

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hanible v. County of Solano Sheriff's Office

Hanible · No. 2:21-cv-01315-SCR · Decided March 18, 2025

SUMMARY

The United States District Court for the Eastern District of California denied seven discovery-related motions filed by pro se plaintiff Brihana Hanible, including motions to quash, motions to compel, a motion for sanctions, a motion to supplement the summary judgment record, and a motion to reopen discovery. The court concluded that the motions were unsupported, moot, untimely, or failed to demonstrate the diligence required under the applicable procedural standards.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 18, 2025
DOCKET	2:21-cv-01315-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to quash subpoenas, compel discovery, obtain discovery sanctions, supplement the summary-judgment record, and reopen discovery in a pending 42 U.S.C. § 1983 and state-law civil-rights action. The magistrate judge, exercising consent jurisdiction, denied all seven motions; the order stated that the separately filed motion for summary judgment would be decided in a separate order.
STANDARD OF REVIEW	Discovery and supplementation requests were reviewed under the applicable Federal Rules of Civil Procedure and the court's discretion. Modification of the scheduling order required good cause under Rule 16(b)(4), principally diligence. A request for additional discovery to oppose summary judgment under Rule 56(d) required an affidavit identifying specific facts further discovery would reveal and explaining why those facts would preclude summary judgment.
PRECEDENTIAL VALUE	unknown

PARTIES

Brihana Hanible v. County of Solano, Thomas Ferrara, Charles Dehoney, Kate Brunke, Rachel Figueroa, Gary Nguyen

TOPICS

discovery dispute

summary judgment

sanctions

civil procedure

section 1983

PRACTICE AREAS

civil procedure

civil rights

discovery

QUESTIONS PRESENTED

1. Whether Plaintiff's motions to quash should be denied for failure to provide a supporting record and failure to properly pursue the motions.
2. Whether Plaintiff was entitled to compel additional electronically stored information when Defendants represented that all responsive video had been produced and no interior footage of the dressing area existed.
3. Whether sanctions were warranted based on an alleged discovery order that was unsupported and did not appear in the docket.
4. Whether Plaintiff could supplement the summary-judgment record with untimely photographs without an adequate evidentiary foundation or showing of diligence.
5. Whether Plaintiff demonstrated good cause and diligence under Rules 16(b)(4) and 56(d) to reopen discovery after the discovery deadline had expired.

HOLDINGS

1. Motions to quash may be denied when the moving party fails to present a record supporting the requested relief and fails to properly pursue or re-notice the motions.
2. A motion to compel must be denied when the requested discovery has been produced and the responding party represents that no additional responsive material exists.
3. Discovery sanctions are not warranted when the motion is unsupported and rests on an alleged discovery order that does not exist in the record.
4. A party seeking to supplement the summary-judgment record must show the required diligence, and supplementation may be denied when the evidence was available earlier and lacks an adequate evidentiary foundation.
5. A party seeking to reopen discovery must demonstrate diligence and good cause under Rule 16(b)(4); a failure to act diligently ends the inquiry, and the same diligence requirement applies to a Rule 56(d) request for additional discovery.

KEY QUOTATIONS

“Rule 16(b)’s good cause standard “primarily considers the diligence of the party seeking the amendment.””
(at 9)

“If that party was not diligent, the inquiry should end.” (at 9)

“The purpose of Rule 56(d) relief is to prevent the nonmoving party from being ‘railroaded’ by a summary judgment motion that is filed too soon after the start of a lawsuit for the nonmovant to properly oppose it without additional discovery.” (at 10)

FACTUAL BACKGROUND

Plaintiff alleged that Solano County Sheriff’s personnel badly beat her during a February 18, 2021 encounter, causing a fractured ankle requiring surgery. Discovery was governed by a scheduling order, with the final discovery deadline extended to November 17, 2023. Plaintiff sought additional electronically stored information, including video footage from a jail dressing or holding area, but Defendants represented that all available footage had been produced and that the area had no interior cameras. Plaintiff also sought to submit photographs of her injuries and reopen discovery to identify additional officers and obtain personnel files.

PROCEDURAL HISTORY

Plaintiff filed the action on July 26, 2021, alleging excessive force and related constitutional and state-law claims arising from a February 2021 law-enforcement encounter. After motions to dismiss and amendments, the operative remaining claims were excessive force, violation of the Bane Act, assault, and battery. The court entered a scheduling order, extended the discovery deadline to November 17, 2023, and Defendants filed summary judgment three days before that deadline. Plaintiff thereafter filed discovery motions and, following a February 20, 2025 hearing, sought to supplement the summary-judgment record and reopen discovery. The court denied all seven motions.

DISPOSITION

other

CASES CITED

- *Courkamp v. Fisher-Price, Inc.*, 2022 WL 4448323 (D. Ariz. Sept. 23, 2022)
- *Stucky v. Department of Education*, 337 F. App’x 611, 613 (9th Cir. 2009)
- *Nakanelua v. United Public Workers*, 2022 WL 174098 (D. Haw. Jan. 19, 2022)
- *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608-09 (9th Cir. 1992)
- *City of Pomona v. SQM North America Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017)
- *Tatum v. City and County of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006)
- *Mkrtchyan v. Sacramento County*, 2023 WL 6961889, at *2-3 (E.D. Cal. Oct. 20, 2023)
- *Pfingston v. Ronan Engineering Co.*, 284 F.3d 999, 1005 (9th Cir. 2002)
- *Morris v. Sutton*, 2019 WL 2994291, at *5 (E.D. Cal. July 9, 2019)
- *Slama v. City of Madera*, 2012 WL 1067198 (E.D. Cal. Mar. 28, 2012)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 BRIHANA HANIBLE, No. 2:21-cv-01315-SCR 12 Plaintiff, 13 v. ORDER
RE: DISCOVERY MOTIONS 14 COUNTY OF SOLANO, et al., 15 Defendants. 16 17 Plaintiff
proceeds pro se in this civil rights action raising claims under 42 U.S.C. §1983 18 and state law
claims from an encounter with law enforcement in February 2021.

The parties have 19 consented to magistrate judge jurisdiction and this matter is before the
undersigned for all 20 proceedings. ECF Nos. 46 & 97. The Court held a hearing on Defendant's
motion for summary 21 judgment (ECF No. 71) and five discovery related motions filed by
Plaintiff (ECF Nos. 66, 74, 22 76, 77, & 85) on February 20, 2025. Following the hearing, the
Court allowed Plaintiff one week 23 to file a motion to reopen discovery (ECF No. 102) and a
motion to supplement the summary 24 judgment record (ECF No. 101).

The Court now issues this Order to address the seven pending 25 discovery motions. An order on
the motion for summary judgment will be issued separately. 26 I. Procedural History and
Background 27 Plaintiff filed this action on July 26, 2021. ECF No. 1. Plaintiff alleged that on
February 28 18, 2021, the Solano County Sheriff's office and three named officers violated her
constitutional 1 rights and that she was "badly beaten" and suffered a fractured ankle that required
surgery.

ECF 2 No. 1 at 5. Defendants filed a motion to dismiss (ECF No. 6), which Magistrate Judge
Barnes 3 granted on January 11, 2022 (ECF No. 18). Judge Barnes found the complaint alleged 4
insufficient factual matter and granted leave to amend. Plaintiff filed a first amended complaint 5
("FAC") on February 3, 2022. Plaintiff's FAC named Solano County and five individuals as 6
defendants: Thomas Ferrara, Charles Dehoney, Kate Brunke, Rachel Figueroa, and Gary Nguyen.

7 ECF No. 22 at 1-2. Defendants moved to dismiss certain claims in the FAC.¹ Judge Barnes 8
granted the motion and gave Plaintiff further leave to amend. ECF No. 37. 9 Plaintiff did not
further amend,² and on October 19, 2022, Judge Barnes issued an order 10 which stated, in part:
"[P]laintiff has not filed a second amended complaint.

In this regard, it 11 appears that plaintiff has elected to proceed on the amended complaint's
remaining claims of 12 excessive force, violation of the Bane Act, assault, and battery, and
consents to the dismissal of 13 all other claims." ECF No. 39 at 1-2. Defendants were directed to
file an Answer, which they 14 did. ECF Nos. 39 & 40. Thereafter, Judge Barnes issued a
Scheduling Order setting a deadline 15 of September 15, 2023 for the completion of discovery,
and a November 3, 2023 deadline for 16 pretrial motions.

