

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Diaz v. City of Merced

Diaz · No. 1:23-CV-00065-JLT-SKO · Decided February 21, 2025

SUMMARY

The United States District Court for the Eastern District of California grants Plaintiff Armando Diaz’s request to reopen and extend expert discovery in his civil rights action against the City of Merced and related defendants. The court finds good cause and excusable neglect based on Plaintiff’s efforts to retain counsel while proceeding pro se, and orders the parties to meet and confer regarding revised expert-discovery, trial, and pretrial deadlines.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sheila K. Oberto
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	February 21, 2025
DOCKET	1:23-CV-00065-JLT-SKO
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to modify the scheduling order and reopen and extend expert discovery after the expiration of the expert disclosure and discovery deadlines. Defendants opposed the request. The magistrate judge granted the motion.
STANDARD OF REVIEW	Abuse-of-discretion-style case-management review; the court applied the good-cause standard under Federal Rule of Civil Procedure 16(b)(4) and the excusable-neglect standard under Rule 6(b)(1)(B).
PRECEDENTIAL VALUE	unknown

TOPICS

- discovery dispute
- civil procedure
- civil rights

PRACTICE AREAS

- civil procedure
- civil rights

QUESTIONS PRESENTED

1. Whether Plaintiff established good cause under Federal Rule of Civil Procedure 16(b)(4) to reopen and extend the expired expert-discovery deadlines.
2. Whether Plaintiff established excusable neglect under Federal Rule of Civil Procedure 6(b)(1)(B) for failing to comply with the expired deadlines.
3. Whether reopening expert discovery would cause undue prejudice or impair the orderly and efficient resolution of the case.

HOLDINGS

1. A scheduling order may be modified to reopen expert discovery when the moving party demonstrates good cause, with diligence serving as the primary focus of the inquiry.
2. When a party seeks to modify an elapsed deadline, the court must also consider whether the failure to act resulted from excusable neglect under Rule 6(b)(1)(B).
3. Reopening limited expert discovery was warranted where the opposing party would not suffer undue prejudice and the modification served the interests of justice.

KEY QUOTATIONS

“The ‘good cause’ standard under Rule 16(b) ‘primarily considers the diligence of the party seeking the amendment,’” (at 3)

“The determination of whether neglect is excusable ‘is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.’” (at 3)

“Further, while the Court recognizes that the request is opposed (Doc. 31) and Defendant will incur increased litigation costs as a result of granting Plaintiff’s request to modify the Scheduling Order, any prejudice suffered by Defendant in this regard is substantially outweighed by Plaintiffs need to engage in discovery to adequately prepare for trial.” (at 4)

FACTUAL BACKGROUND

Plaintiff's original counsel withdrew in August 2024, after which Plaintiff proceeded pro se and attempted to retain new counsel. The expert disclosure, rebuttal-expert, and expert-discovery deadlines expired while Plaintiff lacked counsel. After new counsel appeared in February 2025, Plaintiff sought to reopen expert discovery, supported by a declaration describing contacts with seventeen lawyers or law groups. The trial and pretrial dates had also been vacated or continued, reducing the risk that reopening the limited expert discovery would delay trial.

PROCEDURAL HISTORY

Plaintiff filed this civil rights action on January 12, 2023. After Plaintiff's original counsel withdrew, Plaintiff proceeded pro se for approximately six months while attempting to obtain new counsel. Following the appearance of new counsel, Plaintiff moved to reopen expert discovery. The district court referred the opposed

discovery-extension request to the assigned magistrate judge, who granted it after finding good cause and excusable neglect.

DISPOSITION

other

CASES CITED

- Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002)
- Little v. City of Seattle, 863 F.2d 681, 685 (9th Cir. 1988)
- City of Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017)
- United States ex rel. Schumer v. Hughes Aircraft Co., 63 F.3d 1512, 1516 (9th Cir. 1995), vacated on other grounds, 520 U.S. 939 (1997)
- In re W. States Wholesale Nat. Gas Antitrust Litig., 715 F.3d 716, 737 (9th Cir. 2013)
- Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)
- Multiple Energy Technologies, LLC v. Casden, 2022 WL 16972482, at *4 (C.D. Cal. Nov. 16, 2022)
- Pincay v. Andrews, 389 F.3d 853, 855 (9th Cir. 2004)
- Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P'ship, 507 U.S. 380, 395 (1993)
- Lemoge v. United States, 587 F.3d 1188, 1192 (9th Cir. 2009)
- Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1258-59 (9th Cir. 2010)
- Rodgers v. Watt, 722 F.2d 456, 459 (9th Cir. 1983)
- Woodard v. City of Menlo Park, No. C 09-3331 SBA, 2012 WL 2119278, at *1-2 (N.D. Cal. June 11, 2012)

OPINION

Diaz v. City of Merced

PER CURIAM.

