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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNELL BOYCE,
Plaintiff,
v.
MICHAEL FOX, et al.,
Defendants.

No. 2:14-cv-1743 KJM KJN P

ORDER

Plaintiff is a state prisoner, proceeding through counsel. On February 8, 2018, defendant Wong filed a motion to modify the scheduling order to extend the deadline for discovery and dispositive motions, due to the pendency of defendant’s motion for summary judgment alleging plaintiff failed to exhaust his administrative remedies. Defendant requests extension of the discovery deadline because the discovery deadline expires on February 9, 2018, and the dispositive motions deadline expires on May 4, 2018, and plaintiff has not yet been deposed. Defense counsel emailed plaintiff’s counsel to ask whether counsel would stipulate to resetting the discovery and dispositive motions deadlines so that defendant Wong could take plaintiff’s deposition if the pending motion is denied, but plaintiff’s counsel would not so stipulate. (ECF No. 58 at 2 n.1.)

“The district court is given broad discretion in supervising the pretrial phase of litigation.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (citation and internal


1 quotation marks omitted). Rule 16(b) provides that “[a] schedule may be modified only for good
2 cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “The schedule may be modified
3 ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’”
4 Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting
5 Johnson, 975 F.2d at 607).

6 The pending summary judgment motion addresses only the issue of exhaustion of
7 administrative remedies and does not address the merits of plaintiff’s underlying claims.
8 Defendant demonstrates good cause and diligence to extend the discovery and dispositive
9 motions deadlines. Defendant’s motion is granted. If defendant’s motion for summary judgment
10 on the issue of exhaustion is denied, the court will issue a revised scheduling order to provide
11 new deadlines for discovery and dispositive motions on the merits.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Defendant Wong’s motion (ECF No. 58) is granted;
- 14 2. The discovery and dispositive motions deadlines set in the October 17, 2017
15 scheduling order (ECF No. 54) are vacated; and
- 16 3. The court will issue a revised scheduling order, if appropriate, following resolution of
17 the pending motion for summary judgment.

18 Dated: February 21, 2018

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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