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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

DWAYNE MAYFIELD,  
Plaintiff,  
v.  
M. MIX, et al.,  
Defendants.

CASE NO. 1:10-cv-01091-AWI-GBC (PC)  
ORDER DENYING PLAINTIFF’S MOTION  
TO POSTPONE DEPOSITION AS MOOT  
Doc. 34

On June 16, 2010, Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. Doc. 1. On October 22, 2010, the Court found a cognizable Eighth Amendment claim for excessive force. Doc. 9. On July 26, 2011, the Court issued a discovery and scheduling order, setting a discovery deadline of March 26, 2012 and a dispositive motion deadline of June 4, 2012. Doc. 25. On March 22, 2012, Plaintiff filed a motion for “renewal of scheduling order” and to postpone his deposition noticed for March 22, 2012. Doc. 34.

In Plaintiff’s motion, he states that Defendants noticed his deposition for March 22, 2012, but Plaintiff does not have possession of his property. *Id.* As Plaintiff’s motion was filed on the same date of his scheduled deposition, it is moot for review.

Rule 26(b) (1) give a party the right to discover “any nonprivileged matter that is relevant to any party’s claim or defense.” This includes the right to take the opposing party’s deposition, so long as that deposition is properly noticed. Fed. R. Civ. P. 30. The Court’s July 26, 2011 discovery and

1 scheduling order stated: "Pursuant to Federal Rule of Civil Procedure 30(a), defendants may depose  
2 plaintiff and any other witness confined in a prison upon condition that, at least fourteen (14) days  
3 before such a deposition, defendants serve all parties with the notice required by Federal Rule of  
4 Civil Procedure 30(b)(1)." Doc. 25.

5           Accordingly, Plaintiff's motion to postpone his deposition is DENIED as moot.

6  
7 IT IS SO ORDERED.

8 Dated: April 17, 2012

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UNITED STATES MAGISTRATE JUDGE