

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.

OPINION

Diaz v. City of Merced

PER CURIAM.

1 2 3

UNITED STATES DISTRICT COURT

4

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 27 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 28 discovery by the district court, and (6) the likelihood that the discovery will lead to 1 2 *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017) (quoting *United States 3 ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1516 (9th Cir. 1995), vacated on other 4 grounds, 520 U.S. 939 (1997)). The "good cause" standard under Rule 16(b) "primarily considers 5 the diligence of the party seeking the amendment," *In re W. States Wholesale Nat. Gas Antitrust 6 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 6(b) analysis, the primary focus is on whether the moving party was diligent. See *De Paz v. Wells Fargo Bank, N.A.*, 2020 WL 2404897, at *2 (C.D. Cal. Feb. 18, 2020) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). Although Defendants contend otherwise (Doc. 31), in light of the Plaintiff’s extensive efforts to retain counsel (see Doc. 33), and consistent with the District Court’s finding of good cause to modify the trial dates, (Doc. 32), the Court finds that Plaintiff was diligent. Further, Plaintiff’s newly retained counsel diligently sought to modify the Scheduling Order after discovering that Plaintiff failed to designate any experts. Turning to the other factors, which largely overlap with the Court’s consideration under Rule 6(b)(1)(B), the Court also finds that modifying the Scheduling Order to reopen expert discovery will 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 Plaintiffs 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

13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28