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

TONY ROBERTS,

Plaintiff,

No. 2:08-cv-2624 JAM KJN P

vs.

MATTHEW CATE, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding without counsel. On October 17, 2011, defendants filed a motion for court order waiving plaintiff’s psychotherapist-patient privilege in connection with plaintiff’s mental health treatment at California Medical Facility and the California Men’s Colony. Defendants contend that plaintiff has placed his mental health treatment at issue by claiming that defendants ignored a recommendation that plaintiff be housed near his family in Southern California. Defendants cite the court’s November 9, 2010 order in which the court stated that

[t]he nature of mental health treatment at California Men’s Colony is relevant to plaintiff’s allegations against Cate and Knowles based on plaintiff’s allegations that these defendants knew or should have known that appropriate mental health treatment needed by plaintiff was allegedly not available to plaintiff at California Men’s Colony.

1 (Dkt. No. 33 at 2 n.1.)

2 Plaintiff opposes the motion on the ground that discovery closed on June 8, 2011.  
3 Plaintiff states under penalty of perjury that at his March 16, 2011 deposition, plaintiff was asked  
4 by prior defense counsel to identify plaintiff's case manager, and plaintiff responded that B. Rice  
5 was plaintiff's case manager. (Dkt. No. 66 at 6.) Plaintiff states that during the first week of  
6 October, 2011, he was contacted by B. Rice, who told plaintiff she was contacted by the litigation  
7 coordinator and asked plaintiff to contact defendants' attorney. (Id.) B. Rice asked plaintiff if he  
8 would sign a release, and plaintiff informed her that since the discovery deadline expired on June  
9 8, 2011, plaintiff did not believe defendants were entitled to obtain the medical information, and  
10 would not sign the release. (Id.) Plaintiff argues that defendants have failed to show good cause  
11 to reopen discovery, or to address why defendants failed to seek these mental health records prior  
12 to the close of discovery. Plaintiff contends that defendants' motion "is simply an end run  
13 around the discovery deadline set by this court." (Dkt. No. 66 at 2.)

14 Defendants did not file a reply. Rather, on November 3, 2011, defendants filed a  
15 motion to extend the December 1, 2011 dispositive motion deadline until 60 days after the court  
16 rules on defendants' motion to waive privilege, stating "plaintiff's mental health providers are  
17 precluded from discussing "plaintiff's relevant mental health treatment" and

18 [a]bsent information from Plaintiff's mental health providers,  
19 Defendants are precluded from meeting their initial burden on  
20 summary judgment of establishing the absence of a genuine issue  
of fact.

21 (Dkt. No. 67 at 2.)

22 The court's initial scheduling order issued on December 15, 2010. (Dkt. No. 36.)  
23 On March 8, 2011, plaintiff's motion to modify the scheduling order was granted, and the  
24 discovery deadline was extended to June 8, 2011. (Dkt. No. 42.) On August 8, 2011, discovery  
25 was reopened for the limited purpose of resolving one discovery motion, but the parties were  
26 reminded that discovery was closed. (Dkt. No. 60 at 4.)

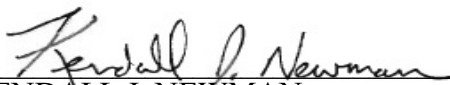
1           The record reflects defendants were put on notice as early as November 9, 2010,  
2 that plaintiff's mental health records were relevant to this action. Thus, the court finds  
3 defendants' motion for waiver of privilege is untimely as it was not filed prior to the discovery  
4 deadline. The denial of this motion is without prejudice, however, should defendants be able to  
5 show good cause to reopen discovery for this purpose. Fed. R. Civ. P. 16(b)(4). In light of the  
6 denial of defendants' motion, defendants' motion to extend the dispositive motion deadline is  
7 also denied without prejudice.

8           Accordingly, IT IS HEREBY ORDERED that:

9           1. Defendants' October 17, 2011 motion for waiver of privilege (dkt. no. 65) is  
10 denied without prejudice; and

11           2. Defendants' November 3, 2011 motion to extend the dispositive motion  
12 deadline (dkt. no. 67) is denied without prejudice.

13 DATED: November 28, 2011

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16 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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