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

NATHAN KEVIN TURNER,

Plaintiff,

No. 2:09-cv-00632-GEB-DAD P

vs.

KATHLINE DICKINSON, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights complaint pursuant to 42 U.S.C. § 1983. Before the court is plaintiff’s motion to compel discovery and request for an extension of time to file a motion seeking the denial or stay of defendant Rohrer’s motion for summary judgment.

On February 1, 2012, the court filed a discovery and scheduling order in this action. (Doc. No. 36.) In that order, the discovery deadline was set at May 25, 2012, and the parties were informed that discovery requests needed to be served no later than sixty-days prior to that deadline. (See Doc. No. 36 at 6.) Plaintiff’s discovery requests were not served sixty-days prior to the deadline established in the scheduling order. In opposition to plaintiff’s motion to compel, defendant Rohrer acknowledges that he was served with two sets of requests for admissions, interrogatories, and request for production of documents by plaintiff. However,

1 counsel for defendant Rohrer has attached to the opposition to the motion to compel copies of
2 plaintiff's proofs of service for the discovery requests which show that the first set of discovery
3 requests were not served on defendant until April 23, 2012, and the second set of discovery
4 requests were not served until May 21, 2012. Pursuant to the court's discovery and scheduling
5 order, the deadline for serving discovery requests was March 26, 2012. Although on April 12,
6 2012, plaintiff was granted an extension of time to serve his responses to defendant's discovery
7 requests, plaintiff did not request nor did the court grant him an extension of time to conduct
8 discovery on his own behalf. Therefore, plaintiff's motion to compel discovery will be denied
9 because plaintiff's discovery requests were untimely.

10 Plaintiff has requested an extension of time to file a motion to seeking the denial
11 or stay of defendant Rohrer's motion for summary judgment until discovery has been completed.
12 Defendant opposes granting plaintiff time to file a motion but does not oppose granting plaintiff
13 an extension of time to file his opposition to the pending summary judgment motion. As the
14 court has explained above, plaintiff's discovery requests were untimely and the time for
15 conducting discovery in this action has now passed. Therefore, plaintiff's request for an
16 extension of time to file a motion to deny or stay defendant Rohrer's summary judgment motion
17 will be denied. The court will, however, grant plaintiff an extension of time to file his opposition
18 to defendant's pending motion for summary judgment.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. Plaintiff's June 7, 2012 motion to compel discovery (Doc. No. 39) is denied;
21 2. Plaintiff's September 10, 2012 request for an extension of time to file a motion
22 to deny or stay defendant's motion for summary judgment (Doc. No. 43) is denied; and

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1 3. Within thirty days from the service of this order, plaintiff shall file his
2 opposition to defendant Rohrer's motion for summary judgment. Plaintiff's failure to comply
3 with this order may result in the dismissal of this action for lack of prosecution.

4 DATED: October 12, 2012.

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7 _____
8 DALE A. DROZD
9 UNITED STATES MAGISTRATE JUDGE

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