UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL THOMAS, Plaintiff, v. WARE, et al., Defendants.	No. 2:22-cv-00177-TLN-EFB (PC) ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Defendants move to vacate the dispositive motion deadline pending the court's determination on their motion to dismiss. ECF No. 51.

Federal Rule of Civil Procedure 16(b)(4) provides: "A schedule may be modified only for good cause and with the judge's consent." Courts considering a request to modify a schedule under Rule 16(b)(4) look primarily to the whether the party seeking modification could not reasonably meet the deadline despite his diligence. *Johnson v. Mammoth Recreations*, 975 F.2d 604, 609 (9th Cir. 1992). While the focus is primarily on the moving party's diligence, "the existence or degree of prejudice to the party opposing the motion might supply additional reasons to deny" the requested modification. *Id.*

The dispositive motion deadline is currently set on March 18, 2024. ECF No. 48. Defendants' motion to dismiss (filed concurrently with the motion to vacate the dispositive motion deadline) is based on their claim that plaintiff has not complied with the court's December

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19, 2023 order granting defendants' motion to compel and ordering plaintiff to serve supplemental discovery responses. ECF No. 48. Defendants argue that there is good cause to modify the schedule because, if the motion to dismiss is granted, no dispositive motions will be necessary, and if the court denies the motion and grants plaintiff additional time to serve discovery responses, defendants will need those responses for any motion for summary judgment they may file.

Good cause being shown, it is hereby ORDERED that:

1. Defendants' January 31, 2024 motion to vacate the dispositive motion deadline (ECF No. 51) is GRANTED; and
2. The court will set a new dispositive motion deadline should the pending motion to dismiss be denied.

Dated: February 12, 2024

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE