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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

SHANNON LEWIS AVERY, SR.,

1:07-cv-01175-LJO-GSA-PC

Plaintiff,

ORDER GRANTING DEFENDANTS'  
MOTION TO MODIFY THE SCHEDULING  
ORDER  
(Doc. 105.)

vs.

CDCR DIRECTOR, et al.,

ORDER EXTENDING DISPOSITIVE  
MOTIONS DEADLINE FOR ALL PARTIES  
TO THIS ACTION

Defendants.

New Dispositive Motions Deadline: 02/28/2013

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**I. BACKGROUND**

Plaintiff is a former state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On August 29, 2012, Defendants requested an extension of the deadline to file pretrial dispositive motions in this action. (Doc. 105.) Plaintiff has not filed an opposition.

**II. MOTION TO MODIFY SCHEDULING ORDER**

Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P. 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the modification of a scheduling order must generally show that even with the exercise of due diligence, they cannot

1 meet the requirement of the order. Id. The court may also consider the prejudice to the party  
2 opposing the modification. Id. If the party seeking to amend the scheduling order fails to show  
3 due diligence the inquiry should end and the court should not grant the motion to modify. Zivkovic  
4 v. Southern California Edison, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

5 Defendants request an extension of the dispositive motions deadline of September 7, 2012,  
6 established by the Court's Discovery/Scheduling Order of October 27, 2011, to allow time for the  
7 resolution of Defendants' two pending motions to compel, filed on April 13, 2012 and June 25,  
8 2012, and Defendants' pending motion to dismiss, filed on August 2, 2012. Defendants contend  
9 that the Court's decision on any one or all of these motions will necessarily impact their decision  
10 whether to file a motion for summary judgment in this action.

11 The Court finds that Defendants have shown due diligence in attempting to file their  
12 dispositive motions by the September 7, 2012 deadline established by the Court's Scheduling  
13 Order. Therefore, good cause appearing, Defendants' motion to modify the Scheduling Order shall  
14 be granted.

15 **III. CONCLUSION**

16 Based on the foregoing, IT IS HEREBY ORDERED that:

- 17 1. Defendants' motion to modify the Court's Scheduling Order, filed on August 29,  
18 2012, is GRANTED;
- 19 2. The NEW DEADLINE for the parties to file pretrial dispositive motions is February  
20 28, 2013; and
- 21 3. All other provisions of the Court's October 27, 2011 Scheduling Order remain the  
22 same.

23  
24 IT IS SO ORDERED.

25 **Dated: November 7, 2012**

26 **/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE