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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VINCENT E. COFIELD,
Plaintiff,
v.
G. SWARTHOUT, et al.,
Defendants.

No. 2:12-cv-2343-MCE-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed a “Motion for Extension of Time,” which would necessitate a modification of the scheduling order. ECF No. 41. For the reasons that follow, plaintiff’s motion is granted.

I. Background

Plaintiff filed his original complaint initiating this lawsuit on September 12, 2012, ECF No. 1, and is now proceeding on his first amended complaint, ECF No. 17. The court screened the amended complaint on August 14, 2013, and found that it stated cognizable claims against defendants Buckner, Long, and Valencia. ECF No. 19.

On July 30, 2014, defendants filed an answer to plaintiff’s first amended complaint. ECF No. 39. The following day, July 31, 2014, the court issued a Discovery and Scheduling Order (“scheduling order” or “order”). ECF No. 40. That order explained that the parties may conduct

1 discovery until November 21, 2014, and that the parties must serve all requests for discovery
2 pursuant to Federal Rules of Civil Procedure 31, 33, 34, or 36 no later than September 12, 2014.
3 *Id.* at 4. The order explicitly stated that requests to modify the schedule would be looked upon
4 with disfavor and must be supported by good cause. *Id.*

5 **II. Plaintiff's Motion**

6 A scheduling order may be modified upon a showing of good cause. Fed. R. Civ. P.
7 16(b). Good cause exists when the moving party demonstrates he cannot meet the deadline
8 despite exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th
9 Cir. 1992).

10 Plaintiff's motion, which seeks a forty-five day extension to file his requests for
11 discovery, is based on his alleged inability to access the prison's law library due to "excessive
12 unwarranted lockdowns" and delays in the prison's processing of legal mail. ECF No. 41 at 1-2.
13 In their opposition to plaintiff's motion, defendants emphasize the vagueness of plaintiff's
14 assertions. ECF No. 42 at 3. Specifically, defendants note that plaintiff has not identified the
15 dates or duration of the lockdowns, nor explained how the lockdowns, his inability to access the
16 law library, or the delays in mail processing affected his ability to serve discovery requests. *Id.*
17 Notwithstanding the lack of detail in his motion, plaintiff should have an appropriate opportunity
18 to conduct discovery. *See Calloway v. Veal*, 571 F. App'x 626, 627-28 (9th Cir. 2014) (finding
19 that the district court erred by not providing a pro per inmate "an appropriate opportunity to
20 conduct discovery," where the scheduling order gave the parties three and a half months from the
21 filing of the answer to complete discovery).

22 **III. Order**

23 Good cause appearing, it is HEREBY ORDERED that:

- 24 1. Plaintiff's motion to modify the scheduling order (ECF No. 41) is GRANTED.
- 25 2. The parties may conduct discovery until March 9, 2015. Any motions necessary to
26 compel discovery shall be filed by that date. All requests for discovery pursuant to Federal Rules
27 of Civil Procedure 31, 33, 34, or 36 shall be served not later than December 29, 2014.

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1 3. If plaintiff seeks leave to amend the complaint, he must file any motion to amend no
2 later than March 9, 2015.¹

3 4. Dispositive motions shall be filed on or before June 1, 2015. Motions shall be briefed
4 in accordance with paragraph 8 of the order filed September 5, 2013.

5 5. The court will schedule pretrial proceedings, if necessary, upon the resolution of any
6 pretrial motions filed. Requests to modify this schedule will be looked upon with disfavor and
7 must be supported by good cause pursuant to Federal Rule of Civil Procedure 16(b).

8 DATED: November 14, 2014.

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10 EDMUND F. BRENNAN
11 UNITED STATES MAGISTRATE JUDGE

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25 _____
26 ¹ Any motion to amend must be accompanied by a proposed amended complaint that is
27 rewritten or retyped so that it is complete in itself without reference to any earlier filed complaint.
28 E.D. Cal. Local R. 220. This is because an amended complaint supersedes any earlier filed
complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves
any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997)
(explaining the “amended complaint supersedes the original, that latter being treated thereafter as
non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).