

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 JEREMY JONES,

12 Plaintiff,

13 vs.

14 ARNETTE, et al.,

15 Defendants.  
16  
17

**1:16-cv-01212-DAD-GSA-PC**

**ORDER GRANTING DEFENDANTS ARNETT,  
FLORES, GONZALES, AND KEENER'S  
MOTION TO MODIFY SCHEDULING  
ORDER  
(ECF No. 109.)**

**ORDER VACATING DEADLINES IN COURT'S  
DISCOVERY AND SCHEDULING ORDER  
PENDING RESOLUTION OF ISSUES**

18 **I. BACKGROUND**

19 Jeremy Jones ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis*  
20 with this civil rights action pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act  
21 (ADA), 42 U.S.C. § 12132. This case now proceeds with Plaintiff's Second Amended Complaint  
22 filed on September 10, 2018, on (1) Plaintiff's ADA claims against defendants Vasquez, Keener,  
23 Gonzales, Flores, Arnett,<sup>1</sup> Zamora, and Lopez, in their official capacities; (2) Plaintiff's Eighth  
24 Amendment conditions of confinement claims against defendants Vasquez, Keener, and  
25 Gonzales; and (3) Plaintiff's due process claims against defendants Vasquez, Keener, and  
26 Gonzales. (ECF No. 33.)  
27

28  

---

<sup>1</sup> Sued as Arnette.

1 On November 6, 2020, the court issued a Discovery and Scheduling Order establishing  
2 pretrial deadlines for the parties. (ECF No. 59.) After extensions of the deadlines, the current  
3 discovery deadline is August 5, 2021, and the current deadline for filing dispositive motions is  
4 October 5, 2021. (ECF No. 93.)

5 On September 30, 2021, defendants Arnett, Flores, Gonzales, and Keener (“Defendants”)  
6 filed a motion for (1) the issuance of a new scheduling order after the court resolves the issues of  
7 the recently-served defendant [Zamora] and the unserved defendants [Vasquez and Lopez], or in  
8 the alternative, for (2) a 90-day extension of the dispositive motions deadline. (ECF No. 109.)

## 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 scheduling  
16 order fails to show due diligence the inquiry should end and the court should not grant the motion  
17 to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

## 18 **III. DISCUSSION**

19 In this case, the deadlines for discovery and the filing of dispositive motions have been  
20 extended three times, and the most recent deadlines – August 5, 2021 for completion of discovery  
21 and October 5, 2021 for the filing of dispositive motions – have now expired. Yet two of the  
22 Defendants [Vasquez and Lopez] have not been served, and one of the Defendants [Zamora] has  
23 been served but has not appeared.

24 Defendants request the court to vacate the current deadlines and issue a new scheduling  
25 order *after* the pending issues with these three Defendants have been resolved allowing all of the  
26 Defendants to present a united defense and preventing the need to file multiple overlapping and  
27 repetitive motions that would require separate oppositions and replies. Defendants argue that  
28 this would help preserve the court’s and the parties’ resources.

1 In the alternative, Defendants request a ninety-day extension of the deadline to file  
2 dispositive motions. Due to her workload in other matters, defense counsel has been unable to  
3 prepare and file Defendants' motion for summary judgment.

4 Defendants have shown that even with the exercise of due diligence they cannot meet the  
5 requirements of the court's current scheduling order. On August 5, 2021, Defendants took  
6 Plaintiff's deposition. (Decl. of Janet Chen, ECF No. 109 ¶ 2.) The Attorney General's Office  
7 does not currently represent defendant Zamora, but steps have been taken towards his  
8 representation. (Id.) On September 1, 2021, Defendants served responses to Plaintiff's second  
9 set of requests for production of documents which sought information about un-served  
10 Defendants Vasquez and Lopez. (Id.)

11 The court finds good cause to grant Defendants' motion to vacate the current deadlines  
12 in the scheduling order and issue a new scheduling order *after* the pending issues with Defendants  
13 Zamora, Vasquez, and Lopez have been resolved.

14 **III. CONCLUSION**

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

- 16 1. Defendants Arnett, Flores, Gonzales, and Keener's motion to modify the court's  
17 Discovery and Scheduling Order, filed on September 30, 2021, is GRANTED;
- 18 2. The court's Discovery and Scheduling Order is VACATED until after the pending  
19 issues with Defendants Zamora, Vasquez, and Lopez have been resolved, at which  
20 time the court shall issue a new scheduling order.

21  
22 IT IS SO ORDERED.

23 Dated: October 14, 2021

24 /s/ Gary S. Austin  
25 UNITED STATES MAGISTRATE JUDGE  
26  
27  
28