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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH E. ANDERSON,
Plaintiff,
v.
A. GONZALES, et al.,
Defendants.

Case No. 1:14-cv-00362-AWI-BAM (PC)
ORDER GRANTING DEFENDANTS’
MOTION TO MODIFY DISCOVERY AND
SCHEDULING ORDER
(ECF No. 43)
ORDER VACATING THE SCHEDULING
ORDER
(ECF No. 34)

Plaintiff Joseph E. Anderson (“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 proceeds on Plaintiff’s second amended complaint against Defendant Laita for excessive force in violation of the Eighth Amendment, and against Defendant Gonzales for failure to intervene in the use of excessive force in violation of the Eighth Amendment and failure to protect Plaintiff from assault at the hands of another inmate in violation of the Eighth Amendment.

On August 29, 2016, the Court issued a discovery and scheduling order setting the deadline for all dispositive motions (other than a motion for summary judgment for failure to exhaust) for July 10, 2017. (ECF No. 34.)

On November 28, 2016, Defendants Laita and Gonzales filed a motion for summary judgment on exhaustion grounds. (ECF No. 36.) Plaintiff filed his opposition, (ECF No. 39), and Defendants filed their reply, (ECF No. 40). That motion is pending.

1 Currently before the Court is Defendants' timely motion to modify the discovery and
2 scheduling order. (ECF No. 43.) Although Plaintiff has not had an opportunity to respond to
3 Defendants' motion, the Court finds a response unnecessary. Local Rule 230(l).

4 Defendants assert that it would be a waste of the parties' and the Court's resources to
5 require Defendants to file a motion for summary judgment on the merits before the pending
6 motion for summary judgment on exhaustion grounds has been decided. If the motion is granted,
7 Defendant Laita will be dismissed from this action and there will be no need for him to file a
8 motion for summary judgment on the merits. Conversely, if the exhaustion motion is denied,
9 Defendants can avoid filing piecemeal dispositive motions. (ECF No. 43.)

10 Having considered the request, the Court finds good cause to vacate the dispositive
11 motion deadline in the August 29, 2016, scheduling order. Fed. R. Civ. P. 16(b)(4).

12 Accordingly, it is **HEREBY ORDERED** that the dispositive motion deadline set forth in
13 the August 29, 2016, scheduling order is **VACATED**. Once the motion for summary judgment
14 on exhaustion grounds has been resolved, the Court will issue an amended discovery and
15 scheduling order for the filing of dispositive motions.

16
17 **IT IS SO ORDERED.**

18 Dated: July 7, 2017

18 /s/ Barbara A. McAuliffe
19 UNITED STATES MAGISTRATE JUDGE