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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	
13	v.) TO MODIFY THE SCHEDULING ORDER) (ECF No. 74)	
14	JOSE MASIEL, et al.,))	
15	Defendants.)	
16)	
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 June 16, 2014. (ECF No.74.) The motion is deemed submitted. ¹ Local Rule 230(1).		
23	II. Procedural Background		
24	On January 23, 2013, the Court issued a Discovery and Scheduling Order. Pursuant to that		
25	order, discovery closed on September 23, 2013, and the deadline to file dispositive motions ended on		
26	December 2, 2013. (ECF No. 44.)		
27	1 A a Diaintiff will not be projudiced by a result?	tion of the scheduling order it is uppersoner to such for a such	
28	¹ As Plaintiff will not be prejudiced by a modification of the scheduling order, it is unnecessary to wait for a response. Local Rule $230(1)$.		

- 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.)
- On April 22, 2014, the Court extended the dispositive motion deadline to June 27, 2014, pending resolution of Defendants' motion for sanctions. (ECF No. 68.)

Thereafter, on April 28, 2014, Plaintiff filed a motion requesting an extension of time to submit his discovery responses. (ECF No. 69.) Plaintiff filed a renewed motion for an extension of time on May 12, 2014. (ECF No. 71.) On May 20, 2014, the Court directed Defendants to file a response to Plaintiff's pending motions. (ECF No. 72.) Defendants filed a response on June 5, 2014. (ECF No. 73.) Shortly thereafter, on June 16, 2014, Defendants filed the instant motion to vacate the dispositive motion deadline and, if necessary, reset it after resolution of the motion for sanctions. (ECF No. 74.)

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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." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 15 16 609 (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." Id. If the party was not diligent, the inquiry 17 should end. Id. 18

19 Defendants indicate that they are awaiting resolution of the pending motion for sanctions, 20 along with Plaintiff's requests for an extension of time to supplement his discovery responses before 21 proceeding with any motion for summary judgment. Defendants indicate that a summary judgment 22 motion may be unnecessary if the Court imposes dismissal sanctions.

23 Based on the pending motions, the Court finds that the dispositive motion deadline cannot be 24 met despite Defendants' apparent diligence and Defendants have established good cause to modify the 25 Discovery and Scheduling Order.

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IV. **Conclusion and Order**

Based on the above, Defendants' motion to modify the scheduling order is GRANTED. The dispositive motion deadline is VACATED. As necessary and appropriate, the Court will reset the dispositive motion deadline following resolution of the pending motions.

IT IS SO ORDERED.

Dated: June 27, 2014

/s/ Barbara A. McAuliffe UNITED STATES MAGISTRATE JUDGE