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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,
Plaintiff,
vs.
P. PATTERSON, et al.,
Defendants.

1:10-cv-01700-LJO-GSA-PC
ORDER GRANTING REQUEST TO
MODIFY SCHEDULING ORDER
(Doc. 59.)
ORDER EXTENDING DISPOSITIVE
MOTIONS DEADLINE FOR ALL PARTIES
TO THIS ACTION

New Dispositive Motions Deadline: 08/07/15

I. BACKGROUND

Kevin E. Fields (“Plaintiff”) is a prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 17, 2010. (Doc. 1.) This action now proceeds with the First Amended Complaint filed on May 31, 2013, against defendant Correctional Officer P. Patterson (“Defendant”) for use of excessive force in violation of the Eighth Amendment.¹ (Doc. 16.)

¹On February 12, 2015, the court dismissed Plaintiff’s state law claims against defendants Molina and Finley and retaliation claims against defendants Patterson and Molina, on Plaintiff’s Rule 41 motion to dismiss. (Doc. 51.) The court also dismissed defendants Molina and Finley from this action, based on the dismissal of all of the claims against them. (*Id.*) Previously, on March 12, 2014, the Court dismissed all other claims and defendants from this action, under Rule 18(a) or for Plaintiff’s failure to state a claim. (Doc. 24.)

1 On June 10, 2014, the court issued a Scheduling Order establishing pretrial deadlines
2 for the parties, including a deadline of April 20, 2015 to file pretrial dispositive motions. (Doc.
3 31.) On March 25, 2015, Defendant filed a request to vacate or modify the dispositive motions
4 deadline. (Doc. 59.)

5 **II. MOTION TO MODIFY SCHEDULING ORDER**

6 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.
7 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,
8 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the
9 modification of a scheduling order must generally show that even with the exercise of due
10 diligence, they cannot meet the requirement of the order. Id. The court may also consider the
11 prejudice to the party opposing the modification. Id. If the party seeking to amend the
12 scheduling order fails to show due diligence the inquiry should end and the court should not
13 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087
14 (9th Cir. 2002). A party may obtain relief from the court's deadline date for discovery by
15 demonstrating good cause for allowing further discovery. Fed. R. Civ. P. 16(b)(4).

16 Defendant argues that good cause exists to vacate or modify the dispositive motions
17 deadline because Plaintiff still has not opposed Defendant's exhaustion summary judgment
18 motion filed over six months ago on September 10, 2014. Defendant asserts that the motion
19 may dispose of one of Plaintiff's claims, but without knowing the outcome, Defendant is
20 unable to discern whether it must be addressed in a dispositive motion on the merits.
21 Defendant argues that he has been diligent in completing discovery and seeking this
22 modification well in advance of the April 20, 2015 deadline. Defendant also argues that
23 modifying the deadline will not significantly impair the progress of this case or unfairly
24 prejudice Plaintiff.

25 The court finds good cause to extend the dispositive motions deadline in this action
26 until August 7, 2015. Thus, good cause appearing, Defendant's motion to modify the
27 Scheduling Order shall be granted.

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1 **III. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that:

- 3 1. Defendant's request to modify the Court's Scheduling Order, filed on June 10,
4 2014, is GRANTED;
- 5 2. The deadline for filing and serving pretrial dispositive motions is extended from
6 April 20, 2015 to August 7, 2015 for all parties to this action; and
- 7 4. All other provisions of the court's June 10, 2014 Scheduling Order remain the
8 same.

9
10 IT IS SO ORDERED.

11 Dated: March 31, 2015

/s/ Gary S. Austin
12 UNITED STATES MAGISTRATE JUDGE