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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL MADDEN, Successor-in-Interest to Ryan P. Madden, *et al.*,

Plaintiffs,

v.

HICKS, *et al.*,

Defendants.

Case No. 1:18-cv-00255-ADA-BAM (PC)

ORDER GRANTING DEFENDANTS’ SECOND MOTION TO MODIFY THE DISCOVERY AND SCHEDULING ORDER AND STAY DISCOVERY AND DISPOSITIVE MOTION DEADLINES (ECF No. 73)

ORDER GRANTING DEFENDANTS’ MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF (ECF No. 73)

Defendants’ Reply Due: January 22, 2024

Plaintiffs Michael Madden and Kathleen “Kathy” Madden (“Plaintiffs”), as Successors-in-Interest to Ryan P. Madden, are proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Hicks for excessive force and assault and battery claims, and against Defendants Silva and Hicks for California Bane Act and retaliation claims.

Pursuant to the Court’s May 3, 2023 discovery and scheduling order and August 2, 2023 order granting Defendants’ request for extension of time to serve discovery responses, the deadline for completion of all discovery is January 24, 2024, and the deadline for filing all dispositive motions (other than a motion for summary judgment for failure to exhaust) is March

1 11, 2024. (ECF Nos. 60, 65.)

2 On October 3, 2023, Defendants filed a motion for summary judgment on the grounds that
3 Plaintiffs failed to exhaust their administrative remedies. (ECF No. 70.) Following an extension
4 of time, Plaintiffs' opposition is due on or before December 6, 2023. (ECF No. 72.)

5 Currently before the Court is Defendants' second motion to modify the discovery and
6 scheduling order, filed November 22, 2023. (ECF No. 73.) Defendants request that the Court
7 stay the fact discovery and dispositive motion deadlines, to be reset for sixty days after the Court
8 rules on the pending exhaustion-based summary judgment motion. Defendants also request that
9 their deadline to file a reply to Plaintiffs' opposition to the summary judgment motion be
10 extended to January 22, 2024. (*Id.*)

11 In support of the motion, Defendants argue that because the pending summary judgment
12 motion may dispose of all of Plaintiffs' claims against Defendants, it would be a waste of
13 resources to require the parties to continue pursuing fact discovery on issues not related to the
14 exhaustion of administrative remedies. It would also be a waste of resources to require the parties
15 to prepare another pretrial dispositive motion before the pending exhaustion motion is decided.
16 Finally, defense counsel declares that he is currently scheduled to go on leave from December 11,
17 2023 through January 7, 2024, and will not have sufficient time to review Plaintiffs' opposition—
18 currently due on or before December 6, 2023—and prepare Defendants' reply before going on
19 leave. Defendants therefore request an extension of time until January 22, 2024, or fourteen days
20 after defense counsel returns from leave, to file their reply. (*Id.*)

21 Plaintiffs have not yet had an opportunity to file a response, but the Court finds a response
22 is unnecessary. The motion is deemed submitted. Local Rule 230(1).

23 Having considered the request, the Court finds good cause to modify the discovery and
24 scheduling order to stay fact-based discovery and to vacate the discovery and dispositive motion
25 deadlines. Fed. R. Civ. P. 16(b)(4). The Court finds it would be an efficient use of the resources
26 of the Court and the parties to address any exhaustion issues prior to reaching the merits of this
27 action. The Court further notes that a stay of fact-based discovery does not prevent the parties
28 from conducting any further discovery needed to address the issue of whether Plaintiffs exhausted

1 administrative remedies, particularly as the motion for summary judgment is not fully briefed.

2 Finally, the Court finds that the relief granted here will not result in prejudice to Plaintiffs.

3 Accordingly, IT IS HEREBY ORDERED as follows:

- 4 1. Defendants' second motion to modify the discovery and scheduling order, (ECF No.
5 73), is GRANTED;
- 6 2. Fact-based discovery (not including discovery related to the issue of exhaustion) is
7 STAYED;
- 8 3. The discovery and dispositive motion deadlines are VACATED;
- 9 4. Defendants' motion for extension of time to file a reply in support of the pending
10 exhaustion motion for summary judgment, (ECF No. 73), is GRANTED;
- 11 5. Defendants' reply in support of the pending exhaustion motion for summary judgment
12 is due on or before **January 22, 2024**; and
- 13 6. As necessary and appropriate, the Court will reset the discovery and dispositive
14 motion deadlines following resolution of the pending motion for summary judgment
15 for failure to exhaustion administrative remedies.

16
17 IT IS SO ORDERED.

18 Dated: November 28, 2023

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