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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENNIE RAY BROWN

Plaintiff,

v.

OFFICER JESS BEAGLEY, et al.,

Defendants.

Case No.: 1:10-cv-01460 JLT

ORDER DENYING MODIFICATION OF
SCHEDULING ORDER

ORDER DISREGARDING REQUEST TO
COMPEL

ORDER DENYING MOTION TO
RECONSIDER

(Doc. 50).

On August 13, 2010, Plaintiff initiated this civil rights action against two individuals. (Doc. 1). On April 17, 2012, Plaintiff filed a motion requesting subpoenas “pursuant to Fed. R. Civ. P. 45(c)(1).” The Court denied Plaintiff’s request because non-expert discovery had already closed and Plaintiff failed to provide the Court with any facts to show that despite his diligent effort to obtain the requested discovery before the March 30, 2012 deadline, he was unable to do so. (Doc. 48). Although the motion presently before this Court is titled as a Motion to Modify Scheduling Order, Plaintiff raises several other issues, including Defendants’ responses to

1 discovery requests, Plaintiff's need for a hearing, and a request for a de novo review of the
2 Magistrate's prior rulings. For the reasons set forth below, the Court **DENIES** Plaintiff's motion
3 to modify the scheduling order, **DISREGARDS** the portions of the motion relating to
4 Defendants' responses to discovery requests and need for hearing on such issues, and **DENIES**
5 Plaintiff's motion for reconsideration.

6 **1. Good Cause to Modify Scheduling Order**

7 As the Court previously informed Plaintiff, scheduling orders are "not a frivolous piece of
8 paper, idly entered, which can be cavalierly disregarded by counsel without peril." Johnson v.
9 Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir. 1992) quoting (Gestetner Corp. v. Case
10 Equip. Co., 108 F.R.D. 138, 141 (D. Maine 1985). Good cause must be shown for modification
11 of the scheduling order. Fed. R. Civ. P. 16(b)(4). The Ninth Circuit explained:

12 Rule 16(b)'s "good cause" standard primarily considers the diligence of the party
13 seeking the amendment. The district court may modify the pretrial schedule if it
14 cannot reasonably be met despite the diligence of the party seeking the extension.
15 Moreover, carelessness is not compatible with a finding of diligence and offers no
16 reason for a grant of relief. Although the existence of a degree of prejudice to the
17 party opposing the modification might supply additional reasons to deny a motion,
18 the focus of the inquiry is upon the moving party's reasons for modification. If
19 that party was not diligent, the inquiry should end

20 Plaintiff lists the names of six physicians he is currently seeing and 26 different medications
21 that he currently takes (presumably) to demonstrate that his medical conditions prevented him
22 from conducting discovery before the March 30, 2012 deadline. (Doc. 50 at 3). Plaintiff
23 provides several dates in 2011 and 2012 in which he was dealing with his medical issues: May
24 11, 2011 – May 14, 2011 (hospitalization), January 23, 2012 – January 30, 2012 (cardiac issues),
25 and March 22, 2012 (EGD). (Id. at 4). Plaintiff further alleges that from August 17, 2011 to
26 February 17, 2012, the medication he took created mental and physical limitations. (Id. at 5).
27 While the Court does not dispute that Plaintiff has had to deal with several medical issues during
28 this case, he has not demonstrated that the medical issues have prevented him from diligently
pursuing discovery. For example, the Scheduling Order in this case did not issue until October 19,
2011; thus, any date prior to this would not have affected Plaintiff's ability to conduct discovery.
Second, Plaintiff claims that his medication limited his mental and physical abilities from August
2011 to February 2012; however, during that same period of time, Plaintiff was able to file a 20

1 page Objection to Defendant’s Responses (Doc. 27), an 18 page Motion for Reconsideration
2 (Doc. 30), and two Scheduling Conference reports (Docs. 32 and 35). Thus, Plaintiff’s physical
3 and mental condition did not prevent him from requesting a modified scheduling order before the
4 close of discovery.

5 Additionally, Plaintiff claims that good cause exists to modify the scheduling order because
6 he has acted “diligently.” (Doc. 9 at 1 and 5). Plaintiff explains that he “diligently” pursued
7 Defendants’ reasons for their March 15, 2010 “invasion of his privacy” and claims that he has
8 asked Defendants three times to produce a transcription of “the text call” and a glass smoking
9 pipe “before the summons issued.” (*Id.*) From Plaintiff’s description, it does not appear that
10 Plaintiff ever sent Defendant a valid discovery request for such items, as Defendants had not yet
11 been served with any complaint. Other than Plaintiff’s request for the items some time “before
12 the summons issued” in May 2011 (Doc. 16), Plaintiff doesn’t explain another action he took to
13 obtain the discovery. As a result, Plaintiff has failed to provide the Court with any facts to show
14 that despite his diligent effort to obtain the requested discovery before the March 30, 2102, he
15 was unable to do so.

16 **2. Responses to Discovery Requests and Request for Hearing**

17 Plaintiff included in this Motion a request to compel Defendants to respond to
18 Plaintiff’s Interrogatories. (Doc. 50 at 8). Because the Court has already set a hearing date for
19 Plaintiff’s Motion to Compel, the Court **DISREGARDS** this request. The Court will address the
20 issue at the May 24, 2012 hearing. For the reasons set forth above, Plaintiff’s renewed Request
21 for Subpoenas is **DENIED**. (Doc. 40.)

22 **3. Request to Reconsider Magistrate Judge’s Rulings**

23 Plaintiff’s Motion includes a request for a de novo review of the “Magistrate’s findings
24 recommendations and orders inter alia.” (Doc. 50 at 8). It is not clear to which rulings or “other
25 things” Plaintiff refers, as the Court has issued several orders in this case. The Court’s most
26 recent orders, issued April 18, 2012, relate to Plaintiff’s request for subpoenas, settlement
27 agreements, and Plaintiff’s discovery dispute with Defendants. (Doc. 47, 48, and 49). For the
28 reasons discussed above, Plaintiff’s motion for reconsideration is not only vague, it appears

1 frivolous, and demonstrates no error by the Court. The Court therefore **DENIES** Plaintiff's
2 motion for reconsideration.

3 **ORDER**

4 Based upon the foregoing, the Court **ORDERS**:

- 5 1. Plaintiff's motion to modify the scheduling order is **DENIED**;
- 6 2. Plaintiff's motion or a hearing on the discovery dispute is **DISREGARDED**;
- 7 3. Plaintiff's renewed request for subpoenas to be issued is **DENIED**;
- 8 4. Plaintiff's request for reconsideration of previous orders is **DENIED**.

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11 IT IS SO ORDERED.

12 Dated: May 8, 2012

/s/ Jennifer L. Thurston
13 UNITED STATES MAGISTRATE JUDGE
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