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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 WALTER RAPALO,) Case No.: 1:11-cv-01695-LJO-BAM (PC)
12 Plaintiff,)
13 v.) ORDER DENYING PLAINTIFF’S MOTION FOR
14 S. LOPEZ, et al.,) LEAVE TO AMEND AND FILE A SECOND
15 Defendants.) AMENDED COMPLAINT
16) (ECF No. 52)
17)

18 **I. Procedural Background**

19 Plaintiff Walter Rapalo (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis
20 in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendants
21 Lopez, Schaefer and Manasrah for deliberate indifference to serious medical needs in violation of the
22 Eighth Amendment.¹

23 On February 19, 2014, the Court issued a Discovery and Scheduling Order. Pursuant to that
24 order, the deadline to amend pleadings was August 19, 2014. (ECF No. 27.)

25 On March 6, 2015, Plaintiff filed a motion for leave to file an amended complaint. Plaintiff
26 also lodged his proposed second amended complaint. (ECF Nos. 51, 52.) Defendants opposed the
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28 ¹ Defendant Schaefer was erroneously sued as “Schaffer.”

1 motion on March 24, 2015. (ECF No. 53.) No reply was filed and the motion is deemed submitted.
2 Local Rule 230(l).

3 **II. Discussion**

4 **A. Proposed Amendment**

5 Plaintiff seeks to amend his complaint to add an Eighth Amendment deliberate indifference
6 claim against the California Department of Corrections and Rehabilitation (“CDCR”). (ECF No. 52,
7 p. 2.)

8 **B. Legal Standard**

9 As Plaintiff’s request to amend is after expiration of the Scheduling Order deadline for
10 amendment of pleadings, the Court must apply the standard for amending a scheduling order under
11 Federal Rule of Civil Procedure 16, rather than the liberal amendment standard of Rule 15. Coleman
12 v. Quaker Oats Co., 232 F.3d 1271, 1294-95 (9th Cir. 2000) (district court correctly addressed motion
13 for leave to amend under Rule 16 because it had issued a pretrial scheduling order that established a
14 timetable for amending the pleadings and the motion was filed after the deadline had expired).

15 Pursuant to Rule 16(b), a scheduling order “may be modified only for good cause and with the
16 judge’s consent.” Fed. R. Civ. P. 16(b)(4). The “good cause” standard “primarily considers the
17 diligence of the party seeking the amendment.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
18 609 (9th Cir. 1992). The district court may modify the scheduling order “if it cannot reasonably be
19 met despite the diligence of the party seeking the extension.” Id. If the party was not diligent, the
20 inquiry should end. Id.

21 Here, Plaintiff’s attempt to amend is untimely. Further, there is no indication that Plaintiff was
22 diligent in seeking amendment. Plaintiff made no effort to add his proposed cause of action against
23 CDCR prior to the relevant deadline to amend the pleadings in August 2014. Although Plaintiff
24 contends that he discovered the potential claim against CDCR based information obtained through
25 discovery, which is ongoing, his proposed amendment is nonetheless futile. The Eleventh
26 Amendment erects a general bar against federal lawsuits brought against the state. Wolfson v.
27 Brammer, 616 F.3d 1045, 1065-66 (9th Cir. 2010) (citation and quotation marks omitted). While
28 “[t]he Eleventh Amendment does not bar suits against a state official for prospective relief,” Wolfson,

1 616 F.3d at 1065-66, suits against the state or its agencies are barred absolutely, regardless of the form
2 of relief sought, e.g., Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 100, 104 S.Ct. 900
3 (1984); Buckwalter v. Nevada Bd. of Medical Examiners, 678 F.3d 737, 740 n.1 (9th Cir. 2012).

4 Thus, Plaintiff may not maintain a claim against CDCR. Therefore, any amendment is futile.

5 **III. Conclusion and Order**

6 For the reasons stated, Plaintiff's motion for leave to file an amended complaint is HEREBY
7 DENIED.

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9 IT IS SO ORDERED.

10 Dated: April 9, 2015

11 /s/ Barbara A. McAuliffe
12 UNITED STATES MAGISTRATE JUDGE
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