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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 G. J. GUTIERREZ,

10 Plaintiff,

11 vs.

12 A. GUTIERREZ,

13 Defendant.  
14

1:13-cv-00421-LJO-GSA-PC

ORDER DENYING PLAINTIFF'S  
MOTION FOR DISCOVERY  
SCHEDULING ORDER AS MOOT  
(Doc. 42.)

15 G. J. Gutierrez ("Plaintiff") is a state prisoner proceeding pro se in this civil rights  
16 action pursuant to 42 U.S.C. § 1983. This case now proceeds on Plaintiff's original  
17 Complaint, filed on March 22, 2013, against defendant A. Gutierrez, for use of excessive force  
18 in violation of the Eighth Amendment. (Doc. 1.)

19 On December 1, 2014, Plaintiff filed a motion seeking a discovery scheduling order  
20 commencing discovery in this action. (Doc. 42.) Plaintiff asserts that on September 17, 2014,  
21 the court denied Defendant's motion to dismiss, and since then no other orders have been  
22 issued.

23 Plaintiff's motion is moot because on November 21, 2014, the court issued a Discovery  
24 and Scheduling Order commencing discovery in this action.<sup>1</sup> (Doc. 41.) Therefore, Plaintiff's  
25 motion shall be denied.  
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27 <sup>1</sup> Ordinarily, the court issues a Discovery and Scheduling Order in cases such as Plaintiff's after one of  
28 the defendants files an Answer. In this case, Defendant filed an Answer on November 19, 2014, and the court  
issued the Discovery and Scheduling Order on November 21, 2014. (Docs. 40, 41.)

1           Accordingly, IT IS HEREBY ORDERED that Plaintiff’s motion for a Discovery  
2 Scheduling Order, filed on December 1, 2014, is DENIED as moot.

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4 IT IS SO ORDERED.

5       Dated: December 3, 2014

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