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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FLOYD SCOTT,

Plaintiff,

v.

J. PALMER, et al.,

Defendants.

CASE NO. 1:09-cv-01329-LJO-SKO PC

ORDER GRANTING MOTION TO MODIFY
SCHEDULING ORDER AND EXTENDING
DEADLINES

(Doc. 99)

Discovery Deadline: 03/29/2013
Pretrial Dispositive Motion Deadline: 04/29/2013

I. Procedural History

Plaintiff Floyd Scott, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 29, 2009. This action is proceeding against Defendants Palmer, Rivera, and Lopez on Plaintiff’s Eighth Amendment excessive force claim. Pursuant to the Court’s order filed on April 24, 2012, the deadline to complete discovery was October 30, 2012, and the deadline to file pretrial dispositive motions is November 30, 2012.

On June 22, 2012, Defendants filed a motion seeking to have Plaintiff declared a vexatious litigant, the issuance of a pre-filing order, and to require Plaintiff to furnish security. On August 24, 2012, Defendants filed a motion to modify the scheduling order. Defendants requested to vacate the discovery and motion deadlines pending a ruling on their motion, to be reset should the motion be denied. Plaintiff filed an opposition on September 17, 2012.

On November 16, 2012, the undersigned recommended that Defendants’ vexatious litigant motion be denied, and on November 19, 2012, the Honorable Lawrence J. O’Neill granted Plaintiff’s

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1 motion for reconsideration, set aside the order dismissing Plaintiff's excessive force claim arising
2 from the use of pepper spray, and referred this matter back to the undersigned for further scheduling.¹

3 **II. Discussion**

4 Plaintiff's opposition to Defendants' motion to modify the scheduling order is noted, and the
5 Court recognizes Plaintiff's frustration in that his ability to engage in discovery has been interrupted
6 by an early motion for summary judgment and then by the filing of a vexatious litigant motion.
7 However, in as much as Plaintiff's motion for reconsideration was granted and the order dismissing
8 his excessive force claim arising out of the use of pepper spray was set aside, additional time to
9 complete discovery is undoubtedly necessary for both sides, delays notwithstanding, and the Court
10 does not anticipate any further disruption to the completion of discovery. Therefore, the motion shall
11 be granted and the discovery and pretrial dispositive motion deadlines shall be extended, which will
12 allow both sides, upon the receipt of this order, to engage in and complete discovery.² Fed. R. Civ.
13 P. 16(b)(4).

14 **III. Order**

15 Accordingly, it is HEREBY ORDERED that:

- 16 1. Defendants' motion to modify the scheduling order, filed on August 24, 2012, is
17 GRANTED;
- 18 2. The discovery deadline is extended to March 29, 2013; and
- 19 3. The pretrial dispositive motion deadline is extended to April 29, 2013.

20
21 IT IS SO ORDERED.

22 **Dated: November 20, 2012**

23 **/s/ Sheila K. Oberto**
24 **UNITED STATES MAGISTRATE JUDGE**

25
26 ¹ Plaintiff's claim had been dismissed without prejudice as barred by the favorable termination rule.
27 Plaintiff demonstrated that his time credits were restored on March 6, 2012, thereby removing the bar to his claim.

28 ² While the Court will set a motion deadline, it already found that triable issues of fact exist and it does not
anticipate a motion for summary judgment by either Defendants or Plaintiff. Rather, the Court anticipates that
following the completion of discovery, this matter will be ready to be set for trial.