1 2 3

UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

5 6 ARMANDO DIAZ, Case No.: 1:23-CV-00065-JLT-SKO 7 Plaintiff, ORDER GRANTING
PLAINTIFF'S

APPLICATION TO EXTEND THE

8 vs. DISCOVERY DEADLINE TO PERMIT

DISCLOSURE OF EXPERTS, REBUTTAL

9 CITY OF MERCED, CODY McCOMB, EXPERTS, AND TO COMPLETE

NICOLAS DEJON, DOMINIC SAELEE, and EXPERT DISCOVERY

10 DOES 1-15, inclusive (Doc. 30) Defendants. 11 12

13 I. INTRODUCTION

14 On February 7, 2024, Plaintiff filed a motion to modify the pretrial scheduling order, (Doc. 15 21 (the “Motion”)), as partially modified by minute orders, (Docs. 23, 25), to reopen expert 16 discovery to allow the parties to disclose experts, rebuttal experts, and to complete expert discovery. 17 (Doc. 30). The Court has considered the Motion and Opposition, (Doc. 31), as well as Plaintiff’s 18 supplemental declaration in support of his motion, (Doc. 32). For the reasons set forth below, the 19 Court GRANTS Plaintiff’s request to (1) reopen and extend the expert discovery deadlines.¹

20 II. BACKGROUND

21 Plaintiff filed this civil rights action on January 12, 2023. (Doc. 1). On July 24, 2024, the 22 Plaintiff’s original counsel filed a motion to withdraw. (Doc. 17). 23 On August 1, 2024, the Court modified the scheduling order based on good cause in light of 24 the parties’ stipulation. (Doc. 21). As relevant to the pending motion, that order set the following 25 deadlines: expert disclosures were due on August 30, 2024, rebuttal experts were due on September 26 27, 2024; and the expert discovery deadline was set for October 18, 2024. (Id.) 27 On August 12, 2024, the Court granted Plaintiff’s prior counsel’s motion to withdraw. (Doc. 28 1 22). 2 From August 12, 2024 until February 7, 2025 when new counsel appeared on behalf of 3 Plaintiff, Plaintiff proceeded pro se. On February 7, 2025, Plaintiff filed a motion to allow for 4 substitution of attorney and a motion to modify the scheduling order and related pre-trial orders. 5 (Doc. 30). Defendants opposed the Plaintiff’s request to extend the discovery deadlines but noted 6 that they would not oppose the continuance of the trial date and other applicable pre-trial deadlines. 7 (Doc. 31). 8 On February 10, 2025, the District Court entered a minute order ordering the Plaintiff to 9 “supplement the record with a declaration addressing his efforts to retain counsel over the past six 10 months.” (Doc. 32). 11 On February 13, 2025, Plaintiff filed a declaration detailing his efforts to retain counsel over 12 the time period between the withdrawal of his original counsel and retaining new counsel. (Doc 13 33). That declaration recounts Plaintiff’s contacting of seventeen different lawyers or law groups 14 seeking counsel over that 6-month period. (Id.). 15 On February 14, 2025, the District Court found good cause to continue Plaintiff’s unopposed 16 the trial and pretrial dates, ordered the parties to meet and confer to propose “mutually acceptable 17 revised trial and pretrial dates,” and referred “Plaintiff’s separate [and opposed] request to extend 18 discovery deadlines . . . to the assigned magistrate.” (Id.).

19 IV. DISCUSSION

20 District courts have broad authority in managing discovery. See, e.g., *Hallett v. Morgan*, 21 296 F.3d 732, 751 (9th Cir. 2002); see also *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 22 1988) (noting that the Court “has wide discretion in controlling discovery). 23 Under Federal Rule of Civil Procedure 16(b), “[a] schedule may be modified only for good 24 cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “When ruling on a motion to amend 25 a Rule 16 scheduling order to reopen discovery,” district courts must consider the following factors: 26 (1) whether trial is imminent, (2) whether the request is opposed; (3) whether the non-moving party

would be prejudiced; (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court; (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and (6) the likelihood that the discovery will lead to *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017) (quoting *United States ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1516 (9th Cir. 1995), vacated on other grounds, 520 U.S. 939 (1997)). The “good cause” standard under Rule 16(b) “primarily considers the diligence of the party seeking the amendment,” *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737 (9th Cir. 2013) (quoting *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 760, 609 (9th Cir. 1992)), and “[a]lthough the existence or degree of prejudice to the party opposing the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party’s reasons for seeking modification,” *id.* In cases where a Court considers modifying a scheduling order to retroactively modify an elapsed deadline, the [c]ourt must also consider excusable neglect [under Rule 6(b)].” *Multiple Energy Technologies, LLC v. Casden*, 2022 WL 16972482, at *4 (C.D. Cal. Nov. 16, 2022) (citing *Fed. R. Civ. P. 6(b)(1)(B)*). Rule 6(b)(1)(B) provides that “[w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired if the party failed to act because of excusable neglect.” *Fed. R. Civ. P. 6(b)(1)(B)*. In exercising its discretion to determine whether a litigant has established excusable neglect under

Rule 6(b)(1)(B), the court considers four factors: “(1) the danger of prejudice to the non-moving

party, (2) the length of delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the moving party’s conduct was in good faith.” *Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 395 (1993)). “Excusable neglect ‘encompasses situations in which the failure to comply with a filing deadline is attributable to negligence,’ and includes ‘omissions caused by carelessness.’” *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs., Ltd.*, 507 U.S. 380, 388, 394 (1993)) (alterations omitted). “The determination of whether neglect is excusable ‘is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.’” *Id.* (quoting *Pioneer*, 507 U.S. at 395). Both Rule 6(b)(1) and Rule 16(b), “like all the Federal Rules of Civil Procedure, ‘[are] to be 1 liberally construed to effectuate the general purpose of seeing that cases are tried on the merits.’” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1258-59 (9th Cir. 2010) (quoting *Rodgers v. Watt*, 722 F.2d 456, 459 (9th Cir. 1983)). The Court finds that Plaintiff has shown good cause to reopen and modify the Scheduling Order. Starting with the 16(b) analysis, the primary focus is on whether the moving party was 6 diligent. See *De Paz v. Wells Fargo Bank, N.A.*, 2020 WL 2404897, at *2 (C.D. Cal. Feb. 18, 2020) 7 (citing *Johnson v. Mammoth*

Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992)). Although 8 Defendants contend otherwise (Doc. 31), in light of the Plaintiff's extensive efforts to retain counsel 9 (see Doc. 33), and consistent with the District Court's finding of good cause to modify the trial 10 dates, (Doc. 32), the Court finds that Plaintiff was diligent. Further, Plaintiff's newly retained 11 counsel diligently sought to modify the Scheduling Order after discovering that Plaintiff failed to 12 designate any experts. 13 Turning to the other factors, which largely overlap with the Court's consideration under Rule 14 6(b)(1)(B), the Court also finds that modifying the Scheduling Order to reopen expert discovery will 15 not cause Defendant to suffer undue prejudice or impact the orderly and efficient resolution of this 16 case. The trial dates in this matter have recently been vacated upon a separate finding of good cause. 17 (Doc. 34). As such, reopening discovery for the limited purpose requested by Plaintiff will not delay 18 a scheduled trial. And while it is undisputed that Plaintiff did not comply with the discovery 19 deadlines set forth in the Scheduling Order, the Court finds that Plaintiff's failure to conduct 20 foreseeably necessary discovery "was due to his pro se status, lack of legal expertise, and not as a 21 result of bad faith." *Woodard v. City of Menlo Park*, No. C 09-3331 SBA, 2012 WL 2119278, at 22 *1–2 (N.D. Cal. June 11, 2012). Further, while the Court recognizes that the request is opposed 23 (Doc. 31) and Defendant will incur increased litigation costs as a result of granting Plaintiff's request 24 to modify the Scheduling Order, any prejudice suffered by Defendant in this regard is substantially 25 outweighed by Plaintiff's need to engage in discovery to adequately prepare for trial. 26 Weighing all the factors, Court finds that reopening discovery for the limited purpose of 27 allowing Plaintiff to conduct the expert discovery serves the interest of justice and the public policy 28 of adjudicating cases on the merits. See *Ahanchian*, 624 F.3d at 1259 (quoting *Rodgers*, 722 F.2d 1 456).

2 V. CONCLUSION AND ORDER

3 Based on the foregoing, IT IS HEREBY ORDERED as follows: 4 1. The expert discovery is reopened and the expert discovery disclosure, rebuttal expert 5 disclosure, and expert discovery deadlines are continued; and 6 2. Within fourteen (14) days of this order, the parties shall meet and confer and submit 7 mutually acceptable expert discovery disclosure, rebuttal expert disclosure, and expert 8 discovery deadlines to the District Court in addition to and together with their proposed 9 mutually acceptable revised trial and pretrial dates, as previously ordered. (Doc. 34). 10 IT IS SO ORDERED. 11 12 Dated: February 21, 2025 /s/ Sheila K. Oberto .

UNITED STATES MAGISTRATE JUDGE

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