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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 DEVONTE HARRIS,

12 Plaintiff,

13 vs.

14 HUMBERTO GERMAN, et al.,

15 Defendants.
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1:15-cv-01462-DAD-GSA-PC

ORDER GRANTING PLAINTIFF'S
MOTION TO MODIFY SCHEDULING
ORDER
(ECF No. 40.)

ORDER RE-OPENING DISCOVERY AND
SETTING NEW DEADLINES TO
COMPLETE DISCOVERY AND FILE
DISPOSITIVE MOTIONS, FOR ALL
PARTIES

18 New Discovery Deadline: November 30, 2018

19 New Dispositive Motions Deadline: January 30, 2019
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22 **I. BACKGROUND**

23 Plaintiff Devonte Harris is a prisoner proceeding *pro se* and *in forma pauperis* with this
24 civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with the First Amended
25 Complaint filed by Plaintiff on March 14, 2016, against defendants Correctional Officer (C/O)
26 Humberto German, C/O Philip Holguin, and C/O R. Bunitzki (collectively, "Defendants"), for use
27 of excessive force in violation of the Eighth Amendment; and against defendant C/O Philip
28 Holguin for retaliation in violation of the First Amendment. (ECF No. 8.)

1 On March 19, 2018, the court issued a Discovery and Scheduling Order establishing
2 pretrial deadlines for the parties, including a discovery deadline of August 18, 2018, and a
3 deadline of October 18, 2018 for filing dispositive motions. (ECF No. 37.) On August 23, 2018,
4 Plaintiff filed a motion to modify the Scheduling Order. (ECF No. 40.) Defendants have not
5 filed an opposition, and the time to do so has expired.

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 scheduling
13 order fails to show due diligence the inquiry should end and the Court should not grant the motion
14 to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

15 Plaintiff requests a sixty-day extension of the discovery deadline asserting that he has not
16 had access to the law library, his personal legal books, or the documents related to his case for
17 the majority of the time since issuance of the scheduling order, due to events at the prison out of
18 his control. Defendants have not opposed an extension of the discovery deadline.

19 The court finds good cause to extend the discovery deadline and the deadline to file
20 dispositive motions, for all parties to this case. Plaintiff has shown that he was diligent in
21 attempting to conduct discovery but was unable to meet the court's deadline. Therefore,
22 Plaintiff's motion to modify the Discovery and Scheduling Order shall be granted.

23 **III. CONCLUSION**

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

- 25 1. Plaintiff's motion to modify the court's March 19, 2018 Discovery and Scheduling
26 Order, is GRANTED;

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2. Discovery is re-opened, and the deadline for the completion of discovery, including the filing of motions to compel, is extended from August 18, 2018 to **November 30, 2018**; for all parties to this action;
3. The deadline for filing and serving pretrial dispositive motions is extended from October 18, 2018 to **January 30, 2019** for all parties to this action; and
4. All other provisions of the court's March 19, 2018 Discovery and Scheduling Order remain the same.

IT IS SO ORDERED.

Dated: **September 21, 2018**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE