UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTHONY CRAIG HUCKABEE,

      Plaintiff,

v.

MEDICAL STAFF AT CSATF, et al.,

      Defendants.

Case No. 1:09-cv-00749-DAD-BAM (PC)

ORDER GRANTING DEFENDANTS' JOINT MOTION TO MODIFY THE SCHEDULING ORDER AND VACATE DEADLINES PENDING RESOLUTION OF MOTION FOR SUMMARY JUDGMENT FOR PLAINTIFF'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES
(ECF No. 268)

ORDER VACATING AMENDED DEADLINES
(ECF No. 236)

Plaintiff Anthony Craig Huckabee ("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 currently proceeds on Plaintiff's fourth amended complaint against Defendants Wu, McGuiness, Enenmoh, and Jimenez for deliberate indifference to Plaintiff's serious medical needs in violation of the Eighth Amendment.

On November 16, 2017, the Court granted Defendants' motion to modify the discovery and scheduling order, setting the deadline for filing motions for summary judgment for failure to exhaust administrative remedies for December 8, 2017, and the deadline for all dispositive motions (other than a motion for summary judgment for failure to exhaust) for June 8, 2018.

1 (ECF No. 236.) The order was later modified, extending the deadline for filing motions for

2 summary judgment for failure to exhaust to December 15, 2017. (ECF No. 245.)

3   On December 15, 2017, Defendants Enenmoh, Jimenez, and Wu timely filed a motion for

4 summary judgment on the issue of exhaustion. (ECF No. 254.) That motion was joined by

5 Defendant McGuinness. (ECF No. 255.) Plaintiff filed an opposition to the motion for summary

6 judgment, (ECF No. 258), and to Defendant McGuinness' joinder in the motion, (ECF No. 256).

7 Defendant McGuinness filed a reply to Plaintiff's opposition to her joinder. (ECF No. 261.)

8 Defendants Enenmoh, Jimenez, and Wu did not file a reply in support of the motion for summary

9 judgment. That motion is pending.

10   On January 3, 2018, the Court granted Defendants' motion for a stay of non-exhaustion

11 discovery pending resolution of the motion for summary judgment. (ECF No. 257.) All other

12 deadlines remained in place.

13   Currently before the Court is Defendants' joint motion to modify the scheduling order and

14 vacate deadlines pending resolution of their motion for summary judgment, filed June 8, 2018.

15 (ECF No. 268.) Although Plaintiff has not had an opportunity to respond to Defendants' motion,

16 the Court finds a response unnecessary. Local Rule 230(l).

17   Defendants argue that modifying the scheduling order will allow the parties to continue to

18 avoid unnecessary litigation costs, engaging in unnecessary motion practice, and wasting judicial

19 resources while the Court rules on Defendants' motion. Defendants argue that the pending

20 motion asserts the affirmative defense of failure to exhaust, which may be dispositive of the case.

21 Defendants further argue that Plaintiff will not be prejudiced because the Court may issue new

22 discovery and dispositive motion deadlines, if necessary, after ruling on Defendants' pending

23 summary judgment motion. (ECF No. 268.)

24   Having considered the request, the Court finds good cause to vacate the current discovery

25 and non-exhaustion dispositive motion deadlines. Fed. R. Civ. P. 16(b)(4).

26   Accordingly, it is HEREBY ORDERED that the discovery and non-exhaustion dispositive

27 motion deadlines set forth in the November 16, 2017, order are VACATED. Once Defendants'

28 motion for summary judgment on exhaustion grounds has been resolved, the Court will issue an

amended discovery and scheduling order for the continuation of discovery and filing of dispositive motions.

IT IS SO ORDERED.

Dated: **June 13, 2018**   /s/ *Barbara A. McAuliffe*   _
                                        UNITED STATES MAGISTRATE JUDGE