

1 2021, plaintiff moved to amend the scheduling order to re-open discovery because defendants had
2 refused to respond to discovery requests made after the close of discovery. ECF No. 39. The
3 motion was granted, and plaintiff was permitted to conduct discovery until July 23, 2021, with
4 written requests for discovery to be served no later than May 28, 2021. ECF No. 40.

5 The parties proceeded to file two additional stipulated requests to modify the scheduling
6 order that included an extension of defendants' time to respond to written discovery request. ECF
7 Nos. 41, 43. Both requests were granted. ECF Nos. 42, 44. Defendants then moved for
8 summary judgment based on plaintiff's failure to exhaust administrative remedies and to stay all
9 pending deadlines, including the deadline to respond to outstanding discovery requests. ECF
10 Nos. 46, 47. The motion to stay was granted and the deadlines for merit-based discovery and
11 dispositive motions, as well as the deadline for defendants to respond to pending discovery
12 requests, were vacated pending resolution of the motion for summary judgment. ECF No. 51.

13 After defendants' motion for summary judgment was denied, the parties were ordered to
14 confer and submit a joint status report with a proposed schedule for the completion of merit-based
15 discovery and dispositive motions. ECF No. 65. On February 1, 2022, the proposed schedule
16 was adopted with minor modifications and included the following deadlines: written designation
17 of experts due by July 30, 2022; responses to plaintiff's outstanding written discovery requests
18 due April 30, 2022; non-expert discovery, including any additional written discovery and
19 depositions to be completed by August 30, 2022; motions to compel non-expert discovery due by
20 September 28, 2022; expert disclosures to be exchanged by September 30, 2022; written
21 designations of rebuttal experts, including reports, completed by October 30, 2022; expert
22 discovery completed by November 20, 2022; dispositive motions due by December 28, 2022.
23 ECF No. 68. The parties were cautioned that "given the age of the case and the generous
24 deadlines adopted, future requests for extension of time will be highly disfavored." *Id.* at 1.

25 On April 26, 2022, the parties filed a stipulated request to extend the deadline for
26 defendants to serve responses to plaintiff's written discovery requests to May 23, 2022. ECF No.
27 70. The request was granted. ECF No. 71. Prior to the new deadline, defendants filed several

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1 proposed substitutions of attorney, with the last substitution granted on May 24, 2022. ECF No.
2 85.

3 On July 22, 2022, plaintiff filed a motion to extend the deadlines in the scheduling order
4 by sixty days. ECF No. 86. Because the motion did not indicate whether plaintiff attempted to
5 obtain a stipulation from defendants or whether defendants opposed the motion, defendants were
6 ordered to respond. ECF No. 89. Both sets of defendants¹ have now opposed the motion. ECF
7 Nos. 92, 93.

8 On August 10, 2022, the parties submitted a proposed stipulated protective order, which
9 was approved the following day. ECF Nos. 90, 91.

10 II. Motion for Extension

11 Plaintiff seek a sixty-day extension of all deadlines, except the deadline for the written
12 designation of experts. ECF No. 86-2 at 2. He states that while defendants served their written
13 discovery responses on May 23, 2022, several of their interrogatory responses were insufficient
14 and they raised several objections to the requests and did not produce any document with their
15 responses. Id. at 4. Defendants promised to produce certain documents such as post orders and
16 602s at a later date. Id. Plaintiff asserts that there is also a dispute regarding the contents of a
17 protective order. Id. On June 3, 2022, plaintiff sent defendants a letter regarding deficiencies
18 with the discovery responses, to which defendants responded on June 13, 2022. Id. Plaintiff
19 ultimately received all the post orders on July 11, 2022, and learned on July 21, 2022, that the
20 602s were ready for production once there was an agreement on the protective order. Id. at 5.
21 Plaintiff states that the requested extensions are necessary to attempt to resolve the outstanding
22 discovery disputes without court intervention and that he will be prejudiced if he is forced to take
23 defendants depositions without all the relevant documents. Id. at 2, 5-6.

24 Both sets of defendants have opposed the requested extension and argue that plaintiff has
25 failed to demonstrate good cause because he has not been diligent in attempting to resolve the
26 outstanding discovery disputes and has misrepresented said issues. ECF Nos. 92, 93. Defendants

27 ¹ Defendant Guerra is represented by separate counsel from defendants Baker, Cross, Smith,
28 Swett, and Tran.


1 assert that on May 31, 2022, plaintiff sent over a proposed protective order to which they
2 provided joint comments on June 2, 2022. ECF No. 92 at 4; ECF No. 93 at 2. Plaintiff did not
3 respond until August 1, 2022, after which the parties were able to reach an agreement and file the
4 proposed protective order on August 10, 2022. Id. As a result, the requested 602s will be
5 produced. ECF No. 92 at 4. Defendants also assert that they responded to plaintiff's June 3,
6 2022 letter on June 10, 2022, and did not hear anything further from plaintiff until August 1,
7 2022. ECF No. 92 at 4; ECF No. 93-1 at 2. Defendant Guerra responded to the letter on August
8 8, 2022, and defendants Baker, Cross, Tran, Smith, and Swett are in the process of responding.
9 Id. Finally, defendants assert that plaintiff contacted them on July 15, 2022, to schedule
10 depositions toward the end of August and those depositions have been scheduled to take place
11 prior to the current discovery cut-off. ECF No. 92 at 4; ECF No. 93 at 2.

12 While the court appreciates that plaintiff has expressed a desire to resolve the outstanding
13 discovery disputes without court intervention, it does not appear that he has been diligent in doing
14 so. Plaintiff allowed sixty days to lapse between receiving defendants' comments on the
15 proposed protective order before sending a response, and approximately fifty days lapsed between
16 the defendants' responses to plaintiff's June 3, 2022 letter and plaintiff's reply. There is no
17 indication from either party that plaintiff made any efforts to continue attempting to resolve the
18 discovery disputes, and the current request for an extension appears to be an attempt to make up
19 for plaintiff's period of inactivity. Although plaintiff's counsel avers that she has been delayed in
20 her efforts to resolve the disputes by having to provide assistance to her parents, who are dealing
21 with major medical issues, this general representation does little to excuse such a long period of
22 inactivity. The court was clear that further extensions of the deadlines would be highly
23 disfavored, and plaintiff was aware of this when she made the decision to attempt to resolve the
24 discovery disputes without court intervention and then failed to progress the discussion.
25 Defendants' depositions are currently scheduled to take place within the current deadline, and
26 plaintiff continues to have until September 28, 2022, to bring any necessary motions to compel.
27 The court therefore finds that plaintiff has failed to establish good cause for the requested
28 extension.

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Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to modify the scheduling order (ECF No. 86) is DENIED.

DATED: August 19, 2022



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE