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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JESSE WASHINGTON,

Plaintiff,

vs.

J.W. ANDREWS, et al.,

Defendants.

CASE No. 1:07-cv-00886-AWI-MJS (PC)

ORDER DENYING DEFENDANTS'
MOTION FOR MODIFICATION OF
SCHEDULING ORDER TO ALLOW
FILING OF MOTION FOR SUMMARY
JUDGMENT

(ECF No. 113)

_____ /

Plaintiff Jesse Washington is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action filed June 21, 2007 pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1). The parties have declined Magistrate Judge jurisdiction. (Decline Juris., ECF Nos. 86-87, 90).

This case is proceeding on Plaintiff's claim that Defendants destroyed his personal property, were indifferent to his medical needs, denied him access to court and retaliated against him. The Court has filed scheduling orders under which the deadline for conducting discovery was September 17, 2010, and the deadline for dispositive motions October 1, 2010. (Orders, ECF Nos. 27, 42; 52, 55). Trial confirmation hearing is set for January 14, 2013. (Second Sch. Order, ECF No. 88).

1 Trial is set for February 26, 2013. (Id.).

2 On August 23, 2012, Defendants filed a motion for modification of scheduling
3 order to allow filing of a motion for summary judgment. (Mot. Modif. Sch. Order, ECF
4 No. 113). Plaintiff filed objections thereto on September 4, 2012. (Obj. to Mot., ECF
5 No. 114). This Motion is now before the Court for ruling.

6 Defendants' Motion shall be denied.

7 The parties were advised in the scheduling order that:

8 "[M]otions for extensions of [a deadline therein] shall be filed prior to the
9 expiration of the deadline . . . [The schedule] may only be modified with leave
10 of Court and upon a showing of good cause."
Order re Scheduling, ECF No. 27 at ¶ G, citing Fed. R. Civ. P. 16(b).

11 "The good cause standard 'primarily considers the diligence of the party seeking
12 the amendment' . . . 'carelessness is not compatible with a finding of diligence and
13 offers no reason for a grant of relief.'" C.F. v. Capistrano Unified School Dist., 656
14 F.Supp.2d 1190, 1194 (C.D. Cal. 2009). In determining good cause under Rule 16, a
15 court considers four factors: (1) the explanation for the failure to timely move for relief;
16 (2) the importance of the relief sought; (3) potential prejudice in allowing the relief; and
17 (4) the availability of a continuance to cure such prejudice." (Id. at 1196).

18 Good cause to modify a scheduling order requires that defendants demonstrate
19 that, despite diligence, the proposed relief could not have been reasonably sought in a
20 timely manner. Venetec Inter., Inc., v. Nexus Medical, LLC, 541 F.Supp.2d 612, 618
(D. Del. 2008).

21 "Although the existence or degree of prejudice to the party opposing the
22 modification might supply additional reasons to deny a motion, the focus of the inquiry
23 is upon the moving party's reasons for seeking modification. Johnson v. Mammoth
24 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992), citing Gestetner Corp. v. Case
25 Equip. Co., 108 F.R.D. 138, 141 (D.Me. 1985). "If that party was not diligent, the
26 inquiry should end." Johnson, 975 F.2d at 609.

1 Plaintiff objects to any extension of the dispositive motion deadline. He argues
2 the request is untimely. He notes he was recently denied similar Rule 16 relief in this
3 action and asks that Defendants not be treated more favorably.¹ He asserts that he
4 will be prejudiced in preparation for the February 26, 2013 trial if relief is granted.
5 (Objections to Motion at 1:24-2:22).

6 Here, the Court finds Defendants have not shown diligence in seeking Rule
7 16(b) relief. Their request to file a motion for summary judgment is nearly two years
8 beyond the October 1, 2010 deadline and more than 6 months after the trial date was
9 set. (Second Sch. Order, ECF No. 88). Defendants attribute delay in seeking relief
10 from the Court's May 27, 2011 denial of their vexatious litigant motion which they had
11 believed would dispose of the case. (Mot. Modif. Sch. Order at 2:20-3:8). Without
12 suggesting that optimism as to one motion might justify delay in filing another,
13 Defendants delayed in seeking the instant relief for more than a year after denial of the
14 vexatious litigant motion. They give no justification for that delay.

15 Defendants also attribute delay in seeking relief to a recent change in counsel
16 (Decl. of Douglas in Supp. at ¶ 2). However, a mere change in counsel is not a basis to
17 find good cause supporting Rule 16 relief. See Buchanan County, Virginia v.
18 Blankenship, 545 F.Supp.2d 553, 555 (W.D.Va. 2008) (Defendants' retention of new
19 counsel was not alone sufficient to show good cause to modify scheduling order to
20 permit dispositive motions more than for months after deadline designated in
21 scheduling order).

22 Nothing before the Court suggests Defendants' were unaware of arguments in
23 favor of summary judgment prior to expiration of the dispositive motion deadline.

24 The Court finds Defendants' have not been diligent in seeking the requested
25 relief. Defendants have not met the good cause standard under Rule 16. See Doe ex

26
27 ¹ See Order Denying Plaintiff's Ex Parte Request, ECF 96.

1 rel. Doe v. State of Hawaii Dept. of Educ., 351 F.Supp.2d 998, 1007-08 (D. Hawai'i,
2 2004) (no good cause to modify dispositive motion deadline where defendants aware
3 of arguments in support of cross-motion for summary judgment yet delay over one and
4 a half years in seeking relief).

5 Plaintiff would be prejudiced if placed in the position of defending a summary
6 judgment motion while preparing for trial or if the trial date were jeopardized. Since
7 Defendants offer no information as to the basis for their proposed summary judgment
8 motion, the Court cannot gauge potential judicial economies, if any, to be gained by
9 granting the requested relief.

10 Accordingly, for the foregoing reasons, it is ORDERED that Defendants' Motion
11 for Modification of Scheduling Order (ECF No. 113) is DENIED.

12
13 IT IS SO ORDERED.

14 Dated: November 14, 2012

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE