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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE CHRISTOPHER SMITH,

 Plaintiff,

 v.

WEISS, *et al.*,

 Defendants.

Case No. 1:18-cv-00852-NONE-BAM (PC)

**ORDER GRANTING DEFENDANTS’ THIRD
MOTION TO MODIFY DISCOVERY AND
SCHEDULING ORDER DEADLINES
(ECF No. 51)**

**ORDER CLARIFYING DEADLINE FOR
PLAINTIFF TO FILE OPPOSITION OR
RESPONSE TO DEFENDANTS’ MOTION
TO DISMISS
(ECF No. 50)**

TWENTY-ONE (21) DAY DEADLINE

Plaintiff Lawrence Christopher Smith (“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 against Defendants Weiss, Hurtado, and Zavaleta¹ for the excessive force incident of November 15, 2013, in violation of the Eighth Amendment.

Following Plaintiff’s unsuccessful motion to quash or stay his deposition and Defendants’ subsequent motions to modify the discovery and scheduling order deadlines due to the COVID-19 crisis, the current discovery deadline is October 27, 2020, and the current dispositive motion deadline is December 28, 2020. (ECF No. 47.)

¹ Erroneously sued as “Zavleta.”

1 On August 12, 2020, Plaintiff filed a renewed motion for relief from judgment or order
2 regarding the Court's orders rejecting his prior motions to be exempted from a deposition, as well
3 as a renewed motion for a protective order prohibiting Defendants from taking Plaintiff's
4 deposition. (ECF Nos. 48, 49.) On September 2, 2020, Defendants filed a motion to dismiss that
5 includes their opposition to Plaintiff's motion for a protective order and motion for relief from
6 judgment or order. (ECF No. 50.) Defendants also filed a third motion to modify the discovery
7 and scheduling order deadlines. (ECF No. 51.)

8 In their motion to modify the discovery and scheduling order, Defendants state that, due to
9 Plaintiff's pending motions to prohibit his deposition and Defendants' pending motion to dismiss,
10 there is uncertainty as to whether Defendants will need to depose Plaintiff. Defendants argue that
11 they have exercised diligence in this case, timely answering the complaint and noticing Plaintiff's
12 original deposition for September 24, 2019. After Plaintiff's refusal to participate in the
13 deposition and the Court's extension of the deadline for Plaintiff's deposition, Defendants
14 attempted to reschedule the deposition for April 16, 2020. However, due to COVID-19-related
15 challenges, Defendants have been unable to take Plaintiff's deposition, and have received two
16 extensions of the discovery and dispositive motion deadlines. Although Defendants intended to
17 re-notice Plaintiff's deposition in advance of the current discovery deadline, Plaintiff's newest
18 motions indicating his refusal to be deposed, together with Defendant's pending motion to
19 dismiss, may obviate the need for any discovery or dispositive motions in this case. Accordingly,
20 Defendants request that, if necessary, the Court provide them 90 days from a ruling on the
21 pending motions to depose Plaintiff and bring any necessary motions to compel, and 120 days
22 from a ruling on the pending motions to file a dispositive motion. (Id.)

23 Plaintiff has not yet had an opportunity to file a response, but the Court finds a response is
24 unnecessary. The motion is deemed submitted. Local Rule 230(1).

25 Having considered the request, the Court finds good cause to grant the requested relief.
26 Fed. R. Civ. P. 16(b)(4). Defendants have worked diligently to meet the deadlines set by the
27 Court for taking Plaintiff's deposition and filing dispositive motions, but those deadlines are no
28 longer feasible due to the circumstances surrounding the COVID-19 outbreak. Furthermore, the

1 parties' motions are pending before the Court, and discovery and dispositive motions may no
2 longer be necessary depending on the outcome of those motions. Finally, the Court finds that
3 Plaintiff will not be prejudiced by the relief granted here.

4 Finally, the Court notes that because Defendants have filed their motion to dismiss
5 together with their opposition to Plaintiff's motions, it has created some ambiguity as to the filing
6 deadlines for Plaintiff's opposition to the motion to dismiss and his reply to Defendants'
7 opposition of his motions. Therefore, the Court finds it appropriate to clarify and extend the
8 deadline for Plaintiff to file his opposition and reply, which may be combined in one document, if
9 he chooses. Defendants will be permitted the usual seven days to file a reply to Plaintiff's
10 opposition after it is docketed.

11 Accordingly, IT IS HEREBY ORDERED as follows:

- 12 1. Defendants' third motion to modify discovery and scheduling order deadlines, (ECF
13 No. 51), is GRANTED;
- 14 2. The discovery and non-exhaustion dispositive motion deadlines set forth in the June
15 26, 2020 order granting Defendants' second motion to modify discovery and
16 scheduling order deadlines, (ECF No. 47), are VACATED;
- 17 3. The discovery and non-exhaustion dispositive motion deadlines will be reset, as
18 necessary, following resolution of the parties' pending motions;
- 19 4. Plaintiff's opposition to Defendants' motion to dismiss and reply to Defendants'
20 opposition of his motions are both due **twenty-one (21) days** from the date of service
21 of this order; and
- 22 5. **If Plaintiff fails to respond to Defendants' motion to dismiss in compliance with**
23 **this order, the Court will consider the motion unopposed.**

24
25 IT IS SO ORDERED.

26 Dated: September 16, 2020

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