



8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 MARK E. DORSEY,
12 Plaintiff,
13 v.
14 DANIEL PARAMO, et al.,
15 Defendants.

Case No.: 17cv1123-CAB(KSC)

**ORDER RE PLAINTIFF'S MOTION
TO COMPEL DISCOVERY AND
REQUEST FOR AN EXTENSION OF
TIME TO AMEND HIS
COMPLAINT**

[Doc. No. 47.]

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19 Before the Court is plaintiff's Motion to Compel Discovery [Doc. No. 47] and
20 defendants' Opposition thereto [Doc. No. 51]. In his Motion, plaintiff seeks an order
21 compelling defendants to respond to his "informal requests for discovery" dated
22 September 26, 2018. [Doc. No. 47, at p. 2.] Plaintiff's Motion also includes a request to
23 amend the deadline in the Scheduling Order for filing any motions to join other parties or
24 amend the pleadings. [Doc. No. 47, at p. 3.] For the reasons outlined more fully below,
25 the Court finds that plaintiff's Motion to Compel Discovery must be GRANTED,
26 because defendants' responses to plaintiff's discovery requests are incomplete and must
27 be supplemented. Plaintiff may renew his Motion to Compel Discovery if defendants do
28 not supplement their responses as agreed. The Court also finds that plaintiff's request for

1 an extension of the deadline for filing any motions to join other parties or amend the
2 pleadings must be DENIED without prejudice.

3 **Discussion**

4 **I. Plaintiff's Discovery Requests.**

5 In his Motion to Compel Discovery, plaintiff represents that he served defendants
6 with informal discovery requests on or about September 26, 2018 seeking the identities of
7 any prison or medical officials who were involved in preparing and distributing his
8 "lower bunk chrono on 10/21/16." [Doc. No. 47, at pp. 2, 5-7.] After plaintiff's Motion
9 was filed, defendants objected to these discovery requests on various grounds. [Doc. No.
10 51, at pp. 8-11.] While defendants did provide plaintiff with substantive responses to his
11 discovery requests, they are incomplete. [Doc. No. 47, at pp. 2, 5-7; Doc. No. 51, at pp.
12 3, 6-11.]

13 Defendants' responses state that they have requested verification of certain
14 responsive information and will supplement their responses "immediately upon receiving
15 this information from the prison." [Doc. No. 51, at pp. 9, 11.] Accordingly, the Court
16 finds that plaintiff's Motion to Compel Discovery must be GRANTED to the extent
17 defendants have agreed to supplement their responses to provide complete information to
18 plaintiff but have failed to produce such information. Plaintiff may renew his Motion to
19 Compel Discovery if defendants fail to supplement their responses as agreed.

20 **II. Plaintiff's Request to Extend Time.**

21 The operative Scheduling Order in this case includes a deadline of October 26, 2018
22 for filing any motion seeking to amend the pleadings or join other parties. [Doc. No. 45,
23 at p. 1.] In addition, the Scheduling Order states as follows: "The dates and times set forth
24 herein will not be modified except for good cause shown." [Doc. No. 45, at p. 5.] As noted
25 above, plaintiff also requests an order extending the deadline for filing any motion to
26 amend the pleadings or join other parties, so that he can seek leave to add new parties and
27 allegations to this Complaint. More specifically, plaintiff wants to amend his Complaint
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1 to add the parties identified in defendants' responses to his discovery requests. [Doc. No.
2 47, at p. 1.]

3 "Leave to amend a complaint shall be freely given when justice so requires under
4 FRCP 15(a). This standard is applied liberally. Rule 15(a) does not apply, however, when
5 a district court has established a deadline for amended pleadings under FRCP 16(b)." *In*
6 *re Graphics Processing Units Antitrust Litig.*, 540 F. Supp. 2d 1085, 1090 (N.D. Cal.
7 2007), quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-608 (9th
8 Cir.1992). The "good cause" standard in a Rule 16(b) scheduling order "primarily
9 considers the diligence of the party seeking the amendment." *Id.* at 609. "Once the Court
10 has entered a scheduling order, the liberal policy favoring amendments no longer applies.
11 Subsequent amendments are not allowed without a request to first modify the scheduling
12 order. At that point, any modification must be based on a showing of good cause." *In re*
13 *Graphics*, 540 F.Supp. 2d at 1090, citing *Coleman v. Quaker Oats Co.*, 232 F.3d 1271,
14 1294 (9th Cir.2000). "Leave to amend need not be granted when an amendment would be
15 futile." *In re Vantive Corp. Sec. Litig.*, 283 F.3d 1079, 1097 (9th Cir.2002).

16 Based on the information before the Court, it does appear that plaintiff has been
17 diligent in seeking the identities of the individuals who could have been involved in
18 preparing and distributing his "lower bunk chrono on 10/21/16." [Doc. No. 47, at pp. 2, 5-
19 7.] In this regard, plaintiff served defendants with his discovery requests on or about
20 September 26, 2018, the same day the Scheduling Order was entered in this case. [Doc.
21 No. 47, at p. 2; Doc. No. 45.] He then filed his Motion to Compel Discovery shortly
22 thereafter on October 22, 2018. [Doc. No. 47, at p. 2.]

23 On the other hand, plaintiff has not set forth any specific facts to support an
24 amendment of his Complaint or the addition of new parties. Without more, it does not
25 appear there is any basis for plaintiff to state a viable cause of action against the individuals
26 identified in defendant's discovery responses. However, since defendants have agreed to
27 supplement their discovery responses and provide additional information, it is possible that
28 plaintiff could establish good cause to amend his Complaint at some later date.

1 Accordingly, the Court finds that plaintiff's request to extend the deadline for filing
2 motions to amend the pleadings or join other parties must be DENIED without prejudice.
3 If he can make the required showing, plaintiff may renew this request after production of
4 discovery by defendants.

5 Conclusion

6 Based on the foregoing, IT IS HEREBY ORDERED that plaintiff's Motion to
7 Compel Discovery is GRANTED to the extent defendants have agreed to supplement their
8 responses to provide complete information to plaintiff. Plaintiff may renew his Motion to
9 Compel Discovery if defendants fail to supplement their responses as agreed.

10 IT IS FURTHER ORDERED that plaintiff's request to extend the deadline for filing
11 motions to amend the pleadings or join other parties is DENIED without prejudice.
12 Plaintiff may renew this request if there is good cause and it would not be futile to add new
13 parties and/or allegations to the Complaint after defendants supplement their responses to
14 plaintiff's discovery requests.

15 To the extent they have not already done so, defendants are ordered to supplement
16 their responses to plaintiff's discovery requests with complete information no later than
17 February 22, 2019.

18 IT IS SO ORDERED.

19 Dated: February 12, 2019



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21 Hon. Karen S. Crawford
22 United States Magistrate Judge
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