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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEVIN DARNELL BRYANT,

Plaintiff,

v.

GALLAGHER, et al.,

Defendants.

CASE NO. 1:11-cv-00446-LJO-BAM PC

ORDER DENYING PLAINTIFF’S MOTION TO
AMEND THE SCHEDULING ORDER AND
EXTEND THE DISCOVERY DEADLINE

(ECF No. 74)

THIRTY-DAY DEADLINE

Plaintiff Kevin Darnell Bryant (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the first amended complaint, filed July 5, 2011, against Defendant Romero for deliberate indifference to serious medical needs in violation of the Eighth Amendment, and Defendants Gallagher and Romero for conspiracy, retaliation in violation of the First Amendment and failure to protect in violation of the Eighth Amendment. On October 15, 2012, Plaintiff filed a motion to extend the discovery cut-off date to allow him to serve interrogatories on non-parties to this action. (ECF No. 73.) On October 17, 2012, an order issued granting Plaintiff’s motion for a subpoena duces tecum and granting a limited extension of the discovery deadline for the purposes of enforcing the subpoena duces tecum.

Federal Rule of Civil Procedure 33 allows interrogatories to be served only on parties to the litigation. While the Federal Rules allow a party to depose non-parties orally or in writing, Plaintiff would be required to comply with Federal Rules of Civil Procedure 30 and 31, which includes arranging for the recording of the deposition before an officer in compliance with Federal Rule of

1 Civil Procedure 28. The Court shall allow Plaintiff an opportunity to file a motion to extend the
2 deadline to take the depositions of non-parties if he so desires. To obtain an extension of time,
3 Plaintiff must make a showing in the motion that he has the ability to retain and compensate an
4 officer to take depositions of non-parties to this action. See Fed. R. Civ. P. 28.

5 Accordingly, Plaintiff's motion to extend the discovery deadline, filed October 15, 2012, is
6 DENIED without prejudice. Plaintiff shall be granted thirty days in which to file a motion to extend
7 the discovery deadline to depose non-parties to this action.

8
9 IT IS SO ORDERED.

10 **Dated: October 17, 2012**

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE