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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JAMISI J. CALLOWAY,

12 Plaintiff,

13 vs.

14 C/O HAYWARD and

15 C/O OAKS,

16 Defendants.  
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1:08-cv-01896-LJO-GSA-PC

**ORDER DENYING PLAINTIFF'S  
MOTION IN LIMINE REQUESTING  
FURTHER DISCOVERY AND NEW  
TRIAL DATE  
(ECF No. 203.)**

20 **I. BACKGROUND**

21 Jamisi J. Calloway ("Plaintiff") is a state prisoner proceeding pro se and in forma  
22 pauperis with this civil rights action under 42 U.S.C. § 1983. Plaintiff filed the Complaint  
23 commencing this action on December 10, 2008. (ECF No. 1.) This action now proceeds with  
24 Plaintiff's Third Amended Complaint filed on October 5, 2009, against defendants C/O  
25 Hayward and C/O Oaks, for use of excessive force in violation of the Eighth Amendment to the  
26 U.S. Constitution. (ECF No. 20.)

27 This case is scheduled for jury trial to commence on January 31, 2017 at 8:30 a.m.  
28 before District Judge Lawrence J. O'Neill. On January 9, 2017, Plaintiff filed a mislabeled

1 motion in limine in which he requested to reopen discovery and continue the trial. (ECF No.  
2 203.) On January 17, 2017, Defendants filed an opposition. (ECF No. 216.)

3 **II. PLAINTIFF’S MOTION IN LIMINE**

4 **A. Motion to Modify Scheduling Order -- Legal Standard**

5 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.  
6 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,  
7 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the  
8 modification of a scheduling order must generally show that even with the exercise of due  
9 diligence, they cannot meet the requirement of the order. Id. The Court may also consider the  
10 prejudice to the party opposing the modification. Id. If the party seeking to amend the  
11 scheduling order fails to show due diligence the inquiry should end and the Court should not  
12 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087  
13 (9th Cir. 2002). The court has broad discretion to permit or deny discovery. See Hallet v.  
14 Morgan, 296 F.3d 732, 751 (9th Cir. 2001.)

15 **B. Parties’ Positions**

16 Plaintiff requests the court to reopen discovery and reschedule the trial date, because  
17 Plaintiff asserts that Defendants have not turned over evidence to Plaintiff throughout discovery  
18 and the pretrial phase. Plaintiff seeks time to discover “personnel records, arrest records,  
19 felony convictions, dismissed claims, unrelated claims, individual claims, and Defendants  
20 involvement in other lawsuits or incidents alleging excessive force and CDCR indemnification  
21 of Defendants or [their] witnesses for any adverse judgment.” (ECF No. 203 at 2:14-20.)  
22 Plaintiff argues that if this case goes to trial without Plaintiff viewing pertinent documents, he  
23 will be disadvantaged in his ability to cross-examine witnesses and impeach testimony.  
24 Plaintiff contends that Defendants deliberately withheld discovery to delay the case and thwart  
25 justice.

26 In opposition, Defendants argue there is no good cause to reopen discovery for Plaintiff  
27 to obtain the information he seeks, because Plaintiff has not been diligent in seeking the  
28 requested information. Defendants assert that none of Plaintiff’s earlier discovery requests

1 included requests for information about Defendants' purported felony convictions, arrest  
2 records, or CDCR's indemnification of Defendants for any adverse judgment, and Plaintiff has  
3 not shown how the information would handicap his ability to cross examine witnesses at trial.  
4 Defendants assert that the court already gave Plaintiff an opportunity to provide a compelling  
5 need for information about dismissed claims, unrelated claims, and individual claims, and  
6 Plaintiff failed to respond, so the court determined that the discovery phase had concluded.  
7 (Sept. 27, 2012 Order, ECF No. 74 at 3:6-8; Nov. 15, 2012 Order, ECF No. 75 at 1:18-24.)  
8 Defendants also argue that Plaintiff has not shown that the information he seeks exists or is  
9 relevant and admissible. Defendants argue that reopening discovery and delaying trial would  
10 unfairly prejudice Defendants who are ready to proceed and have expended considerable  
11 resources in preparing for trial on January 31.

12 **C. Discussion**

13 Plaintiff has not shown that even with the exercise of due diligence, he could not meet  
14 the requirements of the court's scheduling order. On June 14, 2011 (five and one-half years  
15 ago) the court issued a discovery and scheduling order, which established a deadline of  
16 February 14, 2012 for the parties to complete discovery, including motions to compel. (ECF  
17 No. 31.) On April 25, 2012, Plaintiff filed a motion to reopen discovery and serve new  
18 discovery requests on Defendants. (ECF No. 62.) On September 27, 2012, the court denied the  
19 motion to reopen discovery, without prejudice to renewal of the motion within thirty days, with  
20 submission of copies of the proposed discovery requests and information explaining Plaintiff's  
21 intent. (ECF No. 74.) Plaintiff did not renew the motion, and the discovery phase was closed.  
22 (ECF No. 75.) Plaintiff does not explain why he did not renew his motion to pursue further  
23 discovery following the court's order of September 27, 2012.

24 This case was filed more than seven years ago, on December 10, 2008. (ECF No. 1.)  
25 Plaintiff has had ample time and opportunity to conduct discovery, and Defendants would be  
26 unduly prejudiced if the January 31, 2017 trial were rescheduled at this late stage of the  
27 proceedings. Therefore, Plaintiff's motion in limine shall be denied.

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**III. CONCLUSION**

Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion in limine filed on January 9, 2017, is DENIED.

IT IS SO ORDERED.

Dated: January 20, 2017

/s/ Lawrence J. O'Neill  
UNITED STATES CHIEF DISTRICT JUDGE