

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RODRIGO LOPEZ,
Plaintiff,
v.
NORTH KERN STATE PRISON, et al.,
Defendants.

Case No. 1:16-cv-00881-DAD-BAM (PC)
ORDER GRANTING DEFENDANT’S
MOTION TO MODIFY SCHEDULING
ORDER
(ECF No. 34)

Plaintiff Rodrigo Lopez (“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 first amended complaint against Defendant McDermott for the failure to intervene while Inmate Cancel was attacking Plaintiff, in violation of the Eighth Amendment.

On April 2, 2018, Defendant filed a motion for summary judgment on the ground that Plaintiff failed to properly exhaust administrative remedies. (ECF No. 23.) Pursuant to the Court’s April 4, 2018 Discovery and Scheduling Order, the deadline for the completion of all discovery is December 4, 2018, and the deadline for filing all dispositive motions is February 11, 2019. (ECF No. 25.) The Court has stayed all non-exhaustion discovery pending the disposition of Defendant’s summary judgment motion. (ECF No. 33.)

On October 24, 2018, Defendants filed the instant motion to modify the Discovery and Scheduling Order to vacate the discovery and dispositive motion deadlines. (ECF No. 34.) The

1 Court finds a response unnecessary and the motion is deemed submitted. Local Rule 230(1).

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

8 Defendant states that he has diligently moved this matter forward by filing an early
9 exhaustion-based motion for summary judgment. The motion for summary judgment is
10 potentially dispositive of Plaintiff’s entire case, but the Court is unlikely to issue a final ruling on
11 the motion before the discovery cut off. Thus, it serves judicial economy to vacate the present
12 deadlines pending a final ruling on the motion for summary judgment. (ECF No. 34.)

13 Having considered Defendant’s moving papers, the Court finds good cause for the brief
14 continuance of the dispositive motion deadline in this action. Defendant has been diligent in
15 filing the dispositive motion, and it would be a waste of the resources of the Court and the parties
16 to require the filing of potentially unnecessary dispositive motions, or for the parties to conduct
17 unnecessary discovery. Plaintiff will not be prejudiced by the relief requested, as the Court will
18 reset the applicable deadlines if necessary following a ruling on the pending motion.

19 Based on the foregoing, Defendant’s motion to modify the scheduling order, (ECF No.
20 34), is **HEREBY GRANTED**. The discovery and dispositive motion deadlines are **VACATED**.
21 As necessary and appropriate, the Court will reset the deadlines following resolution of the
22 pending motion for summary judgment.
23 **IT IS SO ORDERED.**

24 Dated: October 26, 2018

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE
27
28