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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN C. McCLINTOCK,
Plaintiff,
v.
T. COOPER, et al.,
Defendants.

No. 2: 18-cv-0560 JAM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. On April 1, 2020, the undersigned ordered defendants to respond to plaintiff’s March 30, 2020 motion requesting that his deposition, set for April 10, 2020, be set aside due to the Covid-19 pandemic. (ECF No. 45.) On April 3, 2020, defendants filed a response to plaintiff’s motion to set aside his deposition and a motion for an extension of time to conduct discovery and to file a dispositive motion. (ECF No. 46.)

The undersigned discusses these pending motions herein.

In his motion to set aside his deposition, plaintiff alleges that he suffers from a well-documented, pre-existing chronic restrictive pulmonary condition, in addition to asthma. (ECF No. 43.) Plaintiff is concerned that attending his deposition, which will be attended by defense

1 counsel, a court reporter and prison staff, may cause him to be exposed to Covid-19. (Id.)

2 Plaintiff requests that his deposition be rescheduled for a later date. (Id.)

3 On April 1, 2020, the undersigned ordered defendants to inform the court of the status of
4 plaintiff's deposition. (ECF No. 45.) If plaintiff's deposition was scheduled for April 10, 2020,
5 defendants were directed to address plaintiff's health concerns and why the deposition could not
6 be scheduled for a later date. (Id.)

7 In the April 3, 2020 pleading, defendants state that on March 27, 2020, the California
8 Department of Corrections and Rehabilitation ("CDCR") informed defense counsel that attorneys
9 and court reporters were no longer allowed to physically enter any state prisons. (ECF No. 46 at
10 3.) Therefore, plaintiff's deposition scheduled for April 10, 2020 cannot go forward. (Id.)
11 Defendants have tentatively rescheduled plaintiff's deposition to take place on May 7, 2020, via
12 video conference. (Id.) However, defendants may need to reschedule plaintiff's deposition again
13 because the Board of Parole Hearings ("BPH") has first priority over the video conference rooms
14 in order to conduct remote parole hearings. (Id.)

15 Because defendants intend to conduct plaintiff's deposition via video conference,
16 plaintiff's concerns expressed in the motion to set aside his deposition are largely addressed.
17 Defense counsel shall ensure that plaintiff and prison staff who attend the deposition with
18 plaintiff maintain appropriate social distancing during the deposition. Accordingly, plaintiff's
19 motion to set aside his deposition is denied as moot.

20 Based on plaintiff's delayed deposition, defendants request that the discovery and
21 dispositive motion deadlines be extended by forty-five days. Good cause appearing, this request
22 is granted.

23 Accordingly, IT IS HEREBY ORDERED that:

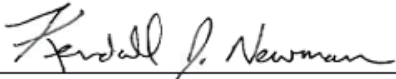
- 24 1. Plaintiff's motion to set aside his deposition (ECF No. 43) is denied;
- 25 2. Defendants' motion for a forty-five days extension of time (ECF No. 46) is granted;
- 26 3. The parties may conduct discovery until June 1, 2020; any motions to compel shall be
27 filed by that date;

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4. All pretrial motions, except motions to compel discovery, shall be filed on or before August 24, 2020. All other deadlines in the Discovery and Scheduling Order (ECF No. 30) remain in effect.

Dated: April 7, 2020


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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