



1 On November 8, 2019, Magistrate Judge Stanley A. Boone conducted a settlement  
2 conference in this case at California State Prison, Corcoran. This case did not settle at that time.

3 On November 12, 2019, the Court issued the second scheduling order in this case, setting  
4 this case for a telephonic trial confirmation hearing on March 23, 2020 and for a jury trial on May  
5 27, 2020, and setting the deadlines for serving and filing pretrial statements, for serving and filing  
6 motions for the attendance of incarcerated witnesses and oppositions to such motion, for notifying  
7 the Court of the names and locations of any unincarcerated witnesses who refuse to testify  
8 voluntarily, and for submitting the money orders for witness fees for any unincarcerated  
9 witnesses who refuse to testify voluntarily.

10 On December 2, 2019, Plaintiff filed a motion for “a court order for the Defendants’ and  
11 prison representative to hold a settlement conference hearing with the Plaintiff to negotiate a  
12 settlement based upon the claims in this case and appointment of an attorney.” (ECF No. 90.) On  
13 December 4, 2019, the Court denied Plaintiff’s motion for a court order requiring Defendants to  
14 hold a settlement conference with Plaintiff, and for appointment of counsel. (ECF No. 91.)

15 On December 23, 2019, Plaintiff filed a “memorandum of points and authorities in  
16 support of the Plaintiff’s motion to modify the attendance of unincarcerated witnesses and second  
17 scheduling order.” (ECF No. 93.) Specifically, Plaintiff requests a 60-day extension of the  
18 deadlines for filing a notice of the names and locations for the attendance of unincarcerated  
19 witnesses who refuse to testify voluntarily, a motion for the attendance of incarcerated witnesses,  
20 and his pretrial statement, and a 60-day continuance of the telephonic trial confirmation hearing.  
21 Plaintiff asserts that he needs the additional time because his motion for reconsideration of the  
22 undersigned’s order denying Plaintiff’s motion for a court order to compel participation in a  
23 mandatory settlement conference and appointment of counsel is currently pending before the  
24 District Judge and he is also going through multiple surgeries for his various medical conditions.  
25 The Court interprets Plaintiff’s filing as a motion to modify the Court’s November 12, 2019  
26 second scheduling order, (ECF No. 88).

27 On January 2, 2020, Plaintiff filed a “memorandum of points and authorities in support of  
28 Plaintiff’s motion for reconsideration.” (ECF No. 94.) This motion remains pending before the

1 District Judge.

2 Also, on January 2, 2020, the Court ordered Defendants Garcia and Neighbors to file a  
3 response to Plaintiff's motion to modify the November 12, 2019 second scheduling order on or  
4 before January 17, 2020. (ECF No. 95.)

5 On January 17, 2020, Defendants Garcia and Neighbors filed a notice of non-opposition to  
6 Plaintiff's motion to modify second scheduling order. (ECF No. 96.) No reply to Plaintiff's  
7 motion to modify the second scheduling order has been filed, and the time to do so has expired.

8 Also, on January 17, 2020, Defendants Garcia and Neighbors filed their own motion to  
9 modify the November 12, 2019 second scheduling order. (ECF No. 97.) In their motion,  
10 Defendants request that all of the upcoming pretrial deadlines and the trial date be reset because  
11 necessary witnesses and defense counsel are unavailable for the May 27, 2020 trial date.  
12 Defendants request that the Court continue the trial date to the next available date between July  
13 20, 2020 and October 2, 2020 or on a date after October 16, 2020. (Id.) Plaintiff did not file a  
14 response to Defendants' motion to modify the second scheduling order, and the time to do so has  
15 expired.

16 On February 14, 2020, Defendants Garcia and Neighbors filed a request to modify  
17 deadline to file pretrial statement. (ECF No. 99.) Defendants state that the Court should grant  
18 their request to modify the current pretrial statement deadline because their pretrial statement is  
19 currently due on or before February 24, 2020. (Id.) The Court finds that a response from Plaintiff  
20 regarding this motion is unnecessary.

21 Therefore, Plaintiff's motion to modify the second scheduling order, Defendants' motion  
22 to modify the second scheduling order, and Defendants' request to modify the current pretrial  
23 statement deadline are all deemed submitted for decision. Local Rule 230(1).

24 **II. Discussion**

25 Pursuant to Federal Rule of Civil Procedure 16(b), a scheduling order "may be modified  
26 only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). The "good cause"  
27 standard "primarily considers the diligence of the party seeking the amendment." Johnson v.  
28 Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). The court may modify the

1 scheduling order “if it cannot reasonably be met despite the diligence of the party seeking the  
2 extension.” Id. If the party was not diligent, the inquiry should end. Id.

