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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,

1:09-cv-01733-AWI-MJS-PC

Plaintiff,

ORDER DENYING MOTION TO MODIFY
THE DISCOVERY AND SCHEDULING
ORDER

v.

T. LLOREN, et al.,

(ECF No. 26)

Defendants.

Plaintiff Kevin E. Fields ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff initiated this action on October 2, 2009. (ECF No. 1.) The Court screened Plaintiff's Complaint on December 10, 2010, and dismissed it with leave to amend. (ECF No. 9.) Plaintiff filed a First Amended Complaint on December 17, 2010. (ECF No. 10.) The Court found that Plaintiff's First Amended Complaint stated a cognizable claim against Defendants Lloren and Battles and ordered service on these Defendants. (ECF Nos. 18, 19, & 21.) Defendants filed an Answer in the action on April 20, 2012 (ECF No. 24), and the Court issued a Discovery and Scheduling Order on May 1, 2012 (ECF No. 25). Pursuant to that Order, discovery in this matter is to close on January 1, 2013 and dispositive motions are to be filed by March 11, 2013. (ECF No. 25.)

1 On June 4, 2012, Plaintiff filed a motion requesting that the Discovery and
2 Scheduling Order be modified so that the time for obtaining discovery and filing dispositive
3 motions be shortened. (Mot., ECF No. 26.) Defendants have not filed an opposition. The
4 time for filing an opposition has passed. Local Rule 230. Plaintiff's motion is now before
5 the Court.

6 Pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, absent a showing
7 of good cause the Court cannot modify the Discovery and Second Scheduling Order.
8 Plaintiff asks that the Discovery and Scheduling Order be modified because he appears
9 to have all the discovery that he needs and can file a dispositive motion by September 3,
10 2012. (Mot. at 7.) However, Defendants have not said whether or not this deadline is
11 acceptable to them and, lacking assurances that they will not be prejudiced, the Court will
12 not curtail their discovery period in this action. Plaintiff can file a motion for summary
13 judgment at any time prior to March 11, 2012. (ECF No. 25); Fed. R. Civ. P. 56. Plaintiff
14 does not have to wait until the last date set in the Discovery and Scheduling Order to file
15 a motion for summary judgment.

16 Plaintiff has failed to show good cause for modification of the Discovery and
17 Scheduling Order. Accordingly, his motion for modification of the Discovery and Scheduling
18 Order is DENIED.

19
20 IT IS SO ORDERED.

21 Dated: August 20, 2012

1st Michael J. Song
UNITED STATES MAGISTRATE JUDGE