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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RONALD TIMBERLAND,

12 Plaintiff,

13 vs.

14 G. MASCARENAS, et al.,

15 Defendants.
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1:16-cv-00922-LJO-GSA-PC

**ORDER GRANTING PLAINTIFF'S
MOTION TO MODIFY SCHEDULING
ORDER
(ECF No. 41.)**

**ORDER EXTENDING DEADLINES FOR
ALL PARTIES**

New Discovery Deadline: 10/09/19

New Dispositive Motions Deadline: 12/09/19

19 **I. BACKGROUND**

20 Ronald Timberland ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
21 *pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. This action now
22 proceeds with Plaintiff's Second Amended Complaint, filed on June 20, 2018, against defendant
23 G. Mascarenas (Correctional Counselor I) for failure to protect Plaintiff in violation of the Eighth
24 Amendment.¹ (ECF No. 26.)

25 On January 9, 2019, the court issued a Discovery and Scheduling Order establishing
26 pretrial deadlines for the parties, including a deadline of July 9, 2019, for the parties to complete
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28 ¹ On October 12, 2018, the court issued an order dismissing all other claims and defendants from
this action based on Plaintiff's failure to state a claim. (ECF No. 30.)

1 discovery, including the filing of motions to compel; and, a deadline of September 9, 2019, for
2 the filing of pretrial dispositive motions. (ECF No. 37.) The parties were advised that all
3 discovery requests must be served at least 60 days before the discovery deadline. (Id. at 2:6.)
4 This case is now in the discovery phase.

5 On May 23, 2019, Plaintiff filed a motion for extension of time to serve his requests for
6 admission and requests for production of documents. The court construes the motion as a motion
7 to modify the scheduling order issued on January 9, 2019.

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

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

17 Plaintiff requests an extension of the discovery deadline so that he can timely serve his
18 requests for admission and requests for production of documents. Plaintiff asserts that he was
19 able to timely serve his interrogatories and to file the motion for extension of time. However,
20 despite his best efforts, Plaintiff asserts that he was unable to meet the deadline for serving all of
21 his discovery requests because he did not have access to his personal property or the law library
22 due to prison lockdowns and other delays beyond his control.

23 Defendant has not opposed Plaintiff's motion and the time for filing an opposition has
24 expired. Local Rule 230(I).

25 Good cause appearing, Plaintiff's motion shall be granted. The discovery deadline shall
26 be extended to October 9, 2019, for all parties to this action, and the dispositive motions deadline
27 shall be extended to December 9, 2019, for all parties to this action. Any further requests for
28 extension of deadlines should be filed before the expiration of the existing deadlines.

1 **III. CONCLUSION**

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

- 3 1. Plaintiff's motion to modify the court's Discovery and Scheduling Order, filed on
4 issued on May 23, 2019, is GRANTED;
- 5 2. The deadline for the completion of discovery, including the filing of motions to
6 compel, is extended from July 9, 2019, to **October 9, 2019**, for all parties to this
7 action;
- 8 3. The deadline for filing and serving pretrial dispositive motions is extended from
9 September 9, 2019, to **December 9, 2019**, for all parties to this action; and
- 10 4. All other provisions of the court's January 9, 2019, Discovery and Scheduling
11 Order remain the same.

12 IT IS SO ORDERED.

13 Dated: **June 18, 2019**

14 **/s/ Gary S. Austin**
15 UNITED STATES MAGISTRATE JUDGE