



1 March 22, 2019.

2 On March 22, 2019, Defendants Wu and Jimenez filed the instant motion to modify the  
3 Court's discovery and scheduling order to extend the time for them to file a motion for summary  
4 judgment.<sup>1</sup> (ECF No. 278.) The Court finds a response unnecessary and the motion is deemed  
5 submitted.<sup>2</sup> Local Rule 230(1).

6 Pursuant to Rule 16(b), a scheduling order "may be modified only for good cause and  
7 with the judge's consent." Fed. R. Civ. P. 16(b)(4). The "good cause" standard "primarily  
8 considers the diligence of the party seeking the amendment." Johnson v. Mammoth Recreations,  
9 Inc., 975 F.2d 604, 609 (9th Cir. 1992). The court may modify the scheduling order "if it cannot  
10 reasonably be met despite the diligence of the party seeking the extension." Id. If the party was  
11 not diligent, the inquiry should end. Id.

12 Defendants Wu and Jimenez state that they have been diligent in their defense of this  
13 action, narrowing the claims and defenses at issue through various motions to dismiss, as well as  
14 a motion for summary judgment for failure to exhaust administrative remedies. In keeping with  
15 the Court's October 24, 2019 discovery and scheduling order, Defendants deposed Plaintiff on  
16 January 16, 2019, in anticipation of timely drafting and filing a motion for summary judgment on  
17 the merits of the remaining claims against Defendants Wu and McGuinness. However, due to the  
18 demands of counsel's existing workload, and previously set deadlines in counsel's other assigned  
19 cases, counsel has been unable to turn to the task of preparing Defendants' motion for summary  
20 judgment by the current deadline. Thus, the motion is being assigned to another attorney in the  
21 Office of the Attorney General, who will need time to review the case file, consult with  
22 Defendants Wu and Jimenez, and draft and file the motion. The attorney reasonably believes he  
23 can complete these tasks within sixty days, or on or before May 21, 2019. (ECF No. 278.)

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25 <sup>1</sup> The Court notes that Defendant McGuinness, who is represented by separate counsel, timely filed a motion for  
26 summary judgment on March 22, 2019, and is not affected by the instant order. The Court notes that all applicable  
27 deadlines with respect to the filing of Plaintiff's opposition to Defendant McGuinness' motion, as well as any reply  
by Defendant McGuinness, remain unchanged by this order.

28 <sup>2</sup> Plaintiff will not be prejudiced by the inability to respond. If the Court grants the motion, it will also extend the  
deadline for Plaintiff to file a dispositive motion.

