIVEL
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Dated: November 12, 2014

MAYALL, HURLEY, P.C.

/s/ Mark E. Berry

MARK E. BERRY
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Attorneys for Defendants County of San Joaquin, Adam Grubb, and Robert Clearly

Dated: November 12, 2014

LAW OFFICES OF JOHN L. BURRIS

/s/ Benjamin Nisenbaum

JOHN L. BURRIS
BENJAMIN NISENBAUM
Attorneys for Plaintiff Mikkos Goodman

ORDER

Good cause appearing, the parties' stipulated request for a continuance of the pretrial deadlines and trial is GRANTED. The operative Pretrial Scheduling Order and all dates already set in this case are VACATED, and an Amended Pretrial Scheduling Order will be issued.

IT IS SO ORDERED.

Dated: November 18, 2014

MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT