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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

LUIS VALENZUELA RODRIGUEZ,	)	Case No.: 1:10-cv-00858 DAD DLB (PC)
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANTS' MOTION
v.	)	TO MODIFY DISCOVERY AND SCHEDULING
	)	ORDER
HUBBARD, et al.,	)	(ECF No. 155)
	)	
Defendants.	)	Discovery Deadline: June 27, 2016
	)	Dispositive Motion Deadline: August 29, 2016
	)	

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Plaintiff Luis Valenzuela Rodriguez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 28 U.S.C. § 1983. This action is proceeding on Plaintiff’s Third Amended Complaint against Defendants Biter, Phillips, Da Viega, Ozaeta, Betzinger, Gregory, Garza, Wegman, Alic, Speidell and Rankin on claims of violation of the Free Exercise Clause of the First Amendment, violation of the Equal Protection Clause of the Fourteenth Amendment, retaliation in violation of the First Amendment, and deliberate indifference to Plaintiff’s safety in violation of the Eighth Amendment.

On January 30, 2015, the Court issued a Discovery and Scheduling Order. (ECF No. 109.) According to the Order, the deadline for the parties to complete discovery was set for June 29, 2015, and the deadline to file dispositive motions was set to August 27, 2015.

1 On April 29, 2015, Defendants filed a motion for summary judgment. On April 30, 2015,  
2 Defendants moved to modify the discovery and scheduling order. On May 4, 2015, the Court granted  
3 the motion and extended the discovery deadline to August 31, 2015, and the dispositive motion  
4 deadline to October 26, 2015. On September 1, 2015, Defendants filed a motion for judgment on the  
5 pleadings. Also on September 1, 2015, the Court modified the scheduling order, and the discovery  
6 deadline was extended to October 30, 2015, and the deadline for filing dispositive motions was  
7 extended to December 28, 2015.

8 On October 22, 2015, Defendants filed a motion to further modify the discovery and  
9 scheduling order. On October 28, 2015, Defendants' motion was granted. The discovery deadline  
10 was moved to January 29, 2016, and the dispositive motion was moved to March 28, 2016.

11 On February 9, 2016, the Court issued a Findings and Recommendation that recommended  
12 Defendants' motion for summary judgment based on exhaustion be granted and the claims be  
13 dismissed without prejudice. The parties were granted thirty days to file objections, and to date, no  
14 objections have been filed. The Findings and Recommendations will be submitted to the District  
15 Judge for review.

16 On March 9, 2016, Defendants filed the instant motion to modify the scheduling order.  
17 Defendants state they intend to file a motion for summary judgment based on the merits of the action  
18 and qualified immunity; however, the current motion for summary judgment based on exhaustion is  
19 pending and has the potential of terminating the case. Therefore, Defendants argue that the deadlines  
20 should be moved to permit the issue of exhaustion to be decided before Defendants are required to file  
21 their motions for summary judgment on the merits. Defendants argue that this would avoid any  
22 unnecessary expending of resources.

23 Modification of the pretrial scheduling order requires a showing of good cause. Fed. R. Civ. P.  
24 16(b)(4). "The schedule may be modified 'if it cannot reasonably be met despite the diligence of the  
25 party seeking the extension.'" Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1087 (9th  
26 Cir. 2002) (quoting Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992)). "If  
27 the party seeking the modification 'was not diligent, the inquiry should end' and the motion to modify  
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1 should not be granted.” Id. In light of the above, the Court finds good cause to extend the deadlines  
2 for discovery and dispositive motions. Fed. R. Civ. P. 16(b)(4).

3 **ORDER**

4 Accordingly, IT IS HEREBY ORDERED that the Discovery and Scheduling Order (ECF No.  
5 109) is modified as follows: the discovery cut-off shall be extended to June 27, 2016, and the deadline  
6 to file dispositive motions shall be extended from March 28, 2016, to August 29, 2016.

7  
8 IT IS SO ORDERED.

9 Dated: March 11, 2016

/s/ Dennis L. Beck  
10 UNITED STATES MAGISTRATE JUDGE