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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PERRY C. BLAIR,

 Plaintiff,

 v.

CDCR, et al.,

 Defendants.

Case No. 1:14-cv-01156-LJO-SAB (PC)

**ORDER GRANTING DEFENDANTS’
MOTION TO MODIFY SCHEDULING
ORDER AS TO DISPOSITIVE MOTION
DEADLINE**

(ECF No. 127)

Plaintiff Perry C. Blair 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 against Defendants Alva, Franco and O’Daniels for deliberate indifference, against Defendants Santos, Esqueda, and Ybarra for a due process violation, and against Defendant Johnson for retaliation.

On February 22, 2018, Defendants filed an exhaustion-related motion for summary judgment. (ECF No. 84.) On May 25, 2018, the undersigned issued Findings and Recommendations recommending that Defendants’ motion for summary judgment by granted in part and denied in part, subject to an evidentiary hearing. (ECF No. 99.) On July 30, 2018, the Findings and Recommendations were adopted in full. (ECF No. 103.)

On October 9, 2018, the undersigned issued an order granting Defendants’ motion for modification of the scheduling order and extending the dispositive motion deadline to ninety days after the final ruling on the pending Albino evidentiary hearing. (ECF No. 118.)

1 On October 24, 2018, the undersigned conducted an Albino evidentiary hearing in order to
2 determine the disputed issues of fact regarding exhaustion of administrative remedies. (ECF No.
3 121.) On May 17, 2019, the undersigned issued Findings and Recommendations following the
4 Albino evidentiary hearing recommending that two of Plaintiff's claims be dismissed for failure to
5 exhaust administrative remedies. (ECF No. 123.) On July 15, 2019, the District Judge issued an
6 order adopting the May 17, 2019 Findings and Recommendations in full, dismissing two of
7 Plaintiff's claims for failure to exhaust administrative remedies, and granting Defendants leave to
8 file a dispositive motion within thirty days from the date of service of this order. (ECF No. 126.)

9 Currently before the Court is Defendants' motion to modify scheduling order as to
10 dispositive motion deadline, filed on July 29, 2019. (ECF No. 127.) The Court finds a response
11 from Plaintiff is unnecessary and the motion is deemed submitted. Local Rule 230(l).

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

18 Defendants argue that good cause exists to modify the discovery and dispositive motion
19 deadlines because, since Defendants were relying on the Magistrate Judge's October 9, 2018 order
20 extending the dispositive motion deadline to ninety days after the final ruling on the pending Albino
21 evidentiary hearing, Defendants did not commence preparing their merits-based summary
22 judgment motion prior to the final ruling on the administrative exhaustion issues, as that ruling
23 would set the scope of claims left for adjudication in the merits-based summary judgment motion.
24 Additionally, Defendants argue that, as there are a large number of Defendants and claims, they
25 will need ninety days in order to complete and file their factually and legally complex merits-based
26 summary judgment motion. Finally, Defendants assert that they have been diligent in preparing
27 and filing the instant motion soon after the final decision on the administrative exhaustion matters
28 issued.

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Having considered Defendants' request, the Court finds good cause to modify the dispositive motion deadline. Therefore, Defendants' motion to modify scheduling order as to the dispositive motion deadline, (ECF No. 127), is HEREBY GRANTED. The dispositive motion deadline is extended to October 14, 2019. All other provisions set forth in the September 1, 2017 discovery and scheduling order, (ECF No. 74), remain in full force and effect.

IT IS SO ORDERED.

Dated: July 30, 2019


UNITED STATES MAGISTRATE JUDGE