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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 BRIAN CAPUTO,

11 Plaintiff,

12 v.

13 GONZALES, et al.,

14 Defendants.  
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Case No. 1:15-cv-01008-LJO-EPG (PC)

ORDER RE: PLAINTIFF'S RESPONSE TO  
MOTION BY DEFENDANT MICHELLE  
BLACK FOR LEAVE TO FILE A MOTION  
FOR SUMMARY JUDGMENT

(ECF NO. 178)

16 Brian Caputo ("Plaintiff") is a prisoner<sup>1</sup> proceeding *pro se* and *in forma pauperis* in this  
17 this civil rights action filed pursuant to 42 U.S.C. § 1983.

18 On May 23, 2019, defendant Black filed a motion for leave to file a motion for  
19 summary judgment. (ECF No. 173). Finding good cause to modify the schedule, on May 30,  
20 2019, the Court granted defendant Black two weeks to file a motion for summary judgment.  
21 (ECF No. 177).

22 On June 7, 2019, Plaintiff filed a response to defendant Black's motion, arguing that  
23 defendant Black should not be permitted to file a motion for summary judgment at this time.  
24 (ECF No. 178).

25 While the Court already granted Defendant's motion, the Court has reviewed Plaintiff's  
26 response and it does not change the Court's analysis. Plaintiff argues that the delay was not his

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28 <sup>1</sup> Plaintiff was detained at Kern County Jail at the time of the incidents alleged in the complaint. He is  
now incarcerated at USP Yazoo City.

1 fault, and he appears to be correct. However, the delay does not have to be Plaintiff's fault for  
2 there to be good cause to modify the schedule. The legal question is whether it is Defendant  
3 Black's fault for not filing the motion earlier, and even Plaintiff agrees it is not.

4 As to Plaintiff's argument that defendant Black is not entitled to summary judgment, he  
5 will have the opportunity to make those arguments in response to defendant Black's motion for  
6 summary judgment.

7 The Court notes that the trial date remains as previously set.

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9 IT IS SO ORDERED.

10 Dated: June 11, 2019

11 /s/ Eric P. Grogan  
12 UNITED STATES MAGISTRATE JUDGE  
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