## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

WARNER LIVINGSTON,	) Case No.: 1:10-cv-01152-LJO-BAM PC
Plaintiff,	ORDER GRANTING DEFENDANTS' MOTION FOR MODIFICATION OF DISCOVERY
V.	) DEADLINE
J. SANCHEZ, et al.,	) ) (ECF No. 56)
Defendant.	)
	)

Plaintiff Warner Livingston ("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 proceeds on Plaintiff's complaint, filed June 25, 2010, against Defendants Sanchez and Ayon for excessive force in violation of the Eighth Amendment. On August 13, 2013, Defendants Sanchez and Ayon filed a motion to extend the discovery and dispositive motion deadlines. (Doc. 56.) The Court does not find a response necessary; and the motion is deemed submitted. Local Rule 230(1).

## I. BACKGROUND

On December 13, 2012, the Court entered a Discovery and Scheduling Order. Pursuant to that order, the discovery deadline was August 13, 2013, and the dispositive motion deadline is October 24, 2013. (Doc. 52.)

Defendants filed the instant motion to extend both the discovery deadline and the dispositive motion deadline an additional thirty days. Defendants explain that they served Plaintiff with

interrogatories, requests for admissions and requests for production on June 11, 2013. (ECF No. 56, Declaration of Tyler V. Heath ("Heath Dec.") at ¶ 3, Ex. A.) Plaintiff's responses were due on July 29, 2013, but Plaintiff did not serve any responses. (Heath Dec. at ¶ 3.)

On August 5, 2013, Plaintiff was deposed. At that time, defense counsel asked Plaintiff about his responses to Defendants' written discovery. (Id. at ¶ 4.) Plaintiff claimed that he received the requests late, but that he would try to respond by August 29, 2013. (Id.) Plaintiff also stated that he filed a request for an extension of time with the Court. (Id.) Defense counsel subsequently sent Plaintiff a letter memorializing this discussion. Counsel informed Plaintiff that the requests were served timely, that Plaintiff's responses were late, and that no request for an extension of time had been timely filed with the Court. (Id. at ¶ 5, Ex. B.) Thereafter, defense counsel received a letter from Plaintiff contending that he received the requests late, but that he would attempt to answer them by August 29, 2013. (Id. at ¶ 6.)

Defense counsel reports that Plaintiff still has not answered Defendants' written discovery and that Plaintiff has not requested an extension of time from the Court. (Id. at ¶ 7.) As a result, Defendants now request that the discovery deadline be extended thirty days to September 12, 2013, for the limited purpose of allowing Plaintiff to respond to Defendants' discovery requests and to allow Defendants to review the responses and file any appropriate motion. Defendants also request a corresponding extension of the dispositive motion deadline.

## II. DISCUSSION

Pursuant to Federal Rule of Civil Procedure 16(b), a scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). The "good cause" standard "primarily considers the diligence of the party seeking the amendment." <u>Johnson v. Mammoth</u>

<u>Recreations, Inc.</u>, 975 F.2d 604, 609 (9th Cir. 1992). The district court may modify the scheduling order "if it cannot reasonably be met despite the diligence of the party seeking the extension." <u>Id.</u>

Given Defendants' efforts to secure responses to their discovery requests, the Court finds good cause to extend the relevant deadlines for the limited purpose of obtaining Plaintiff's responses and, if necessary, the filing of a motion to compel. The Court also finds it appropriate to extend the dispositive motion deadline to allow for completion of discovery.

## III. CONCLUSION AND ORDER

Good cause appearing, Defendants' motion for modification of the discovery and dispositive motion deadlines is GRANTED. The deadline to complete discovery is extended thirty (30) days to September 12, 2013, and the deadline to file dispositive motions is extended thirty (30) days to November 25, 2013.

IT IS SO ORDERED.

Dated: **August 14, 2013** 

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE