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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ELONZA JESSE TYLER,

CASE NO. 1:-04-cv-06638-LJO-BAM PC

Plaintiff,

ORDER DENYING PLAINTIFF’S MOTION
FOR A SCHEDULING ORDER

v.

(ECF No. 160)

ALAMEIDA, et al.,

Defendants.

Plaintiff Elonza Jesse Tyler is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Following remand by the Ninth Circuit of Appeal, this action is proceeding against Defendant Smith for deliberate indifference in violation of the Eighth Amendment. On December 14, 2011, Plaintiff filed a motion for a scheduling order to be issued.

In this action default was entered against Defendant Smith on February 9, 2010. (ECF No. 123.) In the findings and recommendations issued June 17, 2010, Defendant Smith was advised that if he wished to set aside the default he needed to file a notice of motion and a motion. (ECF No. 135.) Defendant Smith has not filed a motion to set aside the default. At this juncture in the proceedings, the parties need to file a motion pursuant to Federal Rule of Civil Procedure 55.

Accordingly, Plaintiff’s motion for a scheduling order is HEREBY DENIED.

IT IS SO ORDERED.

Dated: December 20, 2011

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE