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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Jay Lynn Pember,)	No. CV-11-2332-PHX-SMM (LOA)
10 Plaintiff,)	ORDER
11 vs.)	
12 Charles L. Ryan, et al.,)	
13 Defendants.)	
14)	

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16 This matter is before the Court on Plaintiff's Motion to Modify Deadlines and
17 Plaintiff's Motion to Compel Discovery. (Docs. 66-67) Defendants have not filed a response.

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19 Plaintiff initiated this action by filing a Civil Rights Complaint by a Prisoner on
20 November 28, 2011. (Doc. 1) He subsequently filed a First Amended Complaint on February
21 13, 2013. (Doc. 18) In Count One, Plaintiff asserts deliberate indifference to his serious
22 medical needs in violation of the Eighth Amendment based on allegations he received
23 inadequate medical care for injuries to his neck resulting from a prison official stepping on
24 it during a prison riot in 2004. (Doc. 18 at 11-15) Plaintiff alleges in Count Two a violation
25 of the Due Process Clause based on his confinement for almost four years in the Browning
26 Supermax Unit. (Doc. 18 at 15-23) The assigned District Judge screened the First Amended
27 Complaint on April 5, 2013, and directed ten named defendants to answer Counts One and
28 Two. (Doc. 19 at 12)

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28 In his motion to modify the deadlines, Plaintiff asks the Court to refer to his motion
to compel which, he contends, demonstrates good cause to extend the scheduling order

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1 deadlines. (Doc. 66) Because the motion to modify deadlines contains no discussion of the
2 reasons Plaintiff is seeking the modifications, the Court will consider Plaintiff's request to
3 modify the deadlines in conjunction with the motion to compel.

4 In the motion to compel, Plaintiff states he served requests for production of
5 documents and interrogatories on several defendants on January 14, 2014. (Doc. 67 at 2-3)
6 After thirty days passed without any responses, Plaintiff wrote a letter to Defendants'
7 counsel. He wrote another letter after sixty days passed and a third letter after ninety days
8 passed. One week after sending the third letter, Plaintiff received a response from
9 Defendants' counsel, which Plaintiff attaches to the motion to compel. (Doc. 67, Exh. E)
10 Defendants' counsel states in the letter that no responses to Plaintiff's discovery requests
11 were provided because the requests were sent almost a month and-a-half after the December
12 2, 2013 deadline for discovery requests. (*Id.*) Plaintiff contends he has made several attempts
13 to resolve this alleged dispute by writing letters to Defendants' counsel and "by filing several
14 motions to extend trial management deadlines. . . ." (Doc. 67 at 3)

15 The Court docket shows Plaintiff filed one previous motion to extend deadlines on
16 November 26, 2013, in which he requested a blanket extension of all the deadlines in the
17 scheduling order, doc. 38, issued on September 23, 2013. (Doc. 53) Plaintiff sought the
18 extensions because he was transferred to a lockdown facility on August 22, 2013 and all his
19 property, including legal materials, was confiscated. (Doc. 53 at 1-2) Plaintiff
20 acknowledged, however, that he received "most of his legal box back on September 18,
21 2013." (*Id.* at 2) Although Plaintiff also stated some of his legal materials were still missing,
22 he did not indicate whether any of the missing materials had anything to do with this case.

23 The Court, therefore, denied the motion because Plaintiff failed "to explain how the
24 confiscation of his legal materials until September 18, 2013 [made] it 'impossible' for him
25 to comply with the deadlines in the scheduling order," as he claimed. (Doc. 60 at 2) The
26 Court further explained that Plaintiff failed "to identify any documents that were not returned
27 to him or explain how the failure to return certain documents has prevented him from
28 complying with the scheduling order." (*Id.*)

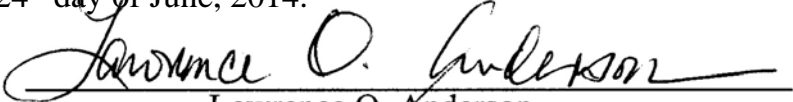
1 The primary argument of Plaintiff's motion to compel, despite the title given to it by
2 Plaintiff, is to again re-urge an extension of the deadlines in the scheduling order. A
3 scheduling order "may be modified only for good cause and with the judge's consent."
4 Fed.R.Civ.P. 16(b)(4). For purposes of this rule, "good cause" means the scheduling
5 deadlines cannot be met despite the party's diligence. *Johnson v. Mammoth Recreations, Inc.*,
6 975 F.2d 604, 609 (9th Cir. 1992) (citing 6A Wright, Miller & Kane, *Federal Practice and*
7 *Procedure* § 1522.1 at 231 (2d ed. 1990)). "The pretrial schedule may be modified if it
8 cannot reasonably be met despite the diligence of the party seeking the extension. If the party
9 seeking the modification was not diligent, the inquiry should end and the motion to modify
10 should not be granted." *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087
11 (9th Cir. 2002) (citation and internal quotation marks omitted).

12 Here, Plaintiff presents many of the same arguments he presented in his prior motion
13 to extend the scheduling order deadlines. As before, Plaintiff fails to demonstrate he could
14 not meet the deadlines despite acting diligently. For example, as noted above, Plaintiff's
15 previous motion to extend the deadlines was filed on November 26, 2013, approximately one
16 week before the discovery request deadline. Plaintiff fails to show why he could not have
17 completed and served his discovery requests at that time rather than waiting until January 14,
18 2014. Plaintiff claims he was submitting administrative grievances to challenge his transfers
19 and to get all of his property back. He fails to show, however, that he could not also have
20 complied with the scheduling order deadlines. For these reasons, the Court finds Plaintiff
21 has failed to show good cause to modify the deadlines in the scheduling order. His motions
22 will, therefore, be denied.

23 Accordingly,

24 **IT IS ORDERED** that Plaintiff's Motion to Modify Deadlines, doc. 66, and
25 Plaintiff's Motion to Compel Discovery, doc. 67, are **DENIED**.

26 DATED this 24th day of June, 2014.

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28 Lawrence O. Anderson
United States Magistrate Judge