UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN HARDNEY,

Plaintiff,

v.

R. WARREN, et al.,

Defendants.

No. 2:16-cv-0172-KJM-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This order addresses the following three motions: (1) plaintiff's request for the status on a previously-filed motion for extension of time (ECF No. 100); (2) defendant Kumeh's second request for an extension of time to respond to plaintiff's first set of interrogatories (ECF No. 103); and (3) defendants Kumeh and Brazil's motion to modify the scheduling order (ECF No. 104).

Plaintiff's Request for Status

On May 12, 2020, plaintiff filed a request for status on a previously submitted motion for extension of time. ECF No. 100. He states that on April 5, 2020, he requested that the April 17, 2020 deadline for serving requests for written discovery be extended to April 26, 2020. He explains that he sought the extension because (1) he was separated from his legal materials in late March when he transferred institutions; (2) he was quarantined for fourteen days due to the

COVID-19 pandemic; (3) there have been delays in the prison mail system; and (4) he has had limited access to the law library and other legal resources. However, for reasons unknown, there is no record of plaintiff previously filing the referenced request for an extension of time. Nonetheless, his May 12, 2020 filing presents good cause to modify the discovery and scheduling order. Accordingly, the court construes that filing as plaintiff's request to modify the scheduling order. So construed, the motion is granted to the extent that all requests for discovery pursuant to Fed. R. Civ. P. 31, 33, 34, or 36 served on or before April 26, 2020, are deemed timely served, *nunc pro tunc*.

Defendant Kumeh's Second Request for Extension of Time

Defendant Kumeh requests a second, one-week extension of time to respond to plaintiff's first set of interrogatories. ECF No. 103. Kumeh's attorney cites to mail delays and a lack of communication from her client as grounds for the extension. *Id.* Defendant Kumeh is granted a second extension of time *nunc pro tunc*, to and including June 3, 2020, within which to respond to plaintiff's first set of interrogatories. Absent good cause, the court is not likely to further extend this deadline.

Defendant Kumeh and Brazil's Motion to Modify the Scheduling Order

Defendants Kumeh and Brazil move for an order to modify the discovery and scheduling order to extend the current June 19, 2020 discovery deadline to September 19, 2020, for the limited purpose of allowing defendants to take plaintiff's deposition. ECF No. 104. Defendants further request that the September 4, 2020 dispositive motion deadline also be extended for three months until December 4, 2020. In light of the many limitations imposed by the COVID-19 pandemic, the motion is granted.

Conclusion

Accordingly, IT IS ORDERED that:

1. Plaintiff's request for the status of a previously filed request for extension of time, construed as a motion to modify the discovery and scheduling order (ECF No. 100) is GRANTED. All requests for discovery pursuant to Fed. R. Civ. P. 31, 33, 34, or 36 served on or before April 26, 2020, are deemed timely served, *nunc pro tunc*.

2. Defendants shall have thirty days from the date of this order to respond to any written discovery served by plaintiff that is now deemed timely served.

3. Defendant Kumeh's request for a second extension of time, to and including June 3, 2020, within which to respond to plaintiff's first set of interrogatories (ECF No. 103) is GRANTED *nunc pro tunc*.

4. Defendants Kumeh and Brazil's motion to modify the scheduling order (ECF No. 104) is GRANTED in that:

    a. The discovery deadline is extended to September 19, 2020, for the limited purpose of allowing defendants to take plaintiff's deposition; and

    b. The dispositive motion deadline is extended to December 4, 2020.

DATED: July 6, 2020.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE