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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 DEFENDANT  
MASCARENAS'S MOTION TO MODIFY  
SCHEDULING ORDER  
(ECF No. 49.)**

**ORDER EXTENDING DISPOSITIVE  
MOTIONS DEADLINE NUNC PRO TUNC  
TO JANUARY 6, 2020**

**ORDER DEEMING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT  
TIMELY FILED ON JANUARY 6, 2020**

21 **I. BACKGROUND**

22 Ronald Timberland ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
23 *pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. This action now  
24 proceeds with Plaintiff's Second Amended Complaint filed on June 20, 2018, against defendant  
25 G. Mascarenas (Correctional Counselor I) for failure to protect Plaintiff in violation of the Eighth  
26 Amendment.<sup>1</sup> (ECF No. 26.)  
27

28 <sup>1</sup> 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 On January 9, 2019, the court issued a Discovery and Scheduling Order establishing  
2 pretrial deadlines for the parties, including a deadline of September 9, 2019, for the filing of  
3 pretrial dispositive motions. (ECF No. 37.) On June 18, 2019, the court modified the scheduling  
4 order and extended the dispositive motions deadline to December 9, 2019. (ECF No. 42.)

5 On December 23, 2019, Defendant filed a motion to modify the current scheduling order  
6 to extend the dispositive motions deadline to January 6, 2020. (ECF No. 49.) Plaintiff has not  
7 opposed the motion.

## 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 Defendant requests an extension of the dispositive motions deadline until January 6,  
18 2020. Defense counsel declares that she is preparing a motion for summary judgment, but  
19 completion of the motion was delayed because defendant Mascarenas requested changes in her  
20 declaration in support of the motion, and as of December 23, 2019, defense counsel had not  
21 received the additional documents and signed declaration needed to make the changes. (Decl. of  
22 Kelli Hammond, ECF No. 49-1 ¶¶ 7-10.)

23 Defense counsel has shown that despite her best efforts she was unable to file Defendant's  
24 motion for summary judgment before the expiration of the current dispositive motions deadline.  
25 On January 6, 2020, Defendant's motion for summary judgment was filed. (ECF No. 51.)  
26 Therefore, good cause appearing, Defendant's motion to modify the scheduling order shall be  
27 granted and the dispositive motions deadline shall be extended *nunc pro tunc* to January 6, 2020.

## 28 **III. CONCLUSION**

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

- 2 1. Defendant Mascarenas's motion to modify the court's Discovery and Scheduling  
3 Order, filed on December 23, 2019, is GRANTED;
- 4 2. The deadline for filing and serving pretrial dispositive motions is extended *nunc*  
5 *pro tunc* to January 6, 2020;
- 6 3. Defendant's motion for summary judgment is deemed timely filed on January 6,  
7 2020; and
- 8 4. All other provisions of the court's January 9, 2019, Discovery and Scheduling  
9 Order remain the same.

10  
11 IT IS SO ORDERED.

12 Dated: January 9, 2020

/s/ Gary S. Austin  
13 UNITED STATES MAGISTRATE JUDGE