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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOHNNY EARL EVANS,

Plaintiff,

v.

TILTON, et al.,

Defendants.

CASE NO. 1:07-cv-01814-DLB (PC)

ORDER DENYING PLAINTIFF’S MOTION
TO MODIFY SCHEDULING ORDER FOR
AMENDED PLEADINGS

(Docs. 40, 45)

ORDER STRIKING AMENDED
COMPLAINT

/ (Docs. 52, 68)

Plaintiff Johnny Earl Evans (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s original complaint against Defendants S. Zamora and Youssef for violation of the Eighth Amendment. On August 26, 2008, the Court had initially screened Plaintiff’s complaint and gave him the option of either filing an amended complaint or proceeding on the claims found to be cognizable by the Court. Plaintiff chose the latter.

The Court’s scheduling and discovery order set a deadline of September 21, 2009 for the filing of amended pleadings. (Doc. 21.) On August 26, 2009, Plaintiff filed a motion for extension of time to file a second amended complaint.¹ On September 21, 2009, Plaintiff renewed his motion. (Doc. 45.) On October 16, 2009, Plaintiff filed his proposed amended complaint. (Docs. 52, Lodged Second Am. Compl.; Doc. 68, Second Am. Compl.) Plaintiff’s motion for

¹ This appears to be a labeling error by Plaintiff, because this is Plaintiff’s first attempt to amend his complaint.

1 extension of time is a motion to modify the Court's scheduling order, which requires a showing of
2 good cause. Fed. R. Civ. P. 16(b); Johnson v. Mammoth Recreations, 975 F.2d 604, 608 (9th
3 Cir. 1992).

4 Plaintiff requests an extension of time to file his amended complaint because Defendants
5 allegedly did not comply with Plaintiff's discovery requests in a timely fashion. (Doc. 40, Pl.'s
6 Mot. 3, ¶ 3.) Plaintiff seeks the discovery of the identities of the medical authorization review
7 committee who reviewed the 7243 medical requests. (Id.)

8 Plaintiff's additional claims against director Tilton, Warden Castro of Kern Valley State
9 Prison, Doctor Patel, RN McKay, and Defendant Youssef were readily known at the time Plaintiff
10 filed his original complaint, even if the identities of the members on the MARC were not.
11 Modification of the scheduling order for further discovery is not good cause in this instance. The
12 Court finds that Plaintiff has not demonstrated good cause to modify the scheduling order.

13 Accordingly, the Court HEREBY ORDERS that:

- 14 1) Plaintiff's motions for extension of time to file an amended complaint, filed
15 August 26, 2009 and September 21, 2009, are DENIED, and
- 16 2) Plaintiff's proposed amended complaint is STRICKEN.

17
18 IT IS SO ORDERED.

19 **Dated: February 22, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE