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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DANIEL MASTERSON,  
Plaintiff,  
vs.  
SUZANNE KILLEN, et al.,  
Defendants.

1:11-cv-01179-LJO-GSA-PC  
ORDER GRANTING PARTIES'  
REQUESTS TO MODIFY SCHEDULING  
ORDER  
(ECF Nos. 51, 53.)  
ORDER EXTENDING DEADLINES FOR  
ALL PARTIES TO THIS ACTION  
**New Discovery Deadline: 10/15/15**  
**New Dispositive Motions Deadline: 12/15/15**

**I. BACKGROUND**

Daniel Masterson ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 18, 2011. (ECF No. 1.) This case now proceeds with Plaintiff's Third Amended Complaint filed on November 22, 2013, against defendants Suzanne Killen, Velva Rowell, Brad Hall, Michael Fisher, Lieutenant F. A. Rodriguez, Kelly Santoro, and Captain Randy Tolson for retaliation, and against defendants Suzanne Killen,

1 Velva Rowell, Brad Hall, Lieutenant F. A. Rodriguez, Kelly Santoro, and Captain Randy  
2 Tolson for conspiracy to retaliate against Plaintiff.<sup>1</sup> (ECF No. 28.) On November 14, 2014, the  
3 court issued a Discovery and Scheduling Order, establishing pre-trial deadlines for the parties,  
4 including a deadline of July 14, 2015 to complete discovery, including the filing of motions to  
5 compel, and a deadline of September 24, 2015 for filing dispositive motions. (ECF No. 42.)

6 On July 8, 2015, Defendants filed a request to modify the Discovery and Scheduling  
7 Order, to allow them time to re-schedule Plaintiff's deposition. (ECF No. 51.) On July 13,  
8 2015, Plaintiff filed a request for an extension of time to file a motion to compel, which the  
9 court construes as a request to modify the Discovery and Scheduling Order. (ECF No. 53.)

10 The parties' requests to modify the Discovery and Scheduling Order are now before the  
11 court.

## 12 **II. MOTION TO MODIFY SCHEDULING ORDER**

13 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.  
14 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,  
15 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the  
16 modification of a scheduling order must generally show that even with the exercise of due  
17 diligence, they cannot meet the requirement of the order. Id. The court may also consider the  
18 prejudice to the party opposing the modification. Id. If the party seeking to amend the  
19 scheduling order fails to show due diligence the inquiry should end and the court should not  
20 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087  
21 (9th Cir. 2002). A party may obtain relief from the court's deadline date for discovery by  
22 demonstrating good cause for allowing further discovery. Fed. R. Civ. P. 16(b)(4).

23 Defendants request an extension of the discovery deadline so they can re-schedule  
24 Plaintiff's deposition, following an unexpected court-reporter cancellation. Plaintiff requests  
25 an extension of the discovery deadline to file a motion to compel, because he has not received  
26 all of Defendants' responses to his requests for admissions and interrogatories. The court finds

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28 <sup>1</sup> On June 30, 2014, the court issued an order dismissing all other claims and defendants from  
this action, for failure to state a claim. (ECF No. 31.)

1 good cause to extend the deadlines in this action for all parties. Thus, good cause appearing,  
2 the parties' motions to modify the Scheduling Order shall be granted.

3 **III. CONCLUSION**

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

- 5 1. Defendants request to modify the Court's Scheduling Order, filed on July 8,  
6 2015, is GRANTED;
- 7 2. Plaintiff's request to modify the Court's Scheduling Order, filed on July 13,  
8 2015, is GRANTED;
- 9 3. The deadline for completion of discovery, including the filing of motions to  
10 compel, is extended from July 14, 2015 to **October 15, 2015**, for all parties to  
11 this action;
- 12 4. The deadline for filing pretrial dispositive motions is extended from September  
13 24, 2015 to **December 15, 2015**, for all parties to this action; and
- 14 5. All other provisions of the court's November 14, 2014 Scheduling Order remain  
15 the same.

16  
17 IT IS SO ORDERED.

18 Dated: **July 15, 2015**

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