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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DEVON DION MANNINGS,

12 Plaintiff,

13 vs.

14 C/O PALERMO, et al.,

15 Defendants.  
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1:12-cv-02038-AWI-GSA-PC

ORDER GRANTING DEFENDANTS'  
MOTION TO MODIFY SCHEDULING  
ORDER  
(Doc. 24.)

ORDER EXTENDING DISPOSITIVE  
MOTIONS DEADLINE FOR ALL PARTIES  
TO THIS ACTION

**New Dispositive Motions Deadline: 06/08/15**

19 **I. BACKGROUND**

20 Devon Dion Mannings (“Plaintiff”) is a state prisoner proceeding pro se with this civil  
21 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this  
22 action at the United States District Court for the Southern District of California on December 6,  
23 2012. (Doc. 1.) The case was transferred to the Eastern District of California on December 13,  
24 2012. (Doc. 4.) This action now proceeds with the original Complaint, against defendants  
25 Palermo, Smith, and Tyler (“Defendants”) for use of excessive force in violation of the Eighth  
26 Amendment.<sup>1</sup>

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28 <sup>1</sup>On February 27, 2014, the court issued an order dismissing all other claims and defendants from this action, based on Plaintiff’s failure to state a claim under § 1983. (Doc. 12.)

1 On May 29, 2014, the court issued a Scheduling Order establishing pretrial deadlines  
2 for the parties, including a deadline of April 9, 2015 to file pretrial dispositive motions. (Doc.  
3 17.) On April 8, 2015, defendants Palermo and Tyler filed a motion to extend the dispositive  
4 motions deadline. (Doc. 24.) On April 8, 2015, defendant Smith filed a joinder to the motion.  
5 (Doc. 27.)

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

7 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.  
8 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,  
9 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the  
10 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 seek an extension of the dispositive motions deadline for this case.  
18 Defendants assert that they have diligently attempted to complete all the work in preparation of  
19 filing a dispositive motion, but due to the complexities of the case, defense counsel's other  
20 obligations, and the need to substitute new counsel for defendant Smith, they will be unable to  
21 meet the April 9, 2015 deadline.

22 The court finds good cause to extend the dispositive motions deadline in this action  
23 until June 8, 2015. Thus, good cause appearing, Defendants' motion to modify the Scheduling  
24 Order shall be granted.

## 25 **III. CONCLUSION**

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

- 27 1. Defendants' motion to modify the Court's Scheduling Order, filed on April 8,  
28 2015, is GRANTED;

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- 2. The deadline for filing and serving pretrial dispositive motions is extended from April 9, 2015 to **June 8, 2015** for all parties to this action; and
- 4. All other provisions of the court's May 29, 2014 Scheduling Order remain the same.

IT IS SO ORDERED.

Dated: April 9, 2015

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE