

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE HALEY,  
Plaintiff,  
v.  
CLARK CONSTRUCTION GROUP-  
CALIFORNIA, INC.,  
Defendant.

Case No. 18-cv-07542-HSG

**ORDER DENYING PLAINTIFF’S EX  
PARTE APPLICATION TO MODIFY  
SCHEDULING ORDER**

Re: Dkt. No. 46

Plaintiff Lawrence Haley moved ex parte to modify the scheduling order to extend the fact discovery deadline from August 19, 2019 to October 2, 2019. Dkt. No. 46 (“Mot.”). The Court held a hearing on the ex parte application on August 22, 2019. Having carefully considered the parties’ arguments, the Court **DENIES** Plaintiff’s ex parte application, and explains its reasoning briefly for the record.

**I. LEGAL STANDARD**

Federal Rule of Civil Procedure 16 provides that “[a] schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16. “Rule 16(b)’s ‘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); see also Fed. R. Civ. P. 16 Advisory Committee’s Notes (1983 amendment) (noting court may modify schedule “if it cannot reasonably be met despite the diligence of the party seeking the extension”). Thus, “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the amendment.” Id.; see also Coleman v. Quaker Oats Co., 232 F.3d 1271, 1294 (9th Cir. 2000). Where the moving party has not been diligent, the inquiry ends, and the motion should be denied. Zivkovic v. S. Cal. Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002); Johnson, 975 F.2d at 609. Whether or not to

1 reopen discovery is in the discretion of the district court: the district court has “wide latitude in  
2 controlling discovery.” *United States v. Reliance Ins. Co.*, 799 F.2d 1382, 1387 (9th Cir. 1986).

3 **II. DISCUSSION**

4 Plaintiff filed his ex parte application the day discovery closed, seeking to extend the  
5 discovery deadline because of Defendant’s purportedly belated production of documents. Mot. at  
6 3–4. According to Plaintiff, those produced documents “revealed more than six (6) additional  
7 witnesses.” Mot. at 4. However, Plaintiff’s motion fails to specifically identify what additional  
8 discovery Plaintiff requests. At the hearing, Plaintiff’s counsel clarified that she was seeking to  
9 depose Bashir Zayid and Steve Highland, individuals whose email addresses were included in  
10 Defendant’s “belatedly produced documents.” See Dkt. No. 46-3, Ex. 12.

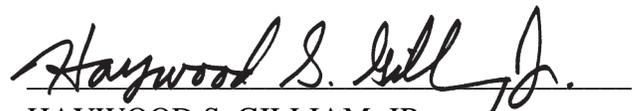
11 The Court finds Plaintiff failed to show good cause why he should be allowed to extend  
12 discovery. The alleged “belatedly produced documents” were just five additional emails, totaling  
13 nineteen pages, which Defendant produced to Plaintiff on August 6, 2019, weeks before the  
14 discovery cut-off. See *id.* Plaintiff accuses Defendant of “trial by ambush and document  
15 dumping,” but Defendant’s conduct hardly qualifies for such labels. See Mot. at 4. Given the  
16 minimal number of documents, Plaintiff could have sought to depose Mr. Zayid and Mr. Highland  
17 well before the August 19, 2019 discovery cut-off. Further, some of these documents were  
18 already produced to Plaintiff, and Defendant identified Mr. Zayid in a discovery response in July  
19 2019. See Dkt. No. 49-1 ¶¶ 12, 20. Plaintiff clearly was not diligent in seeking to extend  
20 discovery.

21 **III. CONCLUSION**

22 For the reasons set forth above, the Court **DENIES** Plaintiff’s ex parte application to  
23 modify the scheduling order.

24 **IT IS SO ORDERED.**

25 Dated: 10/9/2019

26   
27 HAYWOOD S. GILLIAM, JR.  
28 United States District Judge