ECF No. 51. The parties participated in settlement conferences, though the case 17 did not settle.
ECF Nos. 57-59. 18 Judge Barnes later extended the deadline for completion of discovery to

November 17, 19 2023, and for all pretrial motions to December 22, 2023. ECF No. 64. Defendants filed a motion 20 for summary judgment (“MSJ”) on November 14, 2023. At about the same time, in November 21 and December 2023, Plaintiff filed five discovery-related motions.

One was filed prior to 22 Defendants’ noticing the MSJ, and all five were filed prior to the December 22, 2023 deadline for 23 pretrial motions. 24 25 1 As pointed out in Judge Barnes’ order, it was a partial motion to dismiss which did not seek 26 dismissal of all claims. ECF No. 37 at 2 n.1. 2 Plaintiff had in fact submitted a Second Amended Complaint (“SAC”) on March 7, 2022 (ECF 27 No. 26), in response to Defendants’ Motion to Dismiss the FAC.

However, Judge Barnes did not discuss the SAC in her Order on the MTD and the parties have not sought to treat that as the 28 operative complaint. 1 II. Discovery Related Motions Filed Prior to the Motions Deadline 2 Plaintiff has seven pending discovery-related motions, and the Court will address them in 3 the order in which they were filed, beginning with the five motions filed prior to the summary 4 judgment hearing: 5 1.

Motion to Quash (ECF No. 66) 6 Plaintiff moves to quash a subpoena duces tecum and seeks \$100,000 in monetary 7 sanctions. It appears that Plaintiff claims Defendants served a subpoena on her concerning the 8 production of medical records. ECF No. 66 at 6-7. Plaintiff did not attach the subpoena to her 9 motion. Judge Barnes issued a minute order directing Plaintiff to re-notice the motion in accord 10 with Local Rule 251.

ECF No. 68. Plaintiff did not re-notice the motion, and Defendants did not 11 file an opposition to the motion. The motion will be denied based on Plaintiff’s failure to present 12 a record supporting the motion and failure to pursue the motion.

The motion is DENIED. 13 2. Motion to Quash (ECF No. 74) 14 On November 27, 2023, Plaintiff filed a “Notice of Motion and Motion to Quash.” This 15 filing is just three pages, does not include a copy or description of the contested subpoena, and 16 appears to be an attempt to set her previously filed motion to quash for hearing on December 8, 17 2023.

The filing is unsigned by Plaintiff. Plaintiff was again informed the motion was not 18 properly set for hearing. ECF No. 75. Plaintiff did not re-notice the motion and Defendant did 19 not file an opposition to the motion.

The motion is DENIED based on Plaintiff’s failure to 20 present a record supporting the motion. 21 3. Motion to Compel (ECF No. 76) 22 December 5, 2023, Plaintiff moved to compel a subpoena she served on Defendants on 23 June 16, 2023, concerning electronically stored information. ECF No. 76 at 1.

The motion was 24 filed nearly three weeks after the close of discovery, on December 5, 2023, and seeks the 25 production of electronically stored information, particularly video footage of the

“dress out 26 room.” Id. at 2.

The Motion states that Defendants claimed some of the information was 27 privileged and confidential and that the parties met and conferred on three occasions. Id. at 2-3. 28 /// 1 Plaintiff states she requested the information on June 16, 2023, and that Defendants 2 provided information on July 5, 2023. Id. at 2. Plaintiff believed the information was incomplete 3 because it did not contain footage of the “dress out room.” Plaintiff discussed this with defense 4 counsel on several occasions and counsel informed her there was no more footage.

Id. at 3. 5 Plaintiff states that she was informed on October 30, 2023, that Defendants had produced all the 6 video in their possession. Id. at 6. Plaintiff suggests she does not believe Defendants. Id. at 6 (“I 7 would have believed that until I was sent an expert report which discussed the event that 8 happened in the holding cell. It was at this point I realized they had the video footage and would 9 not release it to me.”).

10 Although docketed as Plaintiff’s motion to compel, Plaintiff also includes what is referred 11 to as a “joint stipulation” and includes a purported statement from Defendant that they have 12 produced all video footage to Plaintiff and that their retained expert has the same video footage as 13 that provided to Plaintiff. Id. at 6-7. Plaintiff attempted to set the motion for hearing just 10 days 14 after it was filed, and Judge Barnes issued an order advising that it was defectively noticed and 15 need to be re-noticed in accord with Local Rule 251.

Plaintiff did not re-notice the motion. 16 However, Plaintiff did file another motion on the same subject matter (ECF No. 85) which the 17 Court will address below. This motion is DENIED for the reasons set forth below in discussing 18 Plaintiff’s other motion to compel (ECF No. 85). 19 4. Motion for Sanctions (ECF No. 77) 20 Concurrent with the motion to compel (ECF No. 76), Plaintiff filed a separate motion for 21 sanctions.

Plaintiff sought an order prohibiting Defendants from ordering “any direct or rebuttal 22 evidence of any kind on the issue of...lack of intent of defendant to produce electronically stored 23 information the plaintiff, Brihana Hanible to defraud.” ECF No. 77 at 2.

The motion refers to a 24 purported prior order dated June 16, 2023, allegedly compelling discovery. Id. at 4-5. However, 25 there is no order of that date in this case, nor does there appear to be any prior order compelling 26 discovery. Further, Plaintiff states the order is attached to the supporting affidavit which has 27 exhibits A thru D, but there are no attachments to the motion.

ECF No. 77 at 4 (“On June 16, 28 2023, this Court issued an Order, a true and correct copy of which is attached to the Supporting 1 Affidavit as Exhibit A, B, C, and D.”). A Minute Order issued again informing Plaintiff that the 2 motions were defectively noticed. ECF No. 80. Again, Plaintiff did not re-notice the motion and 3 Defendants did not respond.

The motion is DENIED as the motion is unsupported and seeks to 4 sanction Defendants for noncompliance with an alleged order of June 16, 2023, that does not 5 exist. 6 5. Motion to Compel (ECF No. 85) 7 Plaintiff filed this motion on December 19, 2023, and noticed it for hearing on January 19, 8 2023. ECF No. 85. She again sought the production of electronically stored information.

9 Defendants responded to the motion and stated that “Plaintiff is convinced that the County is in 10 possession of video footage that does not exist.” ECF No. 87 at 1. Defendants state they have 11 “produced all video footage in the possession of the County.” Id. The parties clarified at the 12 hearing that the video footage Plaintiff believed was missing concerned the “dress out room,” or 13 holding cell where inmates change out of civilian clothes and into jail uniforms.

Defense counsel 14 represented at the hearing, as an officer of the Court, that there are no interior cameras in this 15 “dress out” area and that all video footage had been produced. 16 As Defendants have produced the requested video footage, there is nothing to compel. 17 Accordingly, the motion to compel is DENIED. 18 III. Motion to Reopen Discovery and Motion to Supplement 19 During the course of the hearing on the motion for summary judgment, Plaintiff made 20 comments indicating that she believed more discovery was necessary, or that she was still trying 21 to identify the officers involved.

She also presented some photographic evidence during the 22 hearing that had not been previously filed with her opposition to summary judgment. The Court 23 informed Plaintiff that if she wished the court to consider the exhibits, she needed to file them 24 with the Court along with a motion to supplement the record.

The Court also stated that it 25 considered discovery closed, but that it would allow Plaintiff one week to file a motion to reopen 26 discovery. 27 1. Motion to Supplement (ECF No. 101) 28 Plaintiff moves to supplement the summary judgment record with 25 photos that were not 1 previously submitted with her summary judgment opposition. ECF No. 101 at 1. Plaintiff cites 2 to Rule 15 and refers to supplemental pleadings, but what she actually seeks is to supplement the 3 summary judgment record.

Plaintiff states she did not previously submit the photos “because I 4 did not have the images at the time in tangible format nor did I understand the importance of 5 showing the injuries I sustained during the incident until I fully grasp the affect they would have 6 on the video footage.” ECF No. 101 at 6.

The motion does not lay an evidentiary foundation for 7 the photos, but instead states: “If you need further information of what these photographs 8 represent please don’t hesitate to contact me via email or written correspondence.” ECF No. 101 9 at 8. 10 Defendants oppose the motion to supplement. ECF No. 105. Defendants argue that their 11 motion was filed in November 2023,

Plaintiff received an extension to January 5, 2024 to respond, and Plaintiff did not include the photos.

Defendants object that the photos are not authenticated and Plaintiff has not described when the photos were taken or by whom. *Id.* at 2. Whether to grant a motion to supplement the record is within the Court's discretion. *Courkamp v. Fisher-Price, Inc.*, 2022 WL 4448323 (D. Ariz. Sept. 23, 2022).

