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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 C.R., et al.,

8 Plaintiffs,

9 v.

10 CITY OF ANTIOCH, et al.,

11 Defendants.

Case No. 16-cv-03742-JST

**ORDER DENYING PLAINTIFFS'
REQUEST TO CONTINUE PRETRIAL
DEADLINES**

Re: ECF No. 42

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13 The Court set pretrial deadlines at the October 5, 2016 case management conference. ECF
14 No. 24 (minute entry); ECF No. 25 (written scheduling order). Plaintiffs seek to continue some of
15 those deadlines as follows:

Event	Current Deadline	Proposed Deadline
Fact discovery cut-off	September 29, 2017	November 30, 2017
Expert disclosures	October 20, 2017	December 21, 2017
Expert rebuttal	November 10, 2017	January 11, 2018
Expert discovery cut-off	November 24, 2017	January 25, 2018
Deadline to file dispositive motions	December 15, 2017	February 8, 2018

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23 ECF No. 42 at 3. Plaintiffs do not seek to continue the February 27, 2018 pretrial conference
24 statement filing deadline, the March 9, 2018 pretrial conference, or the April 2, 2018 trial date.
25 Defendants oppose Plaintiffs' request for continuance. ECF No. 44.

26 The Court's October 5, 2016 scheduling order provides that:

27 The parties must take all necessary steps to conduct discovery,
28 compel discovery, hire counsel, retain experts, and manage their
calendars so that they can complete discovery in a timely manner

1 and appear at trial on the noticed and scheduled dates. All counsel
2 must arrange their calendars to accommodate these dates, or arrange
to substitute or associate in counsel who can.

3 ECF No. 25 at 2. This schedule “may be modified only for good cause and with the judge’s
4 consent.” Fed. R. Civ. P. 16(b)(4). The good cause analysis “primarily considers the diligence of
5 the party seeking the [continuance].” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609
6 (9th Cir. 1992) (considering whether party seeking belated amendment satisfied Rule 16(b)’s good
7 cause standard). “Although the existence or degree of prejudice to the party opposing the
8 modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the
9 moving party’s reasons for seeking modification. If that party was not diligent, the inquiry should
10 end.” Id. at 609 (citation omitted).

11 In this case, Plaintiffs fail to establish good cause because they have not demonstrated
12 diligence in seeking discovery. According to Defendants’ counsel’s declaration, Plaintiffs have
13 conducted no written discovery except for propounding one request for production of documents
14 in November 2016. ECF No. 44-1 ¶ 3. Defendants responded to that request by “produc[ing] the
15 entire investigative file to Plaintiffs” on December 2, 2016. Id. ¶ 2. “In total, these materials were
16 Batestamped 1-739 and consisted of the entire investigation of this incident, plus additional
17 production. In June of 2017, one additional disc of several audio files of the dispatch of this
18 incident, not previously in Defendants’ possession, was produced to Plaintiffs.” Id. Plaintiffs
19 have taken no depositions and did not inform Defendants’ counsel that they sought to depose the
20 involved officers until August 29, 2017. Id. ¶ 3. Plaintiffs state that they “postponed Defendants’
21 depositions until third party witnesses could be located and deposed,” and that they “met and
22 conferred with Defendants to schedule depositions of all parties” when “Plaintiffs[’] ongoing
23 attempts to locate the witnesses became futile.” ECF No. 42 at 2. However, Plaintiffs provide no
24 information regarding the diligence of their “ongoing attempts” to locate third-party witnesses. In
25 any event, while there might be a case in which waiting until one month before the close of
discovery to schedule party depositions demonstrates diligence, this is not that case.

26 Plaintiffs also contend that a continuance is warranted because, “while reviewing discovery
27 materials to prepare for Defendants’ depositions, it came to Plaintiffs [sic] attention that they were
28 not in possession of certain categories of materials relative to Defendants’ employment and

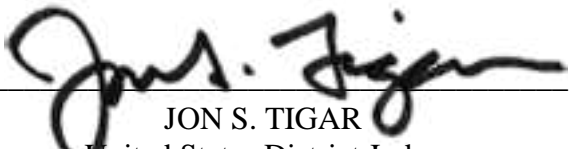
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disciplinary histories. Defendants produced no privilege log and it was unclear whether materials were actually being withheld or did not exist.” Id. Plaintiffs’ counsel did not contact Defendants’ counsel about these materials until August 29, 2017—more than eight months after receiving Defendants’ discovery responses. Id. This was not diligent. In addition, Defendants state that these materials, which consist of the four named Defendants’ personnel records, will be produced this week, ECF No. 44 at 4, thus allowing sufficient time for their review prior to the September 29, 2017 discovery cut-off.

Plaintiffs’ counsel has not shown diligence in “manag[ing] their calendars so that they can complete discovery in a timely manner.” ECF No. 25 at 2. Their request for continuance is therefore denied.

IT IS SO ORDERED.

Dated: September 21, 2017



JON S. TIGAR
United States District Judge