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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS HENDON,

1:05-cv-01247-AWI-GSA-PC

Plaintiff,

ORDER STRIKING PLAINTIFF’S MOTION TO
COMPEL AS UNTIMELY
(Doc. 48.)

v.

BAROYA, et al.,

Defendants.

Carlos Hendon ("Plaintiff") is a state prisoner proceeding pro se with this civil rights action under 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 30, 2005. (Doc. 1.) This action now proceeds on Plaintiff's Second Amended Complaint filed on June 26, 2008, against defendants Baroya, Pham, Hamilton, Nguyet, Hoppe, Griffin and Reidman for subjecting him to cruel and unusual punishment in violation of the Eighth Amendment.¹ (Doc. 18.)

On September 30, 2009, the court issued a Discovery/Scheduling Order establishing a deadline of May 30, 2010 for completion of discovery, including motions to compel. (Doc. 36.) This deadline has not been extended. On August 19, 2010, Plaintiff filed a motion to compel discovery. (Doc. 48.)

¹To date, defendants Hamilton and Hoppe have not been successfully served with process and have not otherwise appeared in this action. (Docs. 29, 38, 51.)

1 “The district court is given broad discretion in supervising the pretrial phase of litigation.”
2 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir.1992) (citation and internal
3 quotation marks omitted). On motion or on its own, the court may issue any just orders if a party or
4 its attorney fails to obey a scheduling or other pretrial order. Fed.R.Civ.P. 16(f)(1)(C).

5 Plaintiff’s motion to compel discovery was filed nearly three months after the expiration of
6 the May 30, 2010 discovery deadline in this action. Plaintiff has not requested an extension of the
7 discovery deadline. Therefore, Plaintiff’s motion is untimely and shall be denied.

8 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion to compel discovery, filed
9 on August 19, 2010, is DENIED as untimely.

10
11 IT IS SO ORDERED.

12 **Dated: November 8, 2010**

/s/ Gary S. Austin
13 UNITED STATES MAGISTRATE JUDGE