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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MORRIS GREEN,
Plaintiff,
v.
CITY AND COUNTY OF SAN
FRANCISCO, et al.,
Defendants.

Case No. [17-cv-00607-TSH](#)
**ORDER RE: MOTION TO RE-OPEN
DISCOVERY**
Re: Dkt. No. 77

I. INTRODUCTION

Plaintiff Morris Green was a Junior Engineer with Defendant City and County of San Francisco’s Public Utilities Commission (the “City”) until his medical separation in February of 2018. Green filed the present lawsuit on February 6, 2017, alleging racial discrimination, retaliation, harassment, and a failure by the City to provide for his medical accommodation requests. Green filed this case pro se, but the Court appointed counsel on April 17, 2018, after the Federal Pro Bono Project was able to locate counsel to represent him. The original fact discovery cut off was February 20, 2018. Since that date, there have been several extensions. Green now moves to reopen discovery. ECF No. 77.

II. BACKGROUND

A. Procedural Background

According to the Case Management Order for this case, discovery was initially set to conclude on February 20, 2018. Case Mgmt. Scheduling Order, ECF No. 27. However, on February 15, 2018, the City requested the fact discovery cut-off be extended by four months. Mot. to Change Deadlines at 2, ECF No. 42. Green opposed the motion for a variety of reasons, including that prolonging the litigation – when he did not have representation and was unemployed due to being terminated by the City – “would place a tremendous toil on the Plaintiff’s overall mental, emotional and physical health including his finances.” Opp’n to Mot. to

1 Change Deadlines, ECF No. 45 at 2. The Court found the City had not established good cause for
2 modifying pre-trial deadlines and directed the City to file a declaration establishing good cause for
3 its request. Order re: Mot. to Change Deadlines at 2, ECF No. 46.

4 On March 12, 2018, after the City filed its declaration – arguing that the Green’s failure to
5 provide his medical records and agree to a Protective Order caused a delay — the Court “found
6 that, by and large, Defendant had not been diligent and had not shown good cause to extend
7 pretrial deadlines.” Order re: Discovery Deadlines, ECF No. 53 at 1. Despite that, the Court
8 partially granted the City’s request to modify the pre-trial deadlines but directed the City to review
9 its discovery responses in good faith and to determine whether any of them should be
10 supplemented. *Id.* The Court, taking into account that Green had complied with all discovery
11 obligations and met all deadlines, gave him additional time to review the City’s responses and to
12 seek assistance from the Court, if necessary, in order to compel further responses from the City.
13 *Id.* at 2. The following day, the Court referred Green to the Federal Pro Bono Project to determine
14 if counsel could be located to assist him in this matter. ECF No. 54. On April 17, 2018, after the
15 Pro Bono Project located counsel for Green, the Court appointed counsel to assist him with
16 discovery and any settlement conference that might take place. ECF No. 57.

17 Two months later, the Court granted the parties’ stipulation to extend the discovery
18 deadline an additional 30 days to conduct a meet and confer conference pursuant to the Court’s
19 March 12, 2018 discovery order. ECF No. 59. Soon after, the Court granted the parties’
20 stipulation to extend the deadline to file discovery disputes from July 23, 2018, to August 2, 2018.
21 ECF No. 63. The Court also set a Case Management Conference for August 9, 2018 and ordered
22 the parties to file an updated joint statement seven days prior. ECF No. 60.

23 On August 2, 2018, the parties filed a Joint Case Management Statement, in which Green
24 indicated he had outstanding discovery disputes. ECF No. 64. Specifically, Green noted in his
25 statement that he was considering a motion to compel in regards to ongoing discovery disputes
26 with the City “for their inability or unwilling[ness] to ‘provide substantive responses’ and
27 documentation to the Plaintiff’s discovery requests . . .” and for producing more than 8100 pages
28 of new documents in “mid April 2018” which was “passed the discovery cut-off deadline.” *Id.* at

1 5.

2 In response, the Court vacated the August 9, 2018 Case Management Conference and
3 upcoming pretrial and trial dates pending resolution of all outstanding discovery disputes. ECF
4 Nos. 65, 66. Later that day, the parties filed seven joint letter briefs, detailing their ongoing
5 discovery disputes. ECF No. 67. On August 6, 2018, the Court ordered the parties to meet and
6 confer in person at the courthouse to resolve their disputes, after which the parties were to submit
7 an updated joint letter brief, as well as a joint proposal for a new discovery deadline. ECF No. 69.
8 On August 24, 2018 the parties filed an updated joint letter brief. In it Green requested permission
9 to take additional discovery, his request in that letter mirroring his request in the current pending
10 motion. ECF No. 70.

11 The Court held a status conference on September 20, 2018. ECF No. 73. At the hearing
12 the City opposed reopening discovery. Also at the hearing, Green noted that he was waiting for a
13 Right to Sue letter from the Department of Justice and that once he received it, he would be
14 seeking to amend his complaint. The City agreed that additional discovery would be appropriate
15 if an amended complaint was filed but only as to new claims. Initially, based on oral argument,
16 the Court denied Green's request to reopen discovery but noted that he would be allowed to
17 conduct discovery as to any new claims in the amended complaint. ECF No. 74.

18 On November 15, 2018 Green filed a status report stating he had received his Right to Sue
19 letter and that an amended complaint would be forthcoming. ECF No. 82. Upon Green's counsel
20 refiling the request to reopen discovery and further briefing the issue, the Court has reconsidered
21 and **GRANTS** Green's Motion to Reopen Discovery.

22 III. LEGAL STANDARD

23 Federal Rule of Civil Procedure 16 provides that deadlines established in a case
24 management order may "be modified only for good cause[.]" Fed. R. Civ. P. 16(b)(4). "Good
25 cause" exists when a deadline "cannot reasonably be met despite the diligence of the party seeking
26 the extension." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Thus,
27 "Rule 16(b)'s 'good cause' standard primarily considers the diligence of the party seeking the
28 amendment." *Id.*; see also *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000).

1 Where the moving party has not been diligent, the inquiry ends, and the motion should be
2 denied. *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002); *Johnson*, 975 F.2d at
3 609.

4 IV. DISCUSSION

5 In the instant case, the Court is persuaded that Green has established good cause to reopen
6 discovery. There is no indication that Green — who until April 17, 2018 was acting pro se — has
7 been dilatory in conducting discovery. Despite the City’s arguments to the contrary, the Court
8 finds that Green navigated the discovery process diligently. He timely served the City with RFPs,
9 Special Interrogatories, and Requests for Admission. Decl. of Emily A. Weirder at 1-2, ECF No.
10 77-1.

11 During the discovery period, despite his efforts, Green was not always successful in getting
12 the City to be completely responsive in its filings. “In many circumstances, a pro se litigant’s
13 good faith unsuccessful efforts to obtain discovery meet the standard of good cause.” *Lawrence v.*
14 *City and County of San Francisco*, 2016 WL 3254232, *3 (N.D. Cal. June 14, 2016) (citing
15 *Henderson v. Peterson*, 2011 WL 441206, at *2 (N.D. Cal. Feb. 3, 2011)) (finding good cause
16 after counsel’s appointment where “Plaintiff’s pro se status” demonstrated “that he was unable to
17 gain access to evidence and information that he might otherwise have obtained had he been
18 represented by counsel”). His lack of success is evidenced by the fact that in March of 2018, upon
19 the direction of the Court to review its previous filings in good faith and make any necessary
20 amendments, the City served amended responses to supplement its previous responses to Green’s
21 Interrogatories and Requests for Admission and made an additional document production.
22 Defendant’s Status report, ECF No. 56 at 2; Decl. of Joseph M. Lake Ex. D, ECF No. 79-4 at 2-3.
23 This was over a month after the original fact discovery cut off.

24 In fact, Magistrate Judge Maria-Elena James¹ noted in the Court’s March Order granting
25 the City’s first request to extend discovery that Green, “who is representing himself in this action .
26 . . has complied with his discovery obligations and met all deadlines,” whereas the City was

27 _____
28 ¹ Magistrate Judge James retired on August 31, 2018, after which this case was reassigned to the undersigned. ECF No. 71.

1 admonished for not being diligent and not having shown good cause for requesting pretrial
2 deadlines be extended. Order Re: Discovery Deadlines at 2.

3 Regardless, in the interests of justice and in order to resolve the case on the merits, when
4 the City requested an extension, the Court granted it. In the months that followed, the Court
5 granted multiple extensions, for both parties, including the following: 1) allowing the City to
6 depose Green five months after discovery cut off; 2) granting Green an additional 30 days to
7 review the City's discovery responses after discovery cut off, ECF No. 53; 3) extending the
8 already previously extended deadlines in its March 12, 2018 Order by an additional 30 days, ECF
9 No. 59; 4) extending the deadline to file Joint Letter Briefs regarding discovery disputes to August
10 2, 2018, ECF No. 63; and 5) extending the dispositive motions deadline to allow parties time to
11 resolve their discovery disputes ECF No. 69. Since Green was appointed counsel, extensions have
12 been a necessary vehicle for allowing his counsel to get up to speed.

13 The Court finds that the additional information Green's counsel now seeks to obtain is
14 relevant and proportional in accordance with Federal Rule of Civil Procedure 26(b)(1), and the
15 information sought will aid in trial preparation and in the resolution of this case on the merits.
16 Specifically, Green proposes to reopen discovery to conduct the following:

- 17 • He proposes conducting a deposition of the City's Person Most
18 Knowledgeable on topics including, but not limited to, Green's
19 transfer to the Collection Systems Division; the City's policy and
20 practices regarding reasonable accommodation requests and requests
21 for transfer; Green's reasonable accommodation requests and
22 requests for transfer; and training and development opportunities
23 provided to Green and Junior Engineers within Wastewater
24 Enterprise. Green intends to conduct this deposition within 60 days
25 of service of the second set of written discovery.
- 26 • Green intends to conduct no more than three depositions of
27 individuals involved in his transfer to the Collections Systems
28 Division and/or the City's decision to deny his reasonable
accommodation request. He intends to conduct this deposition
within 60 days of service of the second set of written discovery.
- Green seeks to serve one limited second set of Requests for
Admission, Requests for Production of Documents, and Special
Interrogatories. He seeks to serve this set of written discovery
within one week of the Court's Order granting his request to re-open
discovery.

1 Mot. to Reopen Discovery at 2.

2 The City will not be inappropriately prejudiced by a reopening of discovery. There is no
3 pretrial conference or trial date currently set in this matter, so those dates will not be impacted by
4 the reopening of discovery. *Calloway v. Scribner*, No. 1:05-CV-01284-BAM PC, 2014 WL
5 1317608, at *4 (E.D. Cal. Mar. 27, 2014) (finding that defendants would not be prejudiced by the
6 reopening of discovery where a trial date had not been set and defendants would “be afforded
7 sufficient time to respond to any permitted discovery”). Also, “any prejudice suffered by
8 Defendant in this regard is substantially outweighed by Plaintiff’s need to engage in discovery to
9 adequately prepare for trial.” *Woodard v. City of Menlo Park*, No. C 09-3331 SBA, 2012 WL
10 2119278, at *1-2 (N.D. Cal. June 11, 2012) (reopening discovery after the appointment of pro
11 bono counsel).

12 Finally, since Green has indicated that he will be filing an amended complaint now that he
13 has received a Right to Sue letter from the Department of Justice, discovery will have to reopen
14 anyway as to the new claims.

15 **V. CONCLUSION**

16 Green’s motion to reopen discovery is **GRANTED**. He may take the additional discovery
17 proposed in his motion and described above in this order. Fact discovery on Green’s existing
18 claims shall close on March 29, 2019. If Green files an amended complaint the Court will address
19 at that time reopening discovery as to any new claims.

20
21 **IT IS SO ORDERED.**

22
23 Dated: November 27, 2018

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25 
26 THOMAS S. HIXSON
27 United States Magistrate Judge
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