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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 STEWART MANAGO,

12 Plaintiff,

13 vs.

14 D. DAVEY, et al.,

15 Defendants.  
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1:16-cv-00399-LJO-GSA-PC

ORDER GRANTING MOTIONS TO  
MODIFY SCHEDULING ORDER  
(ECF Nos. 86, 88.)

ORDER EXTENDING DISCOVERY  
DEADLINE AND DEADLINE TO FILE  
DISPOSITIVE MOTIONS FOR ALL  
PARTIES

**New Discovery Deadline: 10/06/17**

**New Dispositive Motions Deadline: 12/06/17**

20 **I. BACKGROUND**

21 Stewart Manago (“Plaintiff”) is a former state prisoner proceeding pro se and in forma  
22 pauperis with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the  
23 Complaint commencing this action on March 24, 2016. (ECF No. 1.) This case now proceeds  
24 with the First Amended Complaint filed on April 18, 2016, against defendants J. Acevedo, D.  
25 Davey, A. Maxfield, E. Razo, M.V. Sexton, A. Valdez, and J. Vanderpoel (collectively,  
26 “Defendants”), on Plaintiff’s First Amendment retaliation claims. (ECF No. 13.)

27 On August 9, 2016, the Court issued a Discovery and Scheduling Order establishing  
28 pretrial deadlines for the parties, including a deadline of January 6, 2017, for the parties to

1 complete discovery, including the filing of motions to compel, and a deadline of March 7,  
2 2017, for the filing of pretrial dispositive motions. (ECF No. 45.) On December 9, 2016, the  
3 court issued an order extending the discovery deadline to March 7, 2017, and the dispositive  
4 motions deadline to May 6, 2017. (ECF No. 70.) On May 22, 2017, the court issued an order  
5 extending the discovery deadline to July 7, 2017, and the dispositive motions deadline to  
6 September 8, 2017. (ECF No. 85.)

7 On June 9, 2017, and July 12, 2017, Defendants filed motions to modify the scheduling  
8 order to extend the deadlines. (ECF Nos. 86, 88.)

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

10 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.  
11 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,  
12 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the  
13 modification of a scheduling order must generally show that even with the exercise of due  
14 diligence, they cannot meet the requirement of the order. Id. The Court may also consider the  
15 prejudice to the party opposing the modification. Id. If the party seeking to amend the  
16 scheduling order fails to show due diligence the inquiry should end and the Court should not  
17 grant the motion to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087  
18 (9th Cir. 2002).

19 In their first motion (ECF No. 86), Defendants request a sixty-day extension of the  
20 discovery deadline from July 7, 2017, to September 5, 2017, and a sixty-day extension of the  
21 dispositive motions deadline from September 8, 2017, to November 7, 2017. In their second  
22 motion (ECF No. 88), Defendants request extensions of the same deadlines until sixty days  
23 from the date the court rules on Defendants' motion to compel filed concurrently with the  
24 second motion. Defendants seek additional time to conduct further discovery, to schedule and  
25 take Plaintiff's deposition, and, if necessary, file another motion to compel.

26 Defense counsel has filed a declaration dated July 12, 2017, in which she sets forth  
27 Defendants' diligence in attending to the matters in this case. (ECF No. 88-1.) The court finds  
28 that Defendants have shown that even with the exercise of due diligence they cannot meet the

1 deadlines established in the court's Discovery and Scheduling Order. Therefore, the court finds  
2 good cause to extend the outstanding deadlines for all parties to this action. Plaintiff has not  
3 opposed Defendants' motions to modify the scheduling order.

4 Good cause appearing, the discovery deadline shall be extended to October 6, 2017, for  
5 all parties to this action, and the dispositive motions deadlines shall be extended to December  
6 6, 2017, for all parties to this action.<sup>1</sup> Any further requests for extension of deadlines should be  
7 filed before the expiration of the existing deadlines.

8 **III. CONCLUSION**

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

- 10 1. Defendants' motions to modify the Court's Discovery and Scheduling Order,  
11 filed on June 9, 2017, and July 12, 2017, are GRANTED;
- 12 2. The deadline for the completion of discovery, including the filing of motions to  
13 compel, is extended from July 7, 2017, to **October 6, 2017**, for all parties to this  
14 action;
- 15 3. The deadline for filing and serving pretrial dispositive motions is extended from  
16 September 8, 2017, to **December 6, 2017**, for all parties to this action; and
- 17 4. All other provisions of the Court's August 9, 2016, Discovery and Scheduling  
18 Order remain the same.

19  
20 IT IS SO ORDERED.

21 Dated: **July 28, 2017**

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

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<sup>1</sup> The court prefers not to set deadlines conditioned on future events.