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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELLIOT SCOTT GRIZZLE,

Plaintiff,

v.

COUNTY OF SAN DIEGO, et al.,

Defendants.

Case No.: 17-cv-00813-JLS-RBM

ORDER:

**(1) GRANTING JOINT MOTION TO
EXTEND DISCOVERY-RELATED
PRETRIAL DEADLINES;**

AND

**(2) FOURTH AMENDED
SCHEDULING ORDER**

[Docs. 135, 141]

Before the Court is Plaintiff Elliot Scott Grizzle (“Plaintiff”) and Defendants County of San Diego, Sheriff William Gore, Lieutenant Lena Lovelace, and Sergeant Aaron Boorman’s (collectively “Defendants”) Joint Application to Extend Discovery-Related Pretrial Deadlines by Forty-Five Days (“Joint Motion”). (Doc. 141.) The Joint Motion requests that the Court continue the discovery-related pretrial deadlines set forth in the March 15, 2021 Third Amended Scheduling Order (“Scheduling Order”) by forty-five days. (Docs. 135, 141 at 1, 4.) This is the parties’ fourth request for a continuance. (Doc.

1 141 at 2.) The parties allege good cause exists for a continuance because Plaintiff's
2 incarcerated status has prevented timely completion of written discovery and hindered the
3 ability of Defendants to propound Plaintiff's deposition in a timely fashion. (*Id.* at 2.) The
4 parties contend they are ready to proceed with Plaintiff's deposition on July 12, 2021, and
5 do not anticipate another delay. (*Id.* at 3.) Moreover, the parties allege a continuance will
6 not prejudice the parties. (*Id.*)

7 A scheduling order may be modified only upon a showing of good cause and with
8 the judge's consent. FED. R. CIV. P. 16(b)(4); *see, e.g., Johnson v. Mammoth Recreations,*
9 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (stating, "the focus of [the good cause] inquiry is
10 upon the moving party's reasons for seeking modification.").

11 This case was in the initial pleading stage from 2017–2020 (Docs. 1–121). However,
12 the parties have acted diligently since Defendants answered the Third Amended Complaint,
13 and they have attempted to comply with the Scheduling Order deadlines. (*See* Docs. 123,
14 128, 132–133, 136–137.) The Court takes note of the parties' diligence and the challenges
15 that the ongoing COVID-19 pandemic presents to the discovery process, especially for
16 incarcerated litigants. A continuance of time allows the parties additional time to conduct
17 fact and expert discovery. As such, good cause exists to grant a continuance of time. The
18 parties are cautioned, however, that discovery should be pursued diligently to avoid further
19 delays or continuances.

20 Accordingly, the Joint Motion (Doc. 141) is **GRANTED**. The March 15, 2021
21 Scheduling Order (Doc. 135) is hereby **AMENDED AS FOLLOWS**:

22 1. All fact discovery shall be completed by all parties by **August 30, 2021**.
23 "Completed" means that all discovery under Rules 30–36 of the Federal Rules of Civil
24 Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period of
25 time in advance of the cut-off date, **so that it may be completed** by the cut-off date, taking
26 into account the times for service, notice and response as set forth in the Federal Rules of
27 Civil Procedure. **Counsel shall promptly and in good faith meet and confer with**
28 **regard to all discovery disputes in compliance with Civil Local Rule 26.1(a)**. The Court

1 expects counsel to make every effort to resolve all disputes without court intervention
2 through the meet and confer process. If the parties reach an impasse on any discovery
3 issue, counsel shall file an appropriate motion within the time limit and procedures outlined
4 in the undersigned magistrate judge's chambers rules. **A failure to comply in this regard**
5 **will result in a waiver of a party's discovery issue. Absent an order of the Court, no**
6 **stipulation continuing or altering this requirement will be recognized by the Court.**

7 2. The parties shall designate their respective experts in writing by **October 4,**
8 **2021.** The parties must identify any person who may be used at trial to present evidence
9 under to Rules 702, 703 or 705 of the Federal Rules of Evidence. This requirement is not
10 limited to retained experts. The date for exchange of rebuttal experts shall be by **October**
11 **18, 2021.** The written designations shall include the name, address and telephone number
12 of the expert and a reasonable summary of the testimony the expert is expected to provide.
13 The list will include the normal rates the expert charges for deposition and trial testimony.

14 3. By **November 15, 2021,** each party shall comply with the disclosure
15 provisions in Rule 26(a)(2)(A) and (B) of the Federal Rules of Civil Procedure. This
16 disclosure requirement applies to all persons retained or specially employed to provide
17 expert testimony, or whose duties as an employee of the party regularly involve the giving
18 of expert testimony. **Except as provided in the paragraph below, any party that fails**
19 **to make these disclosures shall not, absent substantial justification, be permitted to**
20 **use evidence or testimony not disclosed at any hearing or at the time of trial. In**
21 **addition, the Court may impose sanctions as permitted by FED. R. CIV. P. 37(c).**

22 4. Any party shall supplement its disclosure regarding contradictory or rebuttal
23 evidence under FED. R. CIV. P. 26(a)(2)(D) by **November 29, 2021.**

24 5. All expert discovery shall be completed by all parties by **December 13, 2021.**
25 The parties shall comply with the same procedures set forth in the paragraph governing
26 fact discovery.

27 6. Failure to comply with this section or any other discovery order of the court
28 may result in the sanctions provided for in FED. R. CIV. P. 37, including a prohibition on

1 the introduction of experts or other designated matters in evidence.

2 7. All other pretrial motions must be filed by **January 7, 2022**. Counsel for the
3 moving party must obtain a motion hearing date from the law clerk of the judge who will
4 hear the motion. The period of time between the date you request a motion date and the
5 hearing date may vary from one district judge to another. Please plan accordingly. Failure
6 to make a timely request for a motion date may result in the motion not being heard.
7 Motions in Limine are to be filed as directed in the Civil Local Rules, or as otherwise set
8 by the district judge.

9 8. A Mandatory Settlement Conference shall be conducted on **April 6, 2022** at
10 **9:30 a.m.** in the chambers of **Magistrate Judge Ruth Bermudez Montenegro, 2003 W.**
11 **Adams Ave., Suite 220, El Centro, California 92243.** Counsel or any party representing
12 himself or herself shall submit confidential settlement briefs directly to chambers by
13 **March 25, 2022**. All parties are ordered to read and to fully comply with the Chamber
14 Rules of the assigned magistrate judge.

15 9. Counsel shall file their Memoranda of Contentions of Fact and Law and take
16 any other action required by Civil Local Rule 16.1(f)(2) by **April 14, 2022**.

17 10. Counsel shall comply with the pre-trial disclosure requirements of FED. R.
18 CIV. P. 26(a)(3) by **April 14, 2022**. Failure to comply with these disclosure requirements
19 could result in evidence preclusion or other sanctions under FED. R. CIV. P. 37.

20 11. Counsel shall meet and take the action required by Civil Local Rule 16.1(f)(4)
21 by **April 21, 2022**. At this meeting, counsel shall discuss and attempt to enter into
22 stipulations and agreements resulting in simplification of the triable issues. Counsel shall
23 exchange copies and/or display all exhibits other than those to be used for impeachment.
24 The exhibits shall be prepared in accordance with Civil Local Rule 16.1(f)(4)(c). Counsel
25 shall note any objections they have to any other parties' Pretrial Disclosures under FED. R.
26 CIV. P. 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial
27 conference order.

28 12. Counsel for Plaintiff will be responsible for preparing the pretrial order and

1 arranging the meetings of counsel pursuant to Civil Local Rule 16.1(f). By **April 28, 2022**,
2 Plaintiff's counsel must provide opposing counsel with the proposed pretrial order for
3 review and approval. Opposing counsel must communicate promptly with Plaintiff's
4 attorney concerning any objections to form or content of the pretrial order, and both parties
5 shall attempt promptly to resolve their differences, if any, concerning the order.

6 13. The Proposed Final Pretrial Conference Order, including objections to any
7 other parties' FED. R. CIV. P. 26(a)(3) Pretrial Disclosures shall be prepared, served and
8 lodged with the assigned district judge by **May 5, 2022**, and shall be in the form prescribed
9 in and comply with Civil Local Rule 16.1(f)(6).

10 14. The Final Pretrial Conference is scheduled on the calendar of the **Honorable**
11 **Janis L. Sammartino** on **May 12, 2022** at **1:30 p.m.**

12 15. The parties must review the chambers' rules for the assigned magistrate judge.

13 16. A post trial settlement conference before a magistrate judge may be held
14 within thirty days of verdict in the case.

15 17. The dates and times set forth herein will not be modified except for good cause
16 shown.

17 18. Briefs or memoranda in support of or in opposition to any pending motion
18 shall not exceed twenty-five (25) pages in length without leave of a district court judge.
19 No reply memorandum shall exceed ten (10) pages without leave of a district court judge.
20 Briefs and memoranda exceeding ten (10) pages in length shall have a table of contents
21 and a table of authorities cited.

22 19. Plaintiff's counsel shall serve a copy of this order on all parties that enter this
23 case hereafter.

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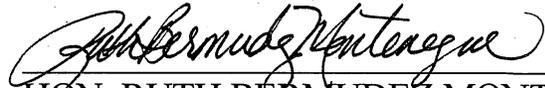
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IT IS SO ORDERED.

Dated: June 21, 2021



HON. RUTH BERMUDEZ MONTENEGRO
UNITED STATES MAGISTRATE JUDGE

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