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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUTH SHELTON-PRYOR,  
Plaintiff,  
v.  
CITY OF VALLEJO and DOES 1-50,  
Defendants.

No. 2:16-cv-00464-MCE-CKD

**MEMORANDUM AND ORDER**

Through the present action, Plaintiff Ruth Shelton-Pryor (“Plaintiff”) asserts a claim of excessive force against an unnamed Defendant Officer in addition to claims against the City of Vallejo (“Defendant” or “the City”) arising under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., asserting wrongful arrest and failure to make reasonable accommodations. Plaintiff’s allegations stem from her interaction with a Vallejo City police officer during an ongoing seizure brought on by Plaintiff’s preexisting brain tumor. Presently before the Court are Plaintiff’s motion to amend the complaint (ECF No. 11) and Plaintiff’s motion for an extension of time to conduct depositions and amended motion to extend the fact discovery deadline in order to conduct those same depositions (ECF Nos. 16 and 20).<sup>1</sup> For the reasons set forth below, Plaintiff’s motion to

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<sup>1</sup> Plaintiff’s filings at ECF Nos. 16 and 20 appear identical, so the Court will treat them as a single motion throughout this Order.

1 amend the complaint is DENIED, but her motion to extend the fact discovery deadline is  
2 GRANTED.

### 4 **BACKGROUND<sup>2</sup>**

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6 On January 9, 2015, Plaintiff was diagnosed with stage 4 Adenocarcinoma of the lung  
7 with brain metastasis. Plaintiff's brain tumor has caused her to experience seizures, for which she  
8 takes medication. Relevant to the present action, Plaintiff experienced such a seizure on July  
9 9, 2015, as she was preparing to be driven to Sacramento. Instead of going to  
10 Sacramento, Plaintiff's brother-in-law attempted to drive her to the hospital. At a stop  
11 sign, Plaintiff—still suffering from the ongoing seizure—exited the vehicle and began  
12 walking down the street. The brother-in-law asked police cadets who happened to be in  
13 the area to call an ambulance. In addition to calling an ambulance, the cadets  
14 apparently called Vallejo police.

15 Vallejo police officers and paramedics arrived separately. The brother-in-law  
16 explained the situation to one of the officers first, and then left Plaintiff with that officer  
17 when he approached the paramedics and another officer to explain the same to them.  
18 Thereafter, the paramedics attempted to place Plaintiff in an ambulance to take her to a  
19 hospital, at which point Plaintiff told them she did not want to go. According to Plaintiff,  
20 one of the officers then became aggressive, pulling Plaintiff's arm behind her back,  
21 sweeping Plaintiff to the ground, and placing her in handcuffs.

22 Plaintiff began crying and told the officer that he was hurting her, but he did not  
23 change her position or loosen the handcuffs. Plaintiff was subsequently taken to the  
24 emergency room, treated, and released. She continues to experience pain in her  
25 shoulder, and has been diagnosed with adhesive capsulitis for which surgery has been  
26 recommended.

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28 <sup>2</sup> The following recitation of facts is taken from Plaintiff's Complaint, ECF No. 1.



1 factors, if a court finds that good cause exists, it should then deny a motion for leave to  
2 amend only if such amendment would be futile.” Baisa v. Indymac Fed. Reserve,  
3 No. 2:09-CV-01464-WBS-JFM, 2010 WL 2348736, at \*1 (E.D. Cal. June 8, 2010).

4 **B. Extension of Fact Discovery Deadline**

5 Plaintiff’s second request seeks an extension of the discovery cutoff, which also  
6 requires amendment of the Pretrial Scheduling Order (“PTSO”). As with Plaintiff’s  
7 motion for leave to file an amended complaint, any motion seeking to amend the PTSO  
8 must meet the “good cause” standard of Rule 16. Fed. R. Civ. P. 16(b). In explaining  
9 this standard, the Ninth Circuit has stated:

10 A district court may modify the pretrial schedule “if it cannot  
11 reasonably be met despite the diligence of the party seeking  
12 the extension.” Moreover, carelessness is not compatible  
13 with a finding of diligence and offers no reason for granting of  
14 relief. Although the existence or degree of prejudice to the  
15 moving party’s reasons for seeking modifications. If that  
16 party was not diligent, the inquiry should end.

17 Johnson, 975 F.2d at 609 (citations omitted).

18 **ANALYSIS**

19 **A. Leave to File An Amended Complaint**

20 Plaintiff first moves to amend her complaint to substitute three Vallejo police  
21 officers in place of Doe defendants, and to add two legal theories: integral participation  
22 and failure to intervene. Plaintiff moves under Federal Rule of Civil Procedure 15(a),  
23 arguing that the Court’s PTSO issued July 14, 2016, failed to set a specific deadline for  
24 the amendment of pleadings, and thus Rule 16 does not apply. The problem with  
25 Plaintiff’s argument is that the PTSO specifically addresses amendment of pleadings  
26 and provides that “[n]o joinder of parties or amendments to pleadings is permitted  
27 without leave of court, good cause having been shown.” ECF No. 7, at 1. Pursuant to  
28 that language, the deadline for amending the pleadings under the more liberal Rule 15

1 standard lapsed at the issuance of the PTSO. In other words, the deadline Plaintiff  
2 claims is absent from the Court's PTSO is the date of the Order itself. Consequently,  
3 Rule 16's more stringent good cause standard applies, and the Court concludes Plaintiff  
4 has not met that standard.

5 Rule 16 primarily considers the diligence of the party seeking amendment. In this  
6 case, Plaintiff learned the identities of the three officers with whom she had contact by  
7 way of Defendant's responses to interrogatories on August 18, 2016. The following  
8 month, Plaintiff's counsel expressed his intent to seek leave to add those three officers  
9 as defendants in the present action. See Ex. A to Decl. of Kelly J. Trujillo, ECF No. 26-1.  
10 He failed to do so, however, for six more months until Plaintiff filed the present motion  
11 seeking leave to amend the complaint on March 31, 2017. See ECF No. 11. Such a  
12 delay indicates a lack of diligence on the part of Plaintiff's counsel, and the Court cannot  
13 find good cause under such circumstances.<sup>4</sup> Due to Plaintiff's delay, the Court's inquiry  
14 need not go any further.<sup>5</sup> Plaintiff's motion to amend, ECF No. 11, is therefore DENIED.

15 **B. Extension of Fact Discovery Deadline**

16 Plaintiff next moves for an extension of the fact discovery deadline for the limited  
17 purpose of taking certain depositions. Specifically, Plaintiff seeks to depose Vallejo  
18 Police Officers Wesley Simpson, Dan AcFalle, and Nickolas Slaon (the three officers  
19 Plaintiff sought to add above), as well as Persons Most Knowledgeable ("PMK")  
20 regarding ADA and excessive force policies within the police department. As provided  
21 above, such an extension requires modification of the Court's PTSO and as such,  
22 Plaintiff must establish good cause for such a modification under Rule 16. Again, the  
23 focus of the Court's inquiry is on the diligence of the party seeking modification. This

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25 <sup>4</sup> Plaintiff's argument that counsel was simply performing a thorough investigation to ensure that  
26 the correct people were named is unconvincing in light of counsel's statement in September 2016 that he  
intended to add the three officers now at issue.

27 <sup>5</sup> Though the Court's inquiry could end here, it is worthwhile to note that adding three named  
28 defendants at this late stage of the case—a year and a half into prosecution and after the close of  
discovery—would prejudice the newly added defendants as well as the City, and would necessarily cause  
substantial delay. For those reasons, Plaintiff's motion would also fail under Rule 15(a).

1 time, however, the focus is on whether the Court's schedule could not have reasonably  
2 been met despite the diligence of the party seeking the extension. As explained below,  
3 though Plaintiff could have been more diligent in pursuing the discovery she now seeks  
4 by way of this motion, the Court finds a thirty-day extension of the discovery deadline for  
5 the limited purpose of taking the depositions described above to be appropriate under  
6 the circumstances.

7 The fact discovery deadline was April 10, 2017. After Defendant's depositions  
8 concluded on March 20, 2017, Plaintiff's counsel expressed his desire to depose the  
9 three officers allegedly involved and a PMK witness. Perhaps as a result of a  
10 misunderstanding between the lawyers, Plaintiff's counsel then waited until March 29 to  
11 follow up with Defendant's counsel regarding possible deposition dates, proposing  
12 April 3, 4, 5, 6, and 7. Counsel subsequently sent notices and subpoenas by email (and  
13 postal mail) on March 31, purporting to set all proposed depositions for April 7.  
14 Defendant objected to the depositions in writing on April 4, and lawyers for both parties  
15 met and conferred by phone the following day. Defendant's counsel at that time  
16 expressed her refusal to appear at the depositions, citing the following objections:  
17 (1) notice was not reasonable; (2) notice and subpoena by email was not proper;  
18 (3) Defendant was not required to accept service on behalf of the nonparty employee  
19 officers; and (4) counsel had a conflict on April 7, 2017, and was therefore unavailable.

20 The parties make various arguments in their respective briefs regarding the  
21 effectiveness of Plaintiff's service of the notices and subpoenas. Whether by email or  
22 postal mail, it appears service of the subpoenas of nonparty officers on Defendant's  
23 counsel was not effective where counsel had not agreed to accept such service. Under  
24 Rule 45, nonparty witnesses—including subordinate or non-managing employees of a  
25 party—must be subpoenaed to attend a deposition. Plaintiff's notice of deposition of  
26 PMK witness, however, was appropriate. In any event, while this weighs against a  
27 showing of Plaintiff's diligence with regard to the nonparty officers' depositions, it is not

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1 determinative of Plaintiff's motion. Rather, the Court considers Plaintiff's overall  
2 diligence in pursuing the subject depositions.

3 To that end, the Court agrees with Defendant to the extent that in a perfect world,  
4 Plaintiff's counsel would have started the process of setting the desired depositions long  
5 before March 20. Indeed, it was Plaintiff's duty to set the depositions, and waiting until  
6 March 20 to begin that process is not particularly diligent. Counsel then waited nine  
7 days, until March 29, to follow up with Defendant's counsel. Though a week's notice  
8 may be reasonable and sufficient under some circumstances, with a minimum of four  
9 depositions not yet scheduled, the Court struggles to understand how Plaintiff planned  
10 on meeting the Court ordered discovery deadline of April 10 in this case.

11 The Court is aware, however, that Defendant's depositions were ongoing during  
12 that time and that counsel may have been under the mistaken impression that  
13 Defendant's counsel would reach out with available dates. Moreover, Defendant's  
14 counsel was aware that Plaintiff intended to take certain depositions at least as of  
15 March 20 and—as is customary—could have consented to accept service of all  
16 deposition notices, including those of the nonparty officers. And given counsel's own  
17 scheduling conflict, counsel could have stipulated to an extension of the discovery cutoff  
18 to allow Plaintiff to schedule those depositions at a mutually convenient time. Lastly,  
19 rather than simply refusing to produce the witnesses, counsel for Defendant could have  
20 sought a protective order from the Court based on Plaintiff's unreasonable and untimely  
21 notice, which order would have simply enlarged time to provide all parties adequate time  
22 to prepare for the depositions. For those reasons, the Court finds good cause to amend  
23 the pretrial scheduling order to extend the close of discovery by thirty days to allow  
24 Plaintiff to take the depositions specified in her moving brief.

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1 **CONCLUSION**

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3 For the reasons set forth above, Plaintiff’s motion for leave to file an amended

4 complaint, ECF No. 11, is DENIED. Plaintiff’s motion for an extension of the fact

5 discovery deadline, ECF Nos. 16 and 20, is GRANTED. Discovery shall be reopened for

6 a period of thirty (30) days from the date of electronic filing of this Order for the limited

7 purpose of allowing Plaintiff to schedule, notice or subpoena, and take, the depositions

8 of Vallejo Police Officers Wesley Simpson, Dan AcFalle, and Nickolas Sloan, as well as

9 Persons Most Knowledgeable regarding ADA and Excessive Force Policies for the

10 Vallejo Police Department. Defendant’s counsel is directed to cooperate with Plaintiff in

11 making those individuals available for deposition within that time period. Plaintiff’s

12 counsel is, however, cautioned that there will be no further extensions of time, and

13 counsel is therefore advised to promptly begin the process of setting those depositions.

14 IT IS SO ORDERED.

15 Dated: November 8, 2017

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17 MORRISON C. ENGLAND, JR.  
18 UNITED STATES DISTRICT JUDGE

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