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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICHOLAS CHRISTOPHER PAPPAS,
Plaintiff,
vs.
NORTH KERN STATE PRISON, et al.,
Defendants.

1:14-cv-00109-DAD-EPG-PC

ORDER GRANTING MOTION TO
MODIFY SCHEDULING ORDER
(ECF No. 45.)

New Deadline To File Dispositive Motions:
Sixty Days After Court's Ruling
On Defendant's Exhaustion Motion
of May 1, 2015

I. BACKGROUND

Nicholas Christopher Pappas (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on January 27, 2014. (ECF No. 1.) This case now proceeds against defendant Correctional Officer J. Lopez (“Defendant”), for use of excessive force in violation of the Eighth Amendment.

On February 4, 2015, the Court issued a Discovery/Scheduling Order setting out deadlines in this action, including a May 4, 2015 deadline to file exhaustion motions, October 4, 2015 deadline to complete discovery, and December 14, 2015 deadline to file dispositive motions. (ECF No. 26.)

1 On December 11, 2015, Defendant filed a motion to modify the Discovery/Scheduling
2 Order to extend the deadline for filing dispositive motions. (ECF No. 45.) Plaintiff has not
3 opposed the motion.

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

5 **A. Legal Standard**

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

15 **B. Defendant's Motion**

16 Defendant requests an extension of the December 14, 2015 deadline to file dispositive
17 motions. Defendant argues that the parties have been diligent about meeting the Court's
18 deadlines, but the deadline to file dispositive motions is fast approaching and the Court has not
19 yet ruled on Defendant's exhaustion motion (motion for summary judgment for failure to
20 exhaust remedies), which will resolve the case if granted. In the event the Court denies the
21 exhaustion motion and the case is not resolved, Defendant seeks time to file another dispositive
22 motion after the Court's ruling. Defendant requests an extension of time until sixty days after
23 the date the Court rules on the exhaustion motion.

24 **C. Discussion**

25 The Court finds that Defendant has been diligent about meeting the Court's deadlines.
26 The Court issued the Discovery/Scheduling Order on February 4, 2015. (ECF No. 26.) The
27 deadline to file exhaustion motions was May 4, 2015. (Id.) Defendant filed an exhaustion
28 motion on May 1, 2015; Plaintiff filed an opposition to the motion on June 4, 2015; and

1 Defendant filed a reply to the opposition on June 11, 2015. (Declaration of Monica N.
2 Anderson at ¶2-3.) The Court issued findings and recommendations to grant the exhaustion
3 motion on December 30, 2015. (ECF No. 46.) Meanwhile, the deadline for the parties to file
4 dispositive motions expired. To date, the Court has not issued a final ruling on Defendant's
5 exhaustion motion.

6 Defendant has shown good cause for the Court to extend the deadline to file dispositive
7 motions. Therefore, Defendant's motion to modify the Discovery/Scheduling Order shall be
8 granted.

9 **III. CONCLUSION**

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

- 11 1. Defendant's motion to modify the Court's Discovery/Scheduling Order, filed on
12 December 11, 2015, is GRANTED;
- 13 2. The deadline for the parties to file dispositive motions is extended from
14 December 14, 2015 until sixty days after the date the Court rules on Defendant's
15 exhaustion motion filed on May 1, 2015; and
- 16 3. All other provisions of the Discovery/Scheduling order of February 4, 2015,
17 remain the same.

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19 IT IS SO ORDERED.

20 Dated: May 4, 2016

21 /s/ Eric P. Grogan
22 UNITED STATES MAGISTRATE JUDGE
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