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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DONALD C HAYES,

Plaintiff,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF CORRECTIONS,  
et al.,

Defendants.

CASE NO. 3:16-CV-05095-BHS-DWC

ORDER

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Plaintiff Donald C. Hayes, proceeding *pro se* and *in forma pauperis*, initiated this lawsuit on February 8, 2016. Dkt. 1. Presently pending before the Court are Plaintiff’s “Motion for Extension of Time (Re: Discovery)” and “Motion for Extended Brief.” Dkt. 214, 223. After review of the record, the Motion for Extension of Time (Dkt. 214) is denied and the Motion for Extended Brief (Dkt. 223) is granted. The Court also directs the Clerk to re-note several Motions for Summary Judgment (Dkt. 209, 211, 217, 232) to December 15, 2017.

1           **I.       Motion for Extension of Time (Dkt. 214)**

2           In the Motion for Extension of Time, Plaintiff requests an extension of time to conduct  
3 discovery because he must acquire documents from Defendant Duong to survive summary  
4 judgment. Dkt. 214. On July 7, 2016, the Court entered a Pretrial Scheduling Order (“Order”).  
5 Dkt. 38. The Order required all discovery to be completed by January 9, 2017. *Id.* Plaintiff filed a  
6 Fourth Amended Complaint on April 13, 2017. *See* Dkt. 140. As the previous pretrial scheduling  
7 deadlines expired prior to Plaintiff filing the Fourth Amended Complaint, the Court extended the  
8 discovery deadline to September 8, 2017. Dkt. 149. On July 28, 2017, Plaintiff moved for an  
9 extension of the discovery period. Dkt. 156. The Court granted the request, and the discovery  
10 deadline was extended to October 27, 2017. Dkt. 219. Plaintiff now moves for an additional  
11 extension of time to complete discovery. Dkt. 214. Defendants filed Responses requesting the  
12 Motion for Extension of Time be denied. Dkt. 221, 222.

13           Pursuant to Federal Rule of Civil Procedure 16(b)(4), a scheduling order may be  
14 modified for good cause and with the judge’s consent. Plaintiff requests the deadlines in this case  
15 be extended so he can conduct additional discovery and allow Defendants to produce the  
16 requested discovery. *See* Dkt. 214. In this case, discovery began on July 7, 2016. Dkt. 38. The  
17 Court, sua sponte, extended the discovery deadline to September 8, 2017. Dkt. 149. The Court  
18 also granted Plaintiff an extension of time, extending the discovery deadline to October 27, 2017.  
19 Dkt. 190. Thus, Plaintiff has had over 15 months to conduct discovery in this case. Plaintiff does  
20 not explain why he did not serve additional discovery during the discovery period or attempt to  
21 confer with Defendants’ counsel regarding discovery disputes. *See* Dkt. 214. Further, Defendant  
22 Duong asserts Plaintiff requested specific documents related to Defendant Duong’s employment  
23 with the Department of Corrections, but Defendant Duong was not in possession of the requested  
24

1 documents. Dkt. 222. After reviewing the Motion for Extension of Time, the Court finds Plaintiff  
2 has failed to show good cause for an extension of time to complete discovery. Accordingly,  
3 Plaintiff's Motion for Extension of Time (Dkt. 214) is denied.

4 **II. Motion for Extended Brief (Dkt. 223)**

5 On October 26, 2017, Plaintiff filed a Motion for Summary Judgment Re: Plaintiff's ADA  
6 Claims. Dkt. 211. The Motion for Summary Judgment was 25 pages. *Id.* Pursuant to Local Rule  
7 7(e)(3), motions for summary judgment shall not exceed twenty-four pages. Plaintiff filed the  
8 Motion for Extended Brief requesting leave of the Court to file the over-length Motion for  
9 Summary Judgment. Dkt. 223. Defendants Smith, Suiter, Reyes, and the Department of  
10 Corrections filed a Response stating they do not oppose the over-length brief. Dkt. 224. Defendant  
11 Duong did not file a response. After considering the relevant record, the Court grants Plaintiff's  
12 Motion for Extended Brief (Dkt. 223). The Court will consider the twenty-five page brief when  
13 ruling on the Motion for Summary Judgment.

14 **III. Re-noting Motions for Summary Judgment**

15 Defendant Duong filed a Motion for Summary Judgment on October 20, 2017, which is  
16 noted for the Court's consideration on December 1, 2017. Dkt. 209, 233. Plaintiff Donald C.  
17 Hayes filed Motions for Summary Judgment on October 26, 2017, October 31, 2017, and  
18 November 9, 2017, which are noted for the Court's consideration on December 1, 2017 and  
19 December 8, 2017. Dkt. 211, 217, 232, 233.<sup>1</sup> Defendants Smith, Suiter, Reyes, and the  
20 Department of Corrections filed a Motion for Summary Judgment on November 17, 2017, which is  
21 noted for the Court's consideration on December 15, 2017. Dkt. 236.

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23 <sup>1</sup> On November 14, 2017, prior to Plaintiff's third Motion for Summary Judgment being docketed, the  
24 Court re-noted Defendant Duong's Motion for Summary Judgment (Dkt. 209) and Plaintiff's first Motion for  
Summary Judgment (Dkt. 211) for December 1, 2017, so the three Motions for Summary Judgment pending at that  
time could be considered simultaneously. Dkt. 233.

1 The Court directs the Clerk to re-note Defendant Duong's Motion for Summary  
2 Judgment (Dkt. 209) and Plaintiff's Motions for Summary Judgment (Dkt. 211, 217, 232) for  
3 December 15, 2017, so the five Motions for Summary Judgment can be considered  
4 simultaneously. *See* Local Civil Rule 7(k) (“[e]ven if the motion and cross motion are noted for  
5 different days, the court will typically consider them together”).

6 **IV. Conclusion**

7 For the above stated reasons, the Court denies Plaintiff's Motion for Extension of Time  
8 (Dkt. 214) and grants Plaintiff's Motion for Extended Brief (Dkt. 223). The Court also directs the  
9 Clerk to re-note the pending Motions for Summary Judgment (Dkt. 209, 211, 217, 232) for  
10 December 15, 2017.

11 Dated this 28th day of November, 2017.

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14 David W. Christel  
15 United States Magistrate Judge  
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