

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REGGIE PERKINS,

Plaintiff,

v.

CONTRA COSTA COUNTY SHERIFF'S
DEPARTMENT J-TEAM, SERGEANT M.
MALONE, DEPUTIES K. WESTERMANN, R.
ROBERTS and R. FULLER, DETECTIVE J.
MOORE, A. GARIBAY and LEIU AGENT G.
RENAUD,

Defendants.

No. C 07-02013 CW

ORDER GRANTING
PLAINTIFF'S
MOTION TO REOPEN
DISCOVERY
(Docket # 81)

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On January 11, 2009, counsel was appointed to represent Plaintiff Reggie Perkins, a state prisoner, in his civil rights case against Defendants. Plaintiff, through counsel, moves to reopen discovery and to modify the pretrial scheduling order under Federal Rule of Civil Procedure 16(b). Defendants R. Fuller, M. Malone, J. Moore and G. Renaud oppose the motion.¹ Defendants Fuller, Malone and Moore are officers of the Contra Costa County Sheriff's Department and are referred to as County Defendants;

¹In the Court's March 16, 2009 Order Granting in Part Defendants' Motion for Summary Judgment, summary judgment was granted in favor of R. Roberts and K. Westermann on the only claim asserted against them.

1 Agent Renaud is a Parole Agent for the State of California. The
2 motion was taken under submission and decided on the papers.
3 Having considered all the papers filed by the parties, the Court
4 grants Plaintiff's motion to reopen discovery.

5 BACKGROUND

6 This case arises from Plaintiff's arrest on October 14, 2005
7 during which Defendants allegedly used excessive force. On April
8 10, 2007, Plaintiff, acting pro se, filed this civil rights
9 complaint. On March 17, 2009, after ruling on Defendants' motion
10 for summary judgment, the Court set a December 14, 2009 trial date
11 and an October 20, 2009 date for the close of discovery. See
12 Docket # 47. At that time, two of the four Defendants had not been
13 served with the complaint; they were served on March 24, 2009. In
14 April, 2009, Plaintiff served a request seeking Defendants'
15 personnel records and his booking photograph. Defendants produced
16 the photograph, but objected to the former request on the ground
17 that the records were confidential. On July 16, 2009, Plaintiff
18 filed a discovery motion seeking production of the personnel
19 records. On August 19, 2009, Defendants opposed the motion. On
20 October 28, 2009, Plaintiff filed a discovery motion for Contra
21 Costa County's use-of-force policies. On January 11, 2010, the
22 Court appointed counsel and denied the discovery motions without
23 prejudice, subject to refiling if counsel deemed it advisable.
24 Also on January 11, 2010, the Court provided new dates for a case
25 management conference, a pretrial conference and jury trial of
26 April 6, 2010, May 11, 2010, and June 6, 2010, respectively.
27 October 20, 2009 remained as the discovery cut-off date.

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1 Plaintiff's counsel and County Defendants' counsel met and
2 conferred about reopening discovery. Defendants had deposed
3 Plaintiff, but Plaintiff had not deposed any Defendant. County
4 Defendants' counsel agreed to allow Plaintiff to take the
5 depositions of each County Defendant and produced some of the
6 documents requested by Plaintiff. Counsel for Defendant Renaud did
7 not agree to Plaintiff's request to depose Renaud or to produce any
8 documents.

9 Plaintiff anticipates requiring the following discovery, with
10 appropriate follow-up: (1) from Defendants--reports concerning
11 Petitioner's arrest and the search of his home; documents regarding
12 Defendants' training on arrests and use of force; documents
13 concerning complaints against Defendants, investigations of
14 complaints, disciplinary measures or lawsuits; and depositions of
15 each Defendant and their expert; (2) from Contra Costa Sheriff's
16 Office and California Department of Corrections and
17 Rehabilitation--reports of the search of Petitioner's home and
18 arrest, including photographs; reports of Contra Costa County's
19 investigation of Petitioner's citizen complaint; policies
20 concerning arrest, use of force and reporting requirements; reports
21 of complaints against Defendants; and Defendants' training,
22 personnel and evaluation records; (3) from West Coast Detention
23 Facility--documents concerning Petitioner's arrest, medical and
24 health records and photographs of Petitioner; and (4) from United
25 States Marshal's Service--documents relating to Petitioner's arrest
26 and any photographs of Petitioner.

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LEGAL STANDARD

Federal Rule of Civil Procedure 16(b) provides that a case management schedule can be modified upon a showing of good cause and by leave of the district judge. The good cause standard primarily considers the diligence of the party seeking the amendment. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). A party moving for an amendment to a scheduling order must therefore show that the scheduling order imposes deadlines that have become unworkable notwithstanding its diligent efforts to comply with the schedule, and that it was diligent in seeking the amendment once it became apparent that extensions were necessary. Jackson v. Laureate, Inc., 186 F.R.D. 605, 608 (E.D. Cal. 1999).

Courts consider the following factors when deciding whether to reopen discovery: (1) whether trial is imminent; (2) whether the request is opposed; (3) whether the non-moving party would be prejudiced; (4) whether the moving party was diligent in obtaining discovery; (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court; and (6) the likelihood that the discovery will lead to relevant evidence. United States ex. rel. Schumer v. Hughes Aircraft Co., 63 F.3d 1512, 1526 (9th Cir. 1995), cert. granted in part, 519 U.S. 926, vacated on other grounds, 520 U.S. 939 (1997). The decision to reopen discovery rests in the sound discretion of the court. Id.

DISCUSSION

Defendants argue that Plaintiff has not shown good cause for

1 amending the Court's scheduling order or for reopening discovery.
2 However, when acting pro se, Plaintiff attempted to obtain
3 discovery, but his requests were opposed by Defendants. When
4 counsel was appointed, the Court sua sponte denied his discovery
5 motions without prejudice so that counsel could assess the
6 situation and refile discovery requests, if counsel deemed they
7 were necessary. As soon as counsel was appointed, counsel met and
8 conferred with Defendants regarding discovery and, when these
9 requests were not satisfactorily met, immediately moved to reopen
10 discovery. Therefore, to the best of his ability, Plaintiff has
11 been diligent in attempting to obtain discovery and has shown good
12 cause for an amendment of the scheduling order.

13 Furthermore, the need for additional discovery was
14 foreseeable. The issue to be tried is excessive force, which,
15 generally, involves disputed facts and divergent views of the same
16 events. Without adequate discovery, Plaintiff would be at an
17 insurmountable disadvantage at trial. Defendants' contention that
18 none of the discovery sought would lead to relevant evidence is
19 unpersuasive. Defendants argue that they would be prejudiced if
20 discovery is reopened. However, if discovery is reopened,
21 Defendants would have to engage in the normal discovery process
22 that would have taken place if, at the start of his case, Plaintiff
23 had not been acting pro se. Although reopening discovery might
24 inconvenience Defendants, it is not prejudicial for all parties to
25 be in possession of the relevant evidence. Although the date of
26 the trial is imminent, if the parties cooperate, all discovery can
27 be completed within the remaining time period.

1 Therefore, Plaintiff's request to re-open discovery is
2 granted. Defendants reasonably request that discovery of their
3 personnel records be subject to a protective order. The Court
4 encourages the parties first to meet and confer on this issue and
5 consider the sample protective order on the Court's website.

6 CONCLUSION

7 For the foregoing reasons, Plaintiff's motion to reopen
8 discovery is granted.

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10 IT IS SO ORDERED.

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12 Dated: February 9, 2010



CLAUDIA WILKEN
United States District Judge