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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLES HOLMES,

Plaintiff,

vs.

ESTOCK, et al.,

Defendants.

Case No.: 16-cv-2458-MMA (BLM)

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION FOR LEAVE
TO FILE A DAUBERT MOTION**

[Doc. No. 187]

Plaintiff Charles Holmes, a California inmate, brings this civil rights action pursuant to 42 U.S.C. § 1983 alleging violations of his Eighth Amendment right to adequate medical care. On June 16, 2022, the Court appointed Plaintiff Pro Bono Counsel pursuant to 28 U.S.C. § 1915(e)(1) and General Order 596. *See* Doc. No. 169. Plaintiff now moves the Court for leave to file a motion challenging Defendants' experts pursuant to *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 582 (1993).

Pursuant to the Rule 16 Scheduling Order and the undersigned's Civil Chambers Rules, *Daubert* motions were due no later than October 4, 2019. *See* Doc. No. 93; Civ. Chambers R. IX fn. 3. Although Plaintiff seeks to file a *Daubert* motion more than three years late, his prior counsel's failures, including his failure to file a *Daubert* motion and timely oppose summary judgment, are well-documented. *See* Doc. Nos. 157, 168. Further, the record demonstrates that since appointment, Plaintiff's current counsel have

1 been diligent in pursuing discovery and readying this case for trial. Accordingly, the
2 Court finds good cause to modify the Rule 16 Scheduling Order to permit Plaintiff to file
3 a *Daubert* motion. *See* Fed. R. Civ. P. 16(b)(4) (“A schedule may be modified only for
4 good cause and with the judge’s consent.”); *see also Valentine v. Nielsen*, No. 16cv2357-
5 W(KSC), 2018 U.S. Dist. LEXIS 39285, at *12 (S.D. Cal. Mar. 9, 2018) (“Parties may be
6 able to satisfy the ‘good cause’ standard if they can show that a prior attorney’s actions
7 were ‘grossly negligent.’”) (quoting *Community Dental Servs. v. Tani*, 282 F.3d 1164,
8 1168 (9th Cir. 2002)). The Court therefore **GRANTS** Plaintiff’s unopposed motion and
9 **SETS** the following schedule and limitations:

10 1. Plaintiff may file one omnibus motion, not to exceed twenty-five (25) pages,
11 asserting all *Daubert* challenges on or before **July 14, 2023**.

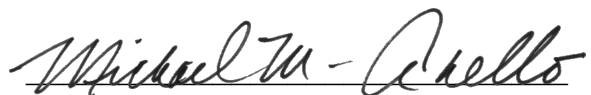
12 2. Defendants’ opposition, not to exceed twenty-five (25) pages, is due on or
13 before **July 28, 2023**.

14 3. No reply briefs will be accepted.

15 4. The Court will hear oral argument on Plaintiff’s *Daubert* motion at the Final
16 Pretrial Conference, **September 11, 2023 at 1:30 p.m.**

17 **IT IS SO ORDERED.**

18 Dated: May 25, 2023

19 

20 HON. MICHAEL M. ANELLO
21 United States District Judge