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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JESSIE W. JONES,

Plaintiff,

v.

F. GARDINER,

Defendant.

Case No.: 14cv2477-MMA-MDD

**ORDER GRANTING IN PART AND
DENYING IN PART JOINT
MOTION TO AMEND PRETRIAL
SCHEDULING ORDER**

[ECF No. 42]

I. INTRODUCTION

Jessie W. Jones (“Plaintiff”), a state prisoner proceeding through counsel, and F. Gardish Gardiner (“Defendant”) jointly filed a motion to amend the pretrial scheduling order. (ECF No. 42). Plaintiff requests the Court reopen discovery for the limited purpose of Plaintiff taking the depositions of Defendant and fact witness, Lt. Coyne. (*Id.* at 2). Defendant opposes Plaintiff’s request and instead moves the Court to mutually reopen expert discovery. (*Id.* at 7).

II. PROCEDURAL BACKGROUND

On April 8, 2015, this Court issued a scheduling order regulating

1 discovery and other pre-trial proceedings. (ECF No. 8). Pursuant to the
2 scheduling order, initial expert disclosures were due on August 7, 2015, and
3 rebuttal disclosures were due on September 11, 2015. (*Id.* at 1). Discovery
4 closed on October 9, 2015. (*Id.* at 2). Neither party disclosed experts, but
5 Defendant did take Plaintiff’s deposition. (ECF No. 42 at 4; *see* ECF No. 10).

6 On November 13, 2015, Defendant filed a motion for summary
7 judgment. (ECF No. 14). On April 14, 2016 District Judge Anello denied
8 Defendant’s motion for summary judgment. (ECF No. 27). Counsel were
9 appointed to represent Plaintiff in November of 2016, more than a year after
10 discovery closed. (ECF No. 34). On February 21, 2017, District Judge Anello
11 issued a pretrial scheduling order, which set May 5, 2017 as the deadline for
12 “[a]ny remaining discovery matters, including requests to re-open discovery.”
13 (ECF No. 40 at 1).

14 III. DISCUSSION

15 A scheduling order “may be modified only for good cause and with the
16 judge’s consent.” Fed. R. Civ. P. 16(b)(4). The “good cause” standard
17 “primarily considers the diligence of the party seeking the amendment.”
18 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).
19 Courts have permitted the reopening of discovery where a state prisoner
20 proceeding *pro se* moved to reopen discovery following the appointment of
21 counsel after the discovery cutoff date. *See, e.g., Draper v. Rosario*, No. S-10-
22 0032 KJM EFB, 2013 WL 6198945, at *2-3 (E.D. Cal. Nov. 27, 2013);
23 *Woodard v. City of Menlo Park*, No. C 09-3331 SBA, 2012 WL 2119278, at *1-
24 2 (N.D. Cal. June 11, 2012); *Henderson v. Peterson*, No. C 07-2838 SBA PR,
25 2011 WL 441206, at *1-2 (N.D. Cal. Feb. 3, 2011).

26 Plaintiff argues he has good cause to re-open discovery for the limited
27 purpose of taking two depositions because he “was unable to depose

1 Defendant and Lt. Coyne before discovery closed, due to his pro se and
2 inmate status.” (ECF No. 42 at 3). Defendant contends that “Plaintiff had
3 ample opportunity to conduct depositions by written questions pursuant to
4 FRCP 31 [and] could have propounded interrogatories to Defendant.”
5 (*Id.* at 6). Defendant further opposes Plaintiff’s request on the grounds that
6 both Defendant and Lt. Coyne “provided declarations in support of
7 Defendant’s motion for summary judgment [and Plaintiff] had an
8 opportunity to request further discovery before he filed his opposition to the
9 motion. . . .” (*Id.*). Defendant asserts that he “will be prejudiced if Plaintiff
10 *alone* is provided additional time to conduct discovery” and argues that the
11 Court should permit a “mutual reopening of discovery to allow Defendant to
12 identify expert witnesses” to assist the jury on causation and damages issues.
13 (*Id.* at 7). Plaintiff notes that Defendant’s counsel’s deliberate choice not to
14 engage in expert discovery does not justify reopening discovery. (*Id.* at 5).

15 The Court finds good cause to permit Plaintiff to conduct depositions of
16 Defendant and Lt. Coyne. This additional fact discovery will assist in
17 resolving the matter on the merits and will not prejudice Defendant. The
18 Court does not find Defendant diligently pursued expert discovery. As
19 previously indicated, initial expert disclosures were due August 7, 2015 and
20 rebuttals were due September 11, 2015. Neither Plaintiff nor Defendant
21 disclosed experts by that deadline. Defendant’s failure to pursue expert
22 discovery as a litigation strategy does not constitute good cause to reopen
23 expert discovery.

24 **IV. CONCLUSION**

25 Accordingly, the Court **GRANTS IN PART AND DENIES IN PART**
26 the parties’ joint motion to amend the pretrial scheduling order as follows:

- 27 1. Plaintiff’s request to reopen discovery for the limited purpose of

1 conducting two depositions is **GRANTED. IT IS HEREBY ORDERED** that
2 the discovery deadline is extended to **June 19, 2017** for the limited purpose
3 of permitting Plaintiff to depose Defendant and Lt. Coyne.

4 2. Defendant's request to reopen expert discovery is **DENIED.**

5 All other dates, deadlines and requirements set forth in the April 8,
6 2015 scheduling order [ECF No. 8] and the February 21, 2017 pretrial
7 scheduling order [ECF No. 40] remain as previously set.

8 **IT IS SO ORDERED.**

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10 Dated: May 18, 2017



11 Hon. Mitchell D. Dembin
12 United States Magistrate Judge
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