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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MUJAHID IBN BURNEY III,

Plaintiff,

No. CIV S-05-1849 FCD EFB P

vs.

JEAN WOODFORD, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He alleges that defendants failed to provide him with a diet that provides adequate nutrition and conforms to his Muslim beliefs.

On July 14, 2008, plaintiff filed a motion for summary judgment. Defendants’ opposition, filed on March 6, 2009, argues in part, that the motion should be denied because it was filed more than seven months after the dispositive motion deadline. Plaintiff has not filed a reply brief.

Plaintiff’s motion is untimely. On July 5, 2007, the court issued a discovery and scheduling order, which required that all dispositive motions be filed on or before November 23, 2007. A schedule may be modified only upon a showing of good cause. Fed. R. Civ. P. 16(b).

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1 Good cause exists when the moving party demonstrates he cannot meet the deadline despite
2 exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.
3 1992). Plaintiff filed his motion for summary judgment almost eight months after the deadline
4 for doing so had passed. Plaintiff never requested that the scheduling order be modified, and
5 there is no indication that good cause exists to modify the scheduling order. Thus, the motion
6 should be denied as untimely. *See U.S. Dominator, Inc. v. Factory Ship Robert E. Resoff*, 768
7 F.2d 1099, 1104 (9th Cir. 1985).

8 Accordingly, it is hereby RECOMMENDED that plaintiff's July 14, 2008, motion for
9 summary judgment be denied as untimely.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Such a document should be captioned
14 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
15 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
16 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: October 6, 2009.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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