

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

JONATHAN L. DELL,  
Plaintiff,  
v.  
R. ESPINOZA et al.,  
Defendants.

**CASE No. 1:16-cv-1769-DAD-MJS (PC)**  
**ORDER DENYING AS MOOT**  
**DEFENDANTS' MOTION TO MODIFY**  
**THE DISCOVERY AND SCHEDULING**  
**ORDER**  
**(ECF NO. 44)**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's original November 22, 2016, complaint against Correctional Officer ("CO") R. Espinoza and CO R. Roque on an Eighth Amendment excessive force claim, against Sergeant C. James on an Eighth Amendment failure to protect claim, and against Dr. S. Barnett and Lt. L.A. Martinez on an Eighth Amendment deliberate indifference claim. (ECF No. 9.)

Pending before the Court is Defendants' motion to modify the Discovery and Scheduling Order given the pendency of their motion for summary judgment for failure to exhaust administrative remedies. (ECF No. 44.) On December 29, 2017, the undersigned issued findings and recommendations to grant Defendants' motion for summary judgment; those recommendations remain pending before the district judge. (ECF No. 45.) In that same order, the undersigned granted Defendants' motion for a

1 protective order and stayed all merits-based discovery pending resolution of Defendants'  
2 motion.

3 Since discovery has now been stayed, IT IS HEREBY ORDERED that  
4 Defendants' motion for modification of the discovery and scheduling (ECF No. 44) is  
5 DENIED as moot. If necessary, the undersigned will revisit the dates set in this case  
6 following the district judge's consideration of the undersigned's recommendation to grant  
7 Defendants' motion for summary judgment.

8  
9 IT IS SO ORDERED.

10 Dated: January 17, 2018

*/s/ Michael J. Seng*  
11 UNITED STATES MAGISTRATE JUDGE

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28