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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL FOLEY,
Plaintiff,
v.
LOREA AROSTEGUI,
Defendant.

Case No. 2:14-cv-00094-RFB-NJK

ORDER

I. INTRODUCTION

Before the Court is Plaintiff's Emergency Motion to Reopen Discovery and Vacate Trial Date. ECF Nos. 117, 120. For the reasons stated below, the Court grants the motion.

II. BACKGROUND

On March 10, 2014, Plaintiff Michael Foley filed a civil rights lawsuit against Clark County and Lorea Arostegui, Georgina Stuart, Deborah Croshaw, Lisa Reese, and Lisa Ruiz-Lee, all of whom are Clark County Family Services employees. ECF No. 5. 2. Plaintiff alleged the following causes of action: (1) First Amendment claim regarding the right to petition the government for redress of grievances; (2) Fourth Amendment claim arising from an unlawful search and seizure; (3) Due Process and Equal Protection claims under the Fifth and Fourteenth Amendments; (4) Conspiracy to Violate the Right to Life, Liberty, Property, Due Process and Equal Protection of the Laws; and (5) Intentional Infliction of Emotional Distress. Discovery began on September 23, 2016 and concluded on December 22, 2016. Following Defendants' Motion for Summary Judgment, Plaintiff's Due Process claim against Defendant Clark County and First Amendment retaliation claim against Defendant Arostegui remain. ECF No. 78.

1 On January 22, 2019, Plaintiff, who had previously been representing himself pro se,
2 retained the Lewis Roca Rothgerber Christie, LLP law firm to assist him on a pro bono basis.
3 Plaintiff filed the instant Emergency Motion to Reopen Discovery and Vacate Trial Date on
4 January 24, 2019. ECF No. 117. Defendants responded on January 28, 2019. ECF No. 121. A
5 jury trial is currently scheduled for February 11, 2019. ECF No. 113.

6 7 **III. LEGAL STANDARD**

8 Plaintiff seeks a modification of the scheduling order, which “may be modified only for
9 good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). The Ninth Circuit has
10 instructed district courts to consider: “1) whether trial is imminent, 2) whether
11 the request is opposed, 3) whether the non-moving party would be prejudiced, 4) whether the
12 moving party was diligent in obtaining discovery within the guidelines established by the court, 5)
13 the foreseeability of the need for additional discovery in light of the time allowed for discovery by
14 the district court, and 6) the likelihood that the discovery will lead to relevant evidence.” City of
15 Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017).

16 17 **IV. DISCUSSION**

18 The Court has considered the relevant factors and the record and finds that there is good
19 cause to vacate the trial and reopen discovery on a limited basis in this case.

20 The Court does not find that the Defendant would suffer undue or unfair prejudice if the
21 Court were to grant limited discovery. The Court intends to restrict any reopened discovery to the
22 central events and conduct that form the basis of Plaintiff’s surviving claims. Much of this
23 information would have been and presumably was investigated and disclosed by Defendant
24 pursuant to its initial disclosure obligations. Indeed, the very documents that Defendant proffered
25 in connection with its Motion for Summary Judgment (ECF No. 67) relate to the nature of the
26 discovery that the Court intends to permit in this case.

27 Additionally, the Court’s primary consideration is the diligence of the party seeking
28 amendment. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). The

1 Court finds that Plaintiff has diligently pursued this action to the best of his ability while acting
2 pro se. Plaintiff diligently defended against motions to dismiss and for summary judgment and
3 conducted other motions practice. Plaintiff requested the appointment of counsel earlier in the
4 litigation to assist him in more fully participating in discovery and opposing Defendant's motions.
5 Even absent Plaintiff's informed participation in discovery, two claims survived summary
6 judgment, and there is good cause to provide Plaintiff the chance to obtain relevant evidence to
7 support these claims now that he has the support of counsel. Moreover, discovery in this case was
8 conducted in only a three-month window. Particularly given Plaintiff's pro se status, the need for
9 additional discovery in light of such a short discovery window was reasonably foreseeable.

10 The Court therefore schedules a status conference to set the parameters for reopening
11 discovery.

12
13 **IV. CONCLUSION**

14 **IT IS ORDERED** that Plaintiff's Emergency Motion to Reopen Discovery and Vacate
15 Trial Date (ECF Nos. 117, 120) is **GRANTED**. The Calendar Call set for February 6, 2019 and
16 the Jury Trial set for February 11, 2019 are **VACATED**.

17 **IT IS FURTHER ORDERED** that a status conference is scheduled for February 19, 2019
18 at 2:00 PM in LV Courtroom 7C before Judge Richard F. Boulware, II.

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20 DATED: January 29, 2019.

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23 **RICHARD F. BOULWARE, II**
24 **UNITED STATES DISTRICT JUDGE**