3 In his motion, Plaintiff argues that good cause exists to modify the second scheduling  
4 order, extend the deadlines applicable to him for 60 days, and continue the telephonic trial  
5 confirmation hearing for 60 days because his motion for reconsideration of the undersigned’s  
6 order denying Plaintiff’s motion for a court order to compel participation in a mandatory  
7 settlement conference and appointment of counsel is currently pending before the District Judge  
8 and he is also going through multiple surgeries for his various medical conditions. (ECF No. 93.)  
9 In their motion, Defendants argue that good cause exists to modify the second scheduling order  
10 and reset all the applicable deadlines, telephonic trial confirmation hearing, and jury trial date  
11 because defense counsel and necessary witnesses are unavailable for the currently set trial date of  
12 May 27, 2020. (ECF No. 97.)

13 Having considered both Plaintiff’s and Defendants’ reasons, the Court finds that there is  
14 good cause to modify the second scheduling order, continue both the telephonic trial confirmation  
15 hearing and jury trial date, and reset the pretrial deadlines listed in the second scheduling order  
16 accordingly. Therefore, Plaintiff’s motion to modify the second scheduling order, (ECF No. 93),  
17 and Defendants’ motion to modify the second scheduling order, (ECF No. 97), are granted. The  
18 Court sets forth a new telephonic trial confirmation hearing date, jury trial date, and new dates for  
19 the filing of pretrial statements, the filing of motions for the attendance of incarcerated witnesses  
20 and oppositions thereto, and the filing of notifications and submissions related to attendance of  
21 unincarcerated witnesses who refuse to testify voluntarily are set forth below.

22 Further, since Defendants’ pretrial statement deadline is modified as set forth below,  
23 Defendants’ request to modify deadline to file pretrial statement is denied as moot.

24 **III. Order**

- 25 1. Plaintiff’s motion to modify second scheduling order, (ECF No. 93), is  
26 GRANTED;
- 27 2. Defendants’ motion to modify second scheduling order, (ECF No. 97), is  
28 GRANTED;

- 1           3.     Defendants’ request to modify deadline to file pretrial statement, (ECF No. 99), is  
2           DENIED as moot;
- 3           4.     The telephonic trial confirmation hearing before the United States District Judge  
4           Dale A. Drozd is continued to **September 8, 2020, at 1:30 p.m.** in Courtroom 5;<sup>1</sup>
- 5           5.     The jury trial before United States District Judge Dale A. Drozd is continued to  
6           **November 3, 2020, at 8:30 a.m.** in Courtroom 5;
- 7           4.     The deadline for Plaintiff to serve and file a pretrial statement as described in the  
8           Court’s November 12, 2019 second scheduling order is extended to **July 8, 2020**;
- 9           5.     The deadline for Defendants to serve and file a pretrial statement as described in  
10          the Court’s November 12, 2019 second scheduling order is extended to **August 7,**  
11          **2020**;
- 12          6.     If Plaintiff intends to call incarcerated witnesses at the time of trial, the deadline  
13          for Plaintiff to serve and file a motion for attendance of incarcerated witnesses as  
14          described in the Court’s November 12, 2019 second scheduling order is extended  
15          to **July 8, 2020**;
- 16          7.     The deadline for Defendants to serve and file any opposition to Plaintiff’s motion  
17          for the attendance of incarcerated witnesses is extended to **August 7, 2020**;
- 18          8.     If Plaintiff wishes to obtain the attendance of unincarcerated witnesses who refuse  
19          to testify voluntarily, the deadline for Plaintiff to notify the Court of their names  
20          and locations is extended to **June 17, 2020**; and the deadline for Plaintiff to submit  
21          the money orders, as described in subsection 4 of the Court’s November 12, 2019  
22          second scheduling order, to the Court is extended to **August 7, 2020**; and

23     ///  
24     ///  
25     ///

---

27     <sup>1</sup> Although trial dates are set in this matter, the parties are reminded that District Judge Dale A.  
28     Drozd is currently the sole active district judge in this Division after January 2020 and may not be  
available to conduct the pre-trial conference and trial in this action.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

9. All other provisions set forth in the November 12, 2019 second scheduling order, (ECF No. 88), remain in full force and effect.

IT IS SO ORDERED.

Dated: February 20, 2020

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE