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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 AND MOTION FOR EXTENSION
OF TIME TO FILE RESPONSES TO
DEFENDANTS' MOTION TO COMPEL
AND MOTION FOR SUMMARY
JUDGMENT
(ECF No. 32.)**

**SIXTY-DAY DEADLINE FOR PLAINTIFF
TO FILE RESPONSE TO DEFENDANTS'
MOTION TO COMPEL
(ECF No. 38.)**

**SIXTY-DAY DEADLINE FOR PLAINTIFF
TO FILE OPPOSITION OR NOTICE OF
NON-OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
(ECF No. 44.)**

New discovery deadline: 01/29/2019

New dispositive motions deadline: 03/30/2019

25 **I. BACKGROUND**

26 Devonte Harris ("Plaintiff") is a prisoner proceeding *pro se* and *in forma pauperis* with
27 this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with the First
28 Amended Complaint filed by Plaintiff on March 14, 2016, against defendants Correctional

1 Officer (C/O) Humberto German, C/O Philip Holguin, and C/O R. Bunitzki (collectively,
2 “Defendants”), for use of excessive force in violation of the Eighth Amendment; and, against
3 defendant C/O Philip Holguin for retaliation in violation of the First Amendment. (ECF No.
4 8.)

5 On September 13, 2018, the court issued an order requiring Plaintiff to respond to
6 Defendants’ motion to compel of August 16, 2018, within sixty days. (ECF No. 42.) To date,
7 Plaintiff has not filed a response to the motion to compel, and the sixty-day deadline has
8 expired.

9 On September 21, 2018, the court issued a modified Scheduling Order setting out
10 deadlines for the parties, including a discovery deadline of November 30, 2018, and a
11 dispositive motions deadline of January 30, 2019. (ECF No. 43.)

12 On November 16, 2018, the court issued an order requiring Plaintiff to file an
13 opposition or notice of non-opposition to Defendants’ motion for summary judgment of
14 October 15, 2018, within sixty days. (ECF No. 47.) The sixty-day deadline is pending.

15 On November 19, 2018, Plaintiff filed a motion to modify the scheduling order and for
16 an extension of time to file responses to Defendants’ motion to compel and motion for
17 summary judgment. (ECF No. 48.) Defendants have not filed an opposition to Plaintiff’s
18 motion.

19 **II. MOTION TO MODIFY SCHEDULING ORDER**

20 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.
21 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,
22 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the
23 modification of a scheduling order must generally show that even with the exercise of due
24 diligence, they cannot meet the requirement of the order. Id. The Court may also consider the
25 prejudice to the party opposing the modification. Id. If the party seeking to amend the
26 scheduling order fails to show due diligence the inquiry should end and the Court should not
27 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087
28 (9th Cir. 2002).

1 Plaintiff requests an extension of the discovery deadline from November 30, 2018, to
2 January 29, 2019, and an extension of the dispositive motions deadline from January 30, 2019,
3 to March 30, 2019. Plaintiff declares that he is unable to meet these two deadlines because on
4 October 9, 2018, he was transferred from Corcoran State Prison (CSP-Cor) to California State
5 Prison-Sacramento (CSP-Sac) for an upcoming court date of October 12, 2018, and he was not
6 allowed to bring his property with him. (Plaintiff's Declaration, ECF No. 48 at 2 ¶¶ 4, 5.) The
7 court date was postponed and finally took place on October 31, 2018, but Plaintiff has not been
8 transferred back to CSP-Cor, or received his property. (Id. ¶¶ 6, 7.) Plaintiff contacted his
9 prison correctional counselor and the property officer at CSP-Sac with a request to either
10 expedite his transfer back to CSP-Cor, or obtain his property from CSP-Cor. This request was
11 without success. (Id. ¶ 9.) Therefore, Plaintiff does not have his legal materials and has been
12 unable to pursue discovery. (Id. ¶ 8.) These matters are out of Plaintiff's control. (Id. ¶ 11.)

13 The court finds good cause to modify the court's Scheduling Order to extend the
14 discovery and dispositive motions deadlines as requested by Plaintiff. Plaintiff has submitted
15 evidence showing that he was diligent in attempting to gain access to his legal property in time
16 to meet the court's deadlines but was unable to do so. Defendants have not opposed Plaintiff's
17 motion. Therefore, Plaintiff's motion to modify the Scheduling Order shall be granted.

18 **III. MOTION FOR EXTENSION OF TIME**

19 "When an act may or must be done within a specified time, the court may, for good
20 cause, extend the time." Fed. R. Civ. P. 6(b)(1).

21 Plaintiff requests a sixty-day extension of time to file responses to Defendants' motion
22 to compel (ECF No. 38) and motion for summary judgment (ECF No. 44). Defendants have
23 not opposed Plaintiff's motion for extension of time. Good cause having been presented to the
24 court and good cause appearing therefor, Plaintiff's motion for extension of time shall be
25 granted.

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1 **IV. CONCLUSION**

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

- 3 1. Plaintiff's motion to modify the court's September 21, 2018, Scheduling Order,
4 and to extend time to file responses to Defendants' motion to compel and
5 motion for summary judgment, filed on November 29, 2018, is GRANTED;
- 6 2. Plaintiff is GRANTED an extension of time until sixty days from the date of
7 service of this order, in which to file a response to Defendants' motion to
8 compel of August 16, 2018;
- 9 3. Plaintiff is GRANTED an extension of time until sixty days from the date of
10 service of this order, in which to file an opposition or notice of non-opposition
11 to Defendants' motion for summary judgment of October 15, 2018;
- 12 4. The deadline for completion of **discovery** is extended from November 30, 2018,
13 to **January 29, 2019**, for all parties to this action;
- 14 5. The deadline for filing **dispositive motions** is extended from January 30, 2019,
15 to **March 30, 2019**, for all parties to this action; and
- 16 6. All other provisions of the court's September 21, 2018 Scheduling Order remain
17 the same.

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19 IT IS SO ORDERED.

20 Dated: December 21, 2018

21 /s/ Gary S. Austin
22 UNITED STATES MAGISTRATE JUDGE
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