

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 DWAYNE GILES,

No. 2:11-cv-1825-WBS-EFB P

12 Plaintiff,

13 v.

14 TOM FELKER, et al.,

ORDER

15 Defendants.
16

17 Plaintiff is a state prisoner proceeding without counsel in an action brought under 42
18 U.S.C. § 1983. He has filed a motion to compel defendants to answer his discovery requests.
19 ECF No. 83. Defendants Felker, Nachiondo, and Wong oppose plaintiff's motion, and defendant
20 Roche has not filed any response. ECF Nos. 84, 85. As explained below, plaintiff's motion to
21 compel is denied as moot.

22 The court screened plaintiff's first amended complaint on November 19, 2012, and found
23 that it stated cognizable claims against defendants Felker, Nachiondo, Roche, and Wong. ECF
24 No. 19. Nachiondo filed an answer to plaintiff's amended complaint on April 10, 2014, ECF No.
25 51, and defendants Felker, Roche, and Wong did the same on April 15, 2014, ECF No. 52.

26 On April 21, 2014, the court issued a Discovery and Scheduling Order ("scheduling
27 order"). ECF No. 53. Plaintiff subsequently filed a motion to modify the scheduling order. ECF
28 No. 72. On October 7, 2014, the court granted plaintiff's motion and modified the scheduling

1 order. ECF No. 82. The modified scheduling order explains that the parties may conduct
2 discovery until December 12, 2014, any motions necessary to compel discovery must be filed by
3 that date, and that all requests for discovery pursuant to Fed. R. Civ. P. 31, 33, 34, or 36 must be
4 served no later than October 14, 2014. *Id.* at 4.

5 The day before the court modified the scheduling order, however, plaintiff filed the instant
6 motion to compel. ECF No. 83. Because the court had not yet ruled on plaintiff's motion to
7 modify the scheduling order, plaintiff requested that the court rule on that motion or, in the
8 alternative, compel defendants to answer his discovery requests. *Id.* at 2. In their opposition to
9 plaintiff's motion to compel, defendants explain that, in light of the modified scheduling order,
10 they are withdrawing their objection to plaintiff's discovery requests as untimely and will respond
11 without plaintiff re-serving the requests. ECF No. 84 at 2; ECF No. 85 at 2. Because defendants
12 have indicated that they will voluntarily respond to plaintiff's discovery requests, plaintiff's
13 motion to compel is denied as moot.¹

14 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to compel (ECF No. 83)
15 is DENIED.

16 DATED: November 13, 2014.

17 
18 EDMUND F. BRENNAN
19 UNITED STATES MAGISTRATE JUDGE
20
21
22
23
24
25

26 ¹ As noted above, defendant Roche has not filed a response to plaintiff's motion to
27 compel. In the event that Roche does not join Felker, Wong, and Nachiondo in voluntarily
28 responding to plaintiff's discovery requests, plaintiff may file another motion to compel with the
court.