

## UNITED STATES DISTRICT COURT

## EASTERN DISTRICT OF CALIFORNIA

11 DEBRA STEWART, CASE NO. 1:09-cv-1928 SKO

12 Plaintiff, ORDER GRANTING EXTENSION OF TIME TO  
13 v. FILE DEFENDANT'S RESPONSIVE BRIEF14 MICHAEL J. ASTRUE, (Doc. 13)  
15 Commissioner of Social Security,  
16 Defendant.  
17 \_\_\_\_\_ /18 On July 9, 2010, Plaintiff filed her opening brief. (Doc. 12.) Accordingly, pursuant to the  
19 Court's scheduling order and Fed. R. Civ. P. 6(d), Defendant's responsive brief is due by August 12,  
20 2010. (Doc. 6 ¶ 7.)21 On August 5, 2010, the parties stipulated to a modification of the scheduling order to provide  
22 an extension of time to September 8, 2010, for Defendant to file his responsive brief because of a  
23 workload reallocation that caused this case to be recently reassigned to counsel for Defendant. (Doc.  
24 13.)25 A court's scheduling order may be modified upon a showing of "good cause," an inquiry that  
26 focuses on the reasonable diligence of the moving party. Fed. R. Civ. P. 16(b); *Noyes v. Kelly Servs.*,  
27 488 F.3d 1163, 1174 n.6 (9th Cir. 2007) (*citing Johnson v. Mammoth Recreations, Inc.*, 975 F.2d  
28 604, 609 (9th Cir. 1992)).

1 Good cause may be found to exist where the moving party shows that it diligently  
2 assisted the court with creating a workable scheduling order, that it is unable to  
3 comply with the scheduling order's deadlines due to matters that could not have  
4 reasonably been foreseen at the time of the issuance of the scheduling order, and that  
5 it was diligent in seeking an amendment once it became apparent that the party could  
6 not comply with the scheduling order.

7 *Kuschner v. Nationwide Credit, Inc.*, 256 F.R.D. 684, 687 (E.D. Cal. 2009).

8 Here, Defendant's inability to comply with the Court's deadlines apparently could not have  
9 been reasonably foreseen when the Court entered its scheduling order in November 2009. Further,  
10 Defendant requested an extension of time to file his responsive brief before its due date and was,  
11 therefore, diligent in seeking an extension of time. *Cf. Timbisha Shosone Tribe v. Kennedy*, 267  
12 F.R.D. 333, 336 & n.2 (E.D. Cal. 2010) (defendants failed to demonstrate diligence in seeking to  
13 amend opposition to motion because deadline for filing opposition had expired). In sum, Defendant  
14 has shown that, even with the exercise of due diligence, he is unable to meet the timetable set forth  
15 in the Court's scheduling order. *See Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir.  
16 2002). The Court, therefore, finds that good cause exists for an extension of time for Defendant to  
17 file his responsive brief.

18 Accordingly, upon the parties' stipulation and for good cause shown, Defendant shall file and  
19 serve his responsive brief **by no later than September 8, 2010**. Any reply brief shall be filed and  
20 served fifteen (15) days after service of the responsive brief.

21 IT IS SO ORDERED.

22 Dated: August 6, 2010

23 /s/ Sheila K. Oberto  
24 UNITED STATES MAGISTRATE JUDGE