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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,
Plaintiff,
vs.
RICHARD ROSENTHAL,
Defendant.

1:10-cv-01764-GSA-PC
ORDER DENYING PLAINTIFF’S MOTION
TO MODIFY SCHEDULING ORDER
(Doc. 47.)

I. BACKGROUND

Plaintiff is a prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by civil complaint at the Kings County Superior Court on August 11, 2010 (Case #10-C0309). On September 23, 2010, defendant Richard Rosenthal (“Defendant”) removed the case to federal court by filing a Notice of Removal of Action pursuant to 28 U.S.C. § 1441(b). (Doc. 1.) This case now proceeds on the Second Amended Complaint filed by Plaintiff on August 22, 2012, against Defendant Rosenthal for retaliation, in violation of the First Amendment. (Doc. 17.)

On December 17, 2012, the Court issued a Scheduling Order establishing deadlines of August 17, 2013 for completion of discovery, and October 28, 2013 for the parties to file pretrial dispositive motions. (Doc. 26.) On September 3, 2013, Plaintiff filed a motion to modify the Scheduling Order, which was granted by the Court on September 27, 2013,

1 extending the discovery deadline to November 18, 2013, and the dispositive motions deadline
2 to January 17, 2014. (Docs. 36, 40.)

3 On December 6, 2013, Plaintiff filed a second motion to modify the Scheduling Order.
4 (Doc. 47.) On December 19, 2013, Defendant filed an opposition. (Doc. 49.) Plaintiff has not
5 filed a reply to the opposition.

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

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

17 Plaintiff requests an extension of the discovery deadline from November 18, 2013 to
18 February 14, 2014. However, Plaintiff has not established good cause in his motion for
19 modification of the Scheduling Order.¹ Defendant opposes Plaintiff's motion as moot, offering
20 evidence that discovery between the parties is completed, and for Plaintiff's failure to show
21 good cause. The Court finds no good cause to modify the Scheduling Order in this action at
22 this stage of the proceedings. Therefore, Plaintiff's motion to modify the Scheduling Order
23 shall be denied.

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26 ¹ While Plaintiff refers to a declaration in support of his motion, there is no evidence on the
27 court's record that Plaintiff filed a declaration. (Court Record.) Defendant has provided the court with a copy of
28 Plaintiff's declaration which was served upon Defendant. (Exh. A to Opp'n, Doc. 49-1 at 5.) However, the
declaration is not dated or signed and therefore, if filed, would be stricken from the record under Local Rule 131
which requires "[a]ll pleadings and non-evidentiary documents [to be] signed by the individual attorney for the
party presenting them, or by the party involved if that party is appearing in propria persona." (Id. at 7.)

1 **III. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that plaintiff's motion to modify
3 the Court's Scheduling Order, filed on December 6, 2013, is DENIED.

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5
6 IT IS SO ORDERED.

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8 Dated: January 2, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE