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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 DESHAWN MITCHELL,

9 Plaintiff,

10 vs.

11 SERGEANT M. JONES, et al.,

12 Defendants.
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1:11-cv-00099-LJO-GSA-PC

ORDER GRANTING DEFENDANT'S
MOTION FOR RELIEF FROM THE
DISCOVERY/SCHEDULING ORDER
(Doc. 39.)

14 **I. BACKGROUND**

15 Deshawn Mitchell ("Plaintiff") is a state prisoner proceeding pro se with this civil rights
16 action pursuant to 42 U.S.C. § 1983. On January 20, 2011, Plaintiff filed the Complaint
17 commencing this action. (Doc. 1.) The court screened the Complaint and issued an order on
18 January 28, 2014, requiring Plaintiff to either file an amended complaint, or notify the court of
19 his willingness to proceed only on the claims found cognizable by the court. (Doc. 11.) On
20 February 7, 2014, Plaintiff notified the court of his willingness to proceed only on the
21 cognizable claims. (Doc. 13.) The case then proceeded on Plaintiff's original Complaint,
22 against defendant Sergeant M. Jones ("Defendant") for subjecting Plaintiff to adverse
23 conditions of confinement in violation of the Eighth Amendment.¹ (Doc. 1.) Defendant filed
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25 ¹ On March 13, 2014, the court issued an order dismissing all other claims and defendants from
26 this action, based on Plaintiff's failure to state a claim. (Doc. 15.) The order dismissed Plaintiff's claims for
27 improper processing of inmate appeals and for supervisory liability. (Id.) The order also dismissed defendants
28 Lieutenant D. James, Property Officer F. Carreon, Correctional Officer J. Mendez, Appeals Coordinator R.
Gomez, Appeals Coordinator R. Hall, and Appeals Coordinator L. Zinani from this action based on Plaintiff's
failure to state any claims against them. (Id.)

1 an Answer to the Complaint on August 7, 2014. (Doc. 32.) On August 8, 2014, the court
2 issued a discovery/scheduling order establishing a deadline of April 8, 2015 for the parties to
3 complete discovery, and a deadline of June 18, 2015 for the parties to file pretrial dispositive
4 motions. (Doc. 34.)

5 On March 25, 2015, Defendant Jones filed a notice of related cases, notifying the court
6 that this case was related to another case filed by Plaintiff at this court, case number 1:15-cv-
7 00467-DLB-PC; Mitchell v. Jones. (Doc. 36.) On April 6, 2015, the court consolidated this
8 case with case number 1:15-cv-00467-DLB-PC and ordered Plaintiff to file an amended
9 complaint including all of his claims against defendant Jones. (Doc. 37.) Defendant Jones was
10 advised in the order that he was not required to file an answer to the amended complaint until
11 after the court had screened the amended complaint. (Id. at 5:1-3.) On April 20, 2015, Plaintiff
12 filed the First Amended Complaint, which awaits the court's requisite screening. (Doc. 38.)

13 On June 16, 2015, defendant Jones filed a request for relief from the court's
14 discovery/scheduling order. (Doc. 39.)

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

16 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.
17 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,
18 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the
19 modification of a scheduling order must generally show that even with the exercise of due
20 diligence, they cannot meet the requirement of the order. Id. The court may also consider the
21 prejudice to the party opposing the modification. Id. If the party seeking to amend the
22 scheduling order fails to show due diligence the inquiry should end and the court should not
23 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087
24 (9th Cir. 2002).

25 Defendant Jones argues that good cause exists to grant him relief from the court's
26 discovery/scheduling order, because the First Amended Complaint has superceded it.
27 Defendant argues that he has been diligent in this matter, has timely complied with all

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1 deadlines, and is seeking relief only because the First Amended Complaint has not been
2 screened.

3 The court finds good cause to relieve defendant Jones from the deadlines and
4 requirements of the court's discovery/scheduling order of August 8, 2014. Thus, Defendant's
5 motion shall be granted.

6 **III. CONCLUSION**

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

- 8 1. Defendant Jones' request for relief from the court's discovery/scheduling order
9 of August 8, 2014 is GRANTED; and
- 10 2. The court shall screen the First Amended Complaint in due course and issue a
11 new discovery/scheduling order at a later stage of the proceedings.

12 IT IS SO ORDERED.

13 Dated: June 18, 2015

14 /s/ Gary S. Austin
15 UNITED STATES MAGISTRATE JUDGE