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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID P. DEMAREST,
Plaintiff,
v.
CITY OF VALLEJO CALIFORNIA, et al.,
Defendants.

No. 2:16-cv-02271-MCE-KJN

ORDER

Presently pending for the court is plaintiff’s motion for a 42-day extension of time to designate experts. (ECF No. 43.) The hearing on this motion was vacated by District Judge Morrison C. England, Jr., and the matter was referred to the undersigned for consideration. (ECF Nos. 44, 45.) Defendants filed an opposition and plaintiff replied. (ECF Nos. 48 and 51.) After review of the briefing, arguments, and applicable legal standards, the court GRANTS plaintiff’s motion.

In the court’s original scheduling order, the designation of expert witnesses was to take place no later than June 7, 2018. (ECF No. 35 at 4.) At the time of this scheduling order, plaintiff was acting pro se. On May 15, 2018, attorney Glenn Michael Katon appeared on behalf of plaintiff. (ECF No. 40.) On June 7, 2018, plaintiff filed the pending motion for an extension of time. Plaintiff indicated that while pro se, “he did not conduct any discovery apart from making the required initial disclosures. Plaintiff’s counsel has not had sufficient time to gain a

1 thorough understanding of the facts and conduct a search for appropriate expert witnesses.

2 Accordingly, Plaintiff seeks an extension to designate expert witnesses by July 19, 2018, and to
3 designate rebuttal experts by August 9, 2018.” (ECF No. 43 at 1–2.)

4 On June 14, 2018, pursuant to the parties’ stipulation, the undersigned ordered that the
5 deadline for discovery is extended through September 14, 2018. (ECF No. 46.)

6 According to the Federal Rules of Civil Procedure, “[w]hen an act may or must be done
7 within a specified time, the court may, for good cause, extend the time: (A) with or without
8 motion or notice if the court acts, or if a request is made, before the original time or its extension
9 expires.” Fed. R. Civ. P. 6(b)(1)(A). As the Ninth Circuit Court of Appeals has observed, “[t]his
10 rule, like all the Federal Rules of Civil Procedure, ‘[is] to be liberally construed to effectuate the
11 general purpose of seeing that cases are tried on the merits.’” Ahanchian v. Xenon Pictures, Inc.,
12 624 F.3d 1253, 1258–59 (9th Cir. 2010) (internal citations omitted.)

13 Defendants assert that plaintiff’s request for an extension was not submitted before the
14 deadline to disclose expert witnesses and that plaintiff has not provided good cause for an
15 extension. (See ECF No. 48.)

16 Liberally construing the deadline here, plaintiff had until the end of June 7, 2018 to
17 disclose experts, and thus when plaintiff submitted his request for an extension on that day, he did
18 so before the original time expired. Indeed, the motion was entered at 5:54 P.M., Pacific
19 Standard Time, on June 7, 2018. (ECF No. 43.) Plaintiff could have disclosed his expert
20 witnesses by 11:59 P.M., on June 7, 2018, and he would have been in compliance with the
21 original scheduling order. Therefore, the motion is timely.

22 Moreover, the parties have agreed to extend the discovery deadline until September 14,
23 2018, and plaintiff’s proposed extension of expert discovery would not disturb the stipulated
24 discovery deadline. What is more, plaintiff has now disclosed his expert witnesses. (See ECF
25 No. 50.) The court finds that good cause exists to extend the deadline, as plaintiff only retained
26 counsel less than one month prior to the deadline for expert disclosures. Furthermore, the court
27 finds that allowing this extension will not prejudice defendants, as it will not affect discovery or
28 the upcoming trial date. At the same time, allowing the disclosure of experts by plaintiff will

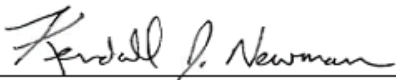
1 ensure that this case is decided on its merits.

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. Plaintiff's motion for a 42-day extension of time to designate experts (ECF No. 43) is
4 GRANTED, retroactively.
- 5 2. Expert witnesses shall be designated by July 19, 2018 and rebuttal experts shall be
6 designated by August 9, 2018.

7 IT IS SO ORDERED.

8 Dated: July 31, 2018

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11 KENDALL J. NEWMAN
12 UNITED STATES MAGISTRATE JUDGE
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