In deciding whether to allow supplementation, courts consider: 1) whether the evidence the party is seeking to admit is relevant, 2) whether the motion is made in good faith, and 3) whether allowing supplementation would unfairly prejudice the non-moving party. *Id.* at *2. A motion to supplement may also be denied if the moving party did not act diligently.

Id., citing *Stucky v. Dep't of Educ.*, 337 F.App'x 611, 613 (9th Cir. 2009). Plaintiff cites to Rule 15, but the appropriate inquiry is under Rule 56(d) or 56(e). See *Nakanelua v. United Public Workers*, 2022 WL 174098 (D. Hawaii Jan. 19, 2022) ("Courts have employed both rules to address motions to supplement the record on summary judgment.").

Under either subsection, the "central question" is whether Plaintiff has "demonstrated the requisite diligence." *Id.* at *2. The Court finds Plaintiff has not made the requisite showing to allow for the untimely submission of the photographic evidence.

The photos purport to be of injuries from the incident in February 2021, and if that is the case, they would have been taken shortly after that time and available to the Plaintiff long ago. Plaintiff's opposition to the motion for summary judgment was filed over one year ago. ECF No. 89. Plaintiff's assertion that she did not have the images in a "tangible format" or did not recognize their relevance, is not sufficient.

The motion to supplement is DENIED. 2. Motion to Reopen Discovery (ECF No. 102) Plaintiff's motion states that she wishes to reopen discovery "on the grounds that the Defendants Motion for Summary Judgment was prematurely filed." ECF No. 102 at 1.

In support of the motion, Plaintiff has submitted a declaration. She states that on or about November 2, 2023, she served a subpoena on the Defendant seeking the production of personnel files, with a compliance date of November 17, 2023. ECF No. 102 at 4. Plaintiff further states that she made a public records request on January 26, 2025, seeking to identify officers involved in a photo she provided.

Id. Plaintiff states: "I have identified four more Doe Defendants, and need ten more officer names." *Id.* Plaintiff contends that Defendants "are not engaging in discovery" and that her motions filed in November and December of 2023 (discussed above) were an "attempt to notify the court that the defendants were not cooperating with discovery." *Id.* at 5.

Plaintiff claims that 16 Defendants improperly moved for summary judgment prior to the close of discovery, and in 17 violation of AB 2049 which requires a motion be filed at least 75 days before hearing.³ Plaintiff 18 also contends she obtained an expert witness after the disclosure deadline on November 1, 2023, 19 and that the expert examined her in January 2024.

Id. at 6-7. 20 Defendants oppose the motion. ECF No. 104. Defendants state that a scheduling order 21 was entered in this matter on January 31, 2023, which set the close of discovery for September 22 15, 2023. Id. at 2. That deadline was subsequently extended to November 17, 2023. ECF No. 23 64. Defendants contend that Plaintiff has not shown good cause for modification of the Court's 24 scheduling order.

ECF No. 104 at 3. Defendants claim that the subpoena concerning the 25 26 3 It appears this is a reference to California state law, Assembly Bill 2049, which did not go into 27 effect until January 1, 2025. State law does not supply the procedural requirements for dispositive motions in this case.

The timing requirements are governed by the Federal Rules of Civil 28 Procedure, this District's Local Rules, and scheduling orders entered by this Court. 1 production of personnel files, which Plaintiff claims was served on or about November 2, 2023, 2 was never served. ECF No. 104-1. 3 Defendants argue that the Court should analyze Plaintiff's request as a request to amend 4 the pretrial scheduling order under Rule 16(b)(4) and that Plaintiff has not shown good cause or 5 reasonable diligence.

ECF No. 104 at 3. Plaintiff's motion could also be construed as falling 6 under Rule 56(d), as a request for additional discovery in order to oppose summary judgment. 7 Under either standard, Plaintiff must show diligence.

Under Rule 16, a court's scheduling order 8 "controls the subsequent course of the action" unless modified, and modification prior to the final 9 pretrial conference requires a showing of good cause. *Johnson v. Mammoth Recreations, Inc.*, 10 975 F.2d 604, 608 (9th Cir. 1992). Rule 16(b)'s good cause standard "primarily considers the 11 diligence of the party seeking the amendment." Id. at 609.

Although the "existence or degree of 12 prejudice to the party opposing the modification" may be considered, the focus of the inquiry is 13 on the moving party's reasons for seeking modification of the schedule. Id. "If that party was not 14 diligent, the inquiry should end." Id. Specifically in the context of a motion to amend a Rule 16 15 order to reopen discovery, the Ninth Circuit has instructed the following factors be considered: 1) 16 whether trial is imminent; 2) whether the request is opposed; 3) whether the non-moving party 17 would be prejudiced; 4) whether the moving party was diligent in obtaining discovery within the 18 guidelines established by the court; 5) the foreseeability of the need for additional discovery; and 19 6) the likelihood further discovery will lead to relevant evidence.

City of Pomona v. SQM N. 20 Amer. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017).⁴ 21 Under Rule 56(d), a “party requesting a continuance pursuant to” that rule “must identify 22 by affidavit the specific facts that further discovery would reveal, and explain why those facts 23 would preclude summary judgment.” Tatum v. City and County of San Francisco, 441 F.3d 24 1090, 1100 (9th Cir. 2006).⁵ Whether to grant such motion, rests in the Court’s discretion. Id. 25 4 Neither party specifically addressed the six-factor test in their briefing. 26 5 Tatum concerned then-Rule 56(f). Under a prior version of the Federal Rules of Civil Procedure, Rule 56(f) was the provision concerning continuances for additional discovery, that 27 provision is now 56(d).

The Advisory Committee notes to the 2010 amendment state that Rule 56(d) “carries forward without substantial change the provisions of former subdivision (f).” See 28 also Slama v. City of Madera, 2012 WL 1067198 (E.D. Cal. March 28, 2012) (“Rule 56(d) was 1 “The purpose of Rule 56(d) relief is to prevent the nonmoving party from being ‘railroaded’ by a 2 summary judgment motion that is filed too soon after the start of a lawsuit for the nonmovant to 3 properly oppose it without additional discovery.” Mkrtchyan v. Sacramento County, 2023 WL 4 6961889 at *2 (E.D.

Cal. Oct. 20, 2023) (internal citation omitted). The failure to conduct 5 discovery diligently is grounds for denial of a motion under this rule. Pfingston v. Ronan 6 Engineering Co., 284 F.3d 999, 1005 (9th Cir. 2002). 7 This lawsuit was filed in July 2021. ECF No. 1.

After motions to dismiss were decided 8 and amendment of the complaint, in December 2022, the Court set a pretrial scheduling 9 conference for January 2023. ECF No. 41. Prior to the scheduling conference, Plaintiff filed a 10 status report which stated that “formal discovery” had not commenced but Plaintiff had “sent 11 requests for items under the California Public Records Act prior to the lawsuit having been filed.

12 Defendants produced some but not all items requested.” ECF No. 43 at 5. Plaintiff’s report also 13 stated that Defendants would identify all officers present at the scene as part of the initial 14 disclosures. Id. at 5-6. Plaintiff proposed a fact discovery deadline of October 20, 2023, and an 15 expert discovery deadline of February 9, 2024. Id. at 7. Defendants filed a separate status report 16 which stated they “did not have contact” with Plaintiff prior to the filing of her status report and 17 “do not consent to the representations made” therein.

ECF No. 45. Defendants agreed to the 18 October 20, 2023 deadline for fact discovery. ECF No. 45 at 2. 19 On January 31, 2023, the pretrial scheduling order was entered. ECF No. 51. The order 20 provides in part: “READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT DATES 21 WHICH THE COURT WILL STRICTLY ENFORCE.” ECF No. 51 at 1.

The order set 22 September 15, 2023 as the deadline for completion of discovery. Id. at 2. It also set a deadline of 23 July 28, 2023, for Plaintiff to disclose experts and a motions deadline of

November 3, 2023. Id. 24 at 6. 25 On August 1, 2023, Plaintiff requested an extension of the expert disclosure deadline. 26 ECF No. 63.

The Court extended the deadline to September 29, 2023, and the deadline for 27 28 formerly Rule 56(f), and the cases that interpret Rule 56(f) apply to current Rule 56(d).”) 1 completion of discovery to November 17, 2023. ECF No. 64. Plaintiff did not file a further 2 motion to extend deadlines prior to the close of discovery, nor did she file a motion to compel.

3 The only discovery-related motion filed prior to the close of discovery, as discussed above, was 4 the motion to quash (ECF No. 66). In the motion to quash, Plaintiff sought to limit discovery by 5 quashing a subpoena that she claimed was served on her seeking medical records. It was not an 6 attempt to extend discovery, or compel discovery from Defendants.

7 Defendants did not file the motion for summary judgment prematurely. Defendants filed 8 the motion more than two years after the case was filed, and just three days prior to the close of 9 discovery. Plaintiff requested 14 additional days to oppose the motion, but did not contend in that 10 motion for extension that she needed to conduct additional discovery.

ECF No. 81. Plaintiff filed 11 an opposition by the extended deadline of January 5, 2024, and did not contend additional time 12 was needed to respond under Rule 56(d). ECF No. 89. 13 Plaintiff’s motion requesting additional time for discovery does not demonstrate the 14 requisite diligence under Rule 56(d). See *Mkrtchyan v. Sacramento County*, 2023 WL 6961889 at 15 *3 (E.D.

Cal. Oct. 20, 2023) (“Plaintiff did not file the pending Rule 56(d) request until more than 16 two weeks after he filed his opposition to defendants’ pending motion for summary judgment and 17 four days after defendants had filed their reply brief. Courts consistently deny Rule 56(d) 18 requests in similar situations.”) (citing cases denying Rule 56(d) relief where the summary 19 judgment opposition has already been filed).

Plaintiff’s motion also does not show the diligence 20 required to demonstrate good cause to modify the Court’s pretrial scheduling order. Discovery 21 closed more than a year prior to the motion to reopen discovery being filed.

The motion points to 22 two specific instances of discovery to support a showing of diligence. Plaintiff claims she served 23 a subpoena in November of 2023 for personnel records. Setting aside that Defendants claim the 24 subpoena was never received, the subpoena was allegedly served only two weeks prior to the 25 close of discovery. Plaintiff did not file a motion to compel compliance with the subpoena, or 26 move to continue summary judgment briefing based on the lack of compliance.

Thus, the service 27 of the subpoena does not support modifying the Court's scheduling order to reopen discovery. 28 Plaintiff also points to a public records request she made on January 26, 2025. Making this 1 request more than a year after discovery closed does not demonstrate diligence in pursuing 2 discovery. 3 Finally, in consideration of the factors from the Ninth Circuit's decision in City of 4 Pomona, the Court finds the factors in totality do not weigh in favor of reopening discovery.

866 5 F.3d at 1066. As to the first factor, a trial date is not imminent as no date is set. However, if the 6 matter proceeds beyond the pending summary judgment motion, a trial date will soon be set and 7 reopening discovery would delay the matter.

As to the second factor, the request is opposed. On 8 the third factor, Defendants argue they would suffer prejudice in the manner of additional time 9 and litigation expenses in this already long pending action. ECF No. 104 at 6. Both a delay in 10 the proceedings and additional costs can constitute prejudice. See *Morris v. Sutton*, 2019 WL 11 2994291 at *5 (E.D.

Cal. July 9, 2019). As to the fourth factor, the Court has discussed above 12 extensively Plaintiff's diligence and determined that Plaintiff was not diligent in obtaining 13 discovery within the schedule set by the Court. Fifth, the discovery Plaintiff apparently seeks 14 pertains to identifying officers and obtaining personnel files.

The need for this type of discovery 15 was foreseeable from the outset and thus this factor weighs against reopening discovery. On the 16 sixth factor, it is likely that the discovery Plaintiff seeks could lead to relevant evidence.

The 17 Court finds that four of the six factors weigh against reopening discovery, and this includes what 18 some courts have called "the most significant factor," diligence. *Id.* at *6. 19 Accordingly, Plaintiff's request to reopen discovery is DENIED. 20 IV. Conclusion 21 For the foregoing reasons, IT IS HEREBY ORDERED: 22 1) Plaintiff's motion to quash (ECF No. 66) is DENIED; 23 2) Plaintiff's motion to quash (ECF No. 74) is DENIED; 24 3) Plaintiff's motion to compel (ECF No. 76) is DENIED; 25 4) Plaintiff's motion for sanctions (ECF No. 77) is DENIED; 26 5) Plaintiff's motion to compel (ECF No. 85) is DENIED; 27 6) Plaintiff's motion to supplement (ECF No. 101) is DENIED; and 28 7) Plaintiffs motion to reopen discovery (ECF No. 102) is DENIED.

2 | SOORDERED. 3 || DATED: March 18, 2025 Kmdo— SEAN C. RIORDAN 5 UNITED STATES MAGISTRATE JUDGE 6 7 8 9 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 12