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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES E. BRYANT,

Plaintiff,

v.

KNIGHT, et al.,

Defendants.

CASE NO. 1:09-CV-01367-OWW-DLB PC

ORDER GRANTING DEFENDANTS’
MOTION FOR MODIFICATION OF
SCHEDULING ORDER

(DOC. 43)

Unenumerated 12(b) Motion Deadline: August
31, 2011

Plaintiff James E. Bryant (“Plaintiff”) is a prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Knight and Davis. Pending before the Court is Defendants’ motion for modification of the discovery and scheduling order, filed July 15, 2011. Doc. 43.

On May 17, 2011, the Court issued a discovery and scheduling order, setting an unenumerated 12(b) motion filing deadline of July 17, 2011. Defendants seek a modification up to and including August 31, 2011. Defendants’ counsel contends that two of Plaintiff’s three claims were possibly not administratively exhausted. Defendants’ counsel contends that he will not be able to meet the deadline because of his heavy involvement in discovery in another action, and because he needs time to obtain and review additional administrative grievances, if any, before preparing the motion.

The decision to modify a scheduling order is within the broad discretion of the district court. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (quoting *Miller v. Safeco Title Ins. Co.*, 758 F.2d 364, 369 (9th Cir. 1985)). Pursuant to Federal Rule of Civil

1 Procedure 16, a pretrial scheduling order “shall not be modified except upon a showing of good
2 cause,” and leave of court. Fed. R. Civ. P. 16(b)(4); *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d
3 1080, 1087-88 (9th Cir. 2002). Although “the existence or degree of prejudice to the party
4 opposing the modification might supply additional reasons to deny a motion, the focus of the
5 inquiry is upon the moving party’s reasons for seeking modification.” *Johnson*, 975 F.2d at 609.

6 Good cause having been presented, it is HEREBY ORDERED that Defendants’ motion
7 for modification of the scheduling order, filed July 15, 2011, is GRANTED. The deadline for
8 filing an unenumerated 12(b) motion is August 31, 2011.¹

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10 IT IS SO ORDERED.

11 Dated: July 21, 2011

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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25 ¹ Defendants’ counsel also requests an extension of time to file an opposition to
26 Plaintiff’s motion for sanctions, filed June 22, 2011. Doc. 40. Plaintiff moves for sanctions,
27 contending that Defendants’ answer contains a false statement that Plaintiff did not exhaust
28 administrative remedies. Defendants’ motion for failure to exhaust administrative remedies is
directly related to Plaintiff’s motion. Good cause having been shown, Defendants’ motion for an
extension of time to file an opposition to Plaintiff’s motion for sanctions is GRANTED.
Defendants are granted up to and including August 31, 2011 in which to file their opposition.