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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NATHANIEL MARCUS GANN,
Plaintiff,
v.
VERA-BROWN,
Defendant.

Case No. 1:18-cv-00084-BAM (PC)
ORDER GRANTING DEFENDANT’S
MOTION TO VACATE SCHEDULING
ORDER
(ECF No. 68)
ORDER VACATING DISPOSITIVE
MOTION DEADLINE

I. Procedural Background

Plaintiff Nathaniel Marcus Gann (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s second amended complaint against Defendant Vera-Brown (“Defendant”) for deliberate indifference to serious medical needs in violation of the Eighth Amendment. All parties have consented to Magistrate Judge jurisdiction. (ECF No. 52.)

On February 25, 2022, Defendant filed a motion for summary judgment on the ground that Plaintiff failed to exhaust the prison’s administrative grievance procedures for his claims against Defendant prior to filing this lawsuit. (ECF No. 57.) Also on February 25, 2022, Plaintiff filed a motion to compel discovery regarding Defendant’s responses to Plaintiff’s Request for Production of Documents (Set 1) and Plaintiff’s Interrogatories (Set 1). (ECF No. 58.) In partial response, Defendant filed a motion to stay all discovery on February 28, 2022. (ECF No. 59.)

1 The Court granted the request in part and ordered a stay of all merits-based discovery, but
2 clarified that Defendant was not relieved of the obligation to timely respond to any requests
3 relating to the issue of exhaustion of administrative remedies. (ECF No. 61.) Defendant filed an
4 opposition to the motion to compel on March 11, 2022. (ECF No. 63.) Plaintiff did not file a
5 reply.

6 On March 7, 2022, Plaintiff filed an opposition to the motion for summary judgment,
7 (ECF No. 62), and Defendant filed a reply on March 14, 2022, (ECF No. 64). Plaintiff filed what
8 appears to be a sur-reply on April 13, 2022, (ECF No. 66), and Defendant filed a motion to strike
9 the sur-reply on April 18, 2022, (ECF No. 67). The motion for summary judgment is now fully
10 briefed.

11 Pursuant to the Court's November 22, 2021 discovery and scheduling order, the deadline
12 for filing all dispositive motions (other than a motion for summary judgment for failure to
13 exhaust) is October 3, 2022. (ECF No. 55.)

14 Currently before the Court is Defendant's September 26, 2022 motion to vacate the
15 scheduling order, which the Court construes as a motion to modify the Court's discovery and
16 scheduling order. (ECF No. 68.) Although Plaintiff has not yet had an opportunity to respond to
17 the motion, the Court finds a response unnecessary, and the motion is deemed submitted. Local
18 Rule 230(1).

19 **II. Motion to Modify Discovery and Scheduling Order**

20 Defendant requests that the Court vacate the current scheduling order pending a ruling on
21 Defendant's motion for summary judgment raising an exhaustion defense. (ECF No. 68.)
22 Defendant contends that the pending motion for summary judgment may dispose of the entire
23 case, the Court has previously stayed discovery at the request of Defendant and without
24 opposition by Plaintiff, the parties have not completed fact based discovery to address the
25 questions of fact present in this matter, and the expenditure of resources required to prepare and
26 submit a dispositive motion will be needless if the Court grants Defendant's motion for summary
27 judgment. Specifically, Defendant requests that the Court vacate the current dispositive motion
28 deadline, and a new discovery and scheduling order should be issued, if necessary, following

1 resolution of the motion for summary judgment based on exhaustion. (*Id.*)

2 In light of the pending motion for summary judgment, and the possibility that the motion
3 may dispose of the entire action, the Court finds good cause to grant Defendant's motion. The
4 Court will vacate the current dispositive motion deadline, to be reset as necessary following
5 resolution of the pending motion for summary judgment.

6 **III. Order**

7 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 8 1. Defendant's motion to vacate scheduling order, (ECF No. 68), is GRANTED;
- 9 2. The deadline for filing all dispositive motions (other than a motion for summary judgment
10 for failure to exhaust) is VACATED; and
- 11 3. As necessary and appropriate, the Court will reset the dispositive motion deadline
12 following resolution of the pending motion for summary judgment.

13
14 IT IS SO ORDERED.

15 Dated: September 28, 2022

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE