

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

DAMEN SMITH,

Plaintiff,

No. CIV S-09-0993 FCD EFB P

VS.

TUCKER,

ORDER

Defendant.

Plaintiff is a state prisoner proceeding with counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. Stipulation to Modify Scheduling Order

On June 14, 2010, the parties filed a stipulation providing that:

the discovery cut off date in this matter, currently set for on or about June 18, 2010, be continued for a period of 90 days in order to allow the parties hereto to conduct further discovery and investigation into the claims as alleged in plaintiff's Notice of Motion and Motion for Leave to File First Amended Complaint

Dckt. No. 30 at 1. The parties' June 14, 2010 stipulation, which would also require modification of the September 10, 2010 deadline for filing dispositive motions, cannot effect modification of the court's discovery and scheduling order. A schedule may be modified upon a showing of

1 good cause. Fed. R. Civ. P. 16(b). Good cause exists when the moving party demonstrates he
2 cannot meet the deadline despite exercising due diligence. *Johnson v. Mammoth Recreations,*
3 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Since the parties' single sentence stipulation does not
4 demonstrate that "good cause" justifies any modification of the discovery and scheduling order,
5 the stipulation will not be approved.

6 **II. Defendant's Failure to Oppose Plaintiff's Motion to Amend**

7 On June 4, 2010, plaintiff moved to amend his complaint. Dckt. No. 29. Plaintiff noticed
8 the motion for hearing on July 14, 2010. Dckt. No. 29. Court records reflect that defendant has
9 filed neither an opposition nor a statement of non-opposition to plaintiff's motion. Local Rule
10 230(c) provides that opposition to the granting of a motion, or a statement of non-opposition
11 thereto, must be served upon the moving party, and filed with this court, no later than fourteen
12 days preceding the noticed hearing date. Local Rule 230(c) further provides that "[n]o party will
13 be entitled to be heard in opposition to a motion at oral arguments if opposition to the motion has
14 not been timely filed by that party."

15 Accordingly, IT IS HEREBY ORDERED that:

16 1. The hearing on plaintiff's motion to amend is continued to August 11, 2010;

17 2. Defendant shall file an opposition or a statement of non-opposition to the motion, no
18 later than July 27, 2010. Defendant's failure to file an opposition will be deemed a statement of
19 non-opposition to the pending motion.

20 3. Plaintiff may file a reply to defendant's opposition, if any, on or before August 4,
21 2010.

22 4. The June 14, 2010 stipulation to continue the discovery cutoff date is not approved.

23 DATED: July 7, 2010

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25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE