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

NORMAN IVORY,

1:09-cv-01272-AWI-GSA-PC

Plaintiff,

ORDER GRANTING MOTION TO MODIFY  
DISCOVERY/SCHEDULING ORDER  
(Doc. 95.)

vs.

JAMES E. TILTON, et al.,

ORDER EXTENDING DISPOSITIVE MOTIONS  
DEADLINE FOR ALL PARTIES TO THIS  
ACTION

Defendants.

**New Dispositive Motions Deadline: 08/10/2012**

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**I. BACKGROUND**

Plaintiff is a prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action now proceeds on the original Complaint filed by Plaintiff on July 20, 2009, against defendant Correctional Officer S. Meraz for use of excessive force in violation of the Eighth Amendment, and against defendant Correctional Captain M. V. Sexton for retaliation in violation of the First Amendment.<sup>1</sup> (Doc. 1.)

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<sup>1</sup>All other claims and defendants were dismissed from this action by the Court on August 23, 2010, based on Plaintiff's failure to state a claim. (Doc. 30.)

1 On May 31, 2011, the Court issued a Discovery/Scheduling Order commencing  
2 discovery and establishing a deadline of April 9, 2012 for the parties to file pretrial dispositive  
3 motions. (Doc. 45.) On March 27, 2012, the Court issued an order extending the dispositive  
4 motions deadline to July 25, 2012. (Doc. 81.) On July 25, 2012, Defendants filed a motion for  
5 another extension of the dispositive motions deadline. (Doc. 95.)

6 **II. MOTION TO MODIFY SCHEDULING ORDER**

7 Modification of the Court's scheduling order requires a showing of good cause, Fed. R.  
8 Civ. P. 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth  
9 Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking  
10 the modification of a scheduling order must generally show that even with the exercise of due  
11 diligence, they cannot meet the requirement of the order. Id. The court may also consider the  
12 prejudice to the party opposing the modification. Id. If the party seeking to amend the  
13 scheduling order fails to show due diligence the inquiry should end and the court should not  
14 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087  
15 (9th Cir. 2002). A party may obtain relief from the court's deadline date for discovery by  
16 demonstrating good cause for allowing further discovery. Fed. R. Civ. P. 16(b)(4).

17 Defendants request a sixteen-day extension of the dispositive motions deadline for all  
18 parties to this action. Defendants' counsel seeks additional time due to a heavy workload in  
19 which his involvement in numerous other matters has prevented the filing of a motion for  
20 summary judgment in this action. (Declaration of Jeffrey Steele, Doc. 95-1.)

21 The Court finds that Defendants have shown due diligence in attempting to meet the  
22 deadline for filing dispositive motions established by the Court's Discovery/Scheduling Order.  
23 Thus, good cause appearing, Defendants' motion to modify the Discovery/Scheduling Order  
24 shall be granted, and the dispositive motions deadline shall be extended for all parties to this  
25 action.

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1 **III. CONCLUSION**

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

- 3 1. Defendants' motion to modify the Court's Discovery/Scheduling Order is  
4 GRANTED; and
- 5 2. The deadline to file pretrial dispositive motions is extended from July 25, 2012  
6 to August 10, 2012 for all parties to this action.

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8 IT IS SO ORDERED.

9 **Dated: July 26, 2012**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE