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8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
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11	KEVIN E. FIELDS,)	Case No.: 1:10-cv-01699-AWI-BAM (PC)
12	Plaintiff,)	 ORDER GRANTING DEFENDANTS' MOTION TO MODIFY THE SCHEDULING ORDER (ECF No. 66) Dispositive Motion Deadline: June 27, 2014
13	v.)	
14	JOSE MASIEL, et al.,)	
15	Defendants.)	,
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17	I. Introduction		
18	Plaintiff Kevin E. Fields ("Plaintiff") is a state prisoner proceeding pro se and in forma		
19	pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against		
20	Defendants Masiel, Aguirre, and Hernandez for retaliation in violation of the First Amendment.		
21	Currently pending before the Court is Defendants' motion to modify the schedule, which was		
22	filed on March 27, 2014. (ECF No. 66.) Plaintiff did not file an opposition. The motion is deemed		
23	submitted. Local Rule 230(1).		
24	II. Procedural Background		
25	On January 23, 2013, the Court issued a Discovery and Scheduling Order. Pursuant to that		
26	order, discovery closed on September 23, 2013, and the deadline to file dispositive motions ended or		
27	December 2, 2013. (ECF No. 44.)		
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On January 17, 2014, the Court extended the discovery deadline to February 28, 2014, and the dispositive motion deadline to April 28, 2014. The deadlines were extended to resolve then-pending discovery motions. (ECF No. 63.)

Following extension of the deadlines, on February 5, 2014, the Court ordered Plaintiff to submit further discovery responses within thirty days. (ECF No. 64.) However, on March 17, 2014, Defendants filed a motion for sanctions based on Plaintiff's reported failure to provide the supplemental responses ordered by the Court. (ECF No. 65.) On April 21, 2014, the Court ordered Plaintiff to file a response to Defendants' motion for sanctions within twenty-one days. (ECF No. 67.) The deadline to respond has not expired.

On March 27, 2014, during pendency of the motion for sanctions, Defendants also filed the instant motion to modify the scheduling order. Defendants request that the Court vacate the dispositive motion deadline and, if necessary, reset the deadline after ruling on Defendants' motion for sanctions. In the alternative, Defendants request that the Court extend the dispositive motion deadline until at least seventy days after the Court issues a ruling on Defendants' motion for sanctions. (ECF No. 66.) Plaintiff has not opposed the request.

III. Discussion

Pursuant to Rule 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 Recreations, Inc.</u>, 975 F.2d 604, 609 (9th Cir. 1992). The court may modify the scheduling order "if it cannot reasonably be met despite the diligence of the party seeking the extension." <u>Id.</u> If the party was not diligent, the inquiry should end. <u>Id.</u>

Defendants indicate that they cannot complete a motion for summary judgment without Plaintiff's supplemental discovery responses. Additionally, Defendants indicate that a summary judgment motion may be unnecessary if the Court imposes dismissal sanctions. Based on the pending sanctions motion, the dispositive motion deadline cannot be met despite Defendants' apparent diligence. Accordingly, the Court finds good cause to modify the Discovery and Scheduling Order.

Defendants have requested that the Court either vacate the deadline and reset it, if necessary, after the motion for sanctions has been resolved or that the Court extend the dispositive motion deadline an additional seventy days after resolution of the sanctions motion. At this time, the Court declines Defendants' invitation to vacate the dispositive motion deadline in its entirety. Instead, the Court will extend the current deadline an additional sixty days to June 27, 2014.

IV. Conclusion and Order

Based on the above, Defendants' motion to modify the schedule is GRANTED. The dispositive motion deadline is extended to June 27, 2014.

IT IS SO ORDERED.

Dated: April 22, 2014 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE