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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANNY R. GARCIA,

Plaintiff,

v.

C/O HEATH, et al.,

Defendants.

No. 2:13-cv-1952 JAM AC P

ORDER and

FURTHER SCHEDULING ORDER

Plaintiff is a state prisoner who proceeds pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. This action proceeds against one defendant, correctional officer M. Mendoza, on plaintiff's First Amendment claim that defendant directed repeated searches of plaintiff's cell in retaliation for plaintiff filing administrative grievances.

Currently pending is plaintiff's second motion for summary judgment. See ECF No. 97. The instant motion duplicates plaintiff's motion filed October 26, 2015, except that the newly-filed motion is missing original Page 6. Cf. ECF No. 45.

The court denied plaintiff's first motion for summary judgment because prematurely filed. See ECF No. 49. Thereafter the court addressed the merits of defendants' timely motion for summary judgment premised on plaintiff's failure to exhaust administrative remedies as to several defendants, who were ultimately dismissed. See ECF No. 68, 78. The court then issued a Further Discovery and Scheduling Order, see ECF No. 79, which was stayed at plaintiff's request pending the Ninth Circuit Court of Appeals' consideration of plaintiff's interlocutory appeal, see

1 ECF Nos. 80-84. Following the Ninth Circuit's dismissal of plaintiff's appeal, see ECF Nos. 85,
2 89, the court lifted the stay and issued another Further Discovery and Scheduling Order, see ECF
3 No. 87. Thereafter, a settlement conference was scheduled. At plaintiff's request, the court
4 vacated all deadlines pending conclusion of the settlement conference. See ECF Nos. 90-1. The
5 parties participated in a settlement conference on June 5, 2017, but the case did not settle. See
6 ECF Nos. 91-6, 98-9.


7 Meanwhile, on May 25, 2017, plaintiff filed the pending motion for summary judgment.
8 ECF No. 97. Defendant filed an opposition on June 12, 2017. ECF No. 100.

9 Defendant contends, correctly, that the pending motion includes previously dismissed
10 defendants, raises new substantive claims, and fails to conform to the procedural requirements for
11 motions for summary judgment set forth in Rule 56, Federal Rules of Civil Procedure. These
12 problems are due in part to the fact that plaintiff prepared the duplicative motion prior to the
13 dismissal of several defendants. The substance of plaintiff's motion is no longer relevant. Even
14 if properly framed, the pending motion was prematurely filed, as the parties require additional
15 time for conducting discovery before filing their respective dispositive motions.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff's motion for summary judgment, ECF No. 97, is DENIED for the reasons set
18 forth above.
- 19 2. The parties may conduct discovery until **September 29, 2017**. Any motions necessary
20 to compel discovery shall be filed and served by that date. All requests for discovery pursuant to
21 Fed. R. Civ. P. 31, 33, 34 or 36 shall be served not later than sixty days prior to that date.
- 22 3. No pretrial dispositive motion shall be filed prior to the close of discovery.
- 23 4. All pretrial dispositive motions shall be filed and served on or before **December 15,**
24 **2017**. Motions shall be briefed in accordance with paragraph 8 of this court's order filed January
25 6, 2015 (ECF No. 20).

26 DATED: June 29, 2017

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28 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE