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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 SHANNON WILLIAMS,) 1:16-cv-001540 DAD-JDP
12 Plaintiff,)
13 v.) **EX PARTE APPLICATION FOR**
14 OFFICER BAKER; WARDEN PAUL) **EXTENSION OF DISCOVERY**
15 COPENHAVER; OFFICER BORJA; ASS.) **DEADLINE; ORDER**
16 WARDEN SNYDER,)
Defendants.)
17

18 Defendant Christopher Baker requests to extend the discovery deadline to allow for a ruling on
19 the pending dispositive motion as to Plaintiff Shannon Williams’ excessive force claim. Defendant
20 acted diligently in filing his dispositive motion and good cause exists for approximately a ninety-day
21 continuance of the discovery deadline to allow for a ruling on the motion that may end the lawsuit.

22 **GOOD CAUSE EXISTS TO CONTINUE THE DISCOVERY DATE**
23 **BASED ON DEFENDANT’S PENDING DISPOSITIVE MOTION**

24 Modification of a scheduling order requires a showing of good cause and due diligence. Fed. R.
25 Civ. Proc. 16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). To
26 establish good cause, the party seeking the modification of a scheduling order must generally show that
27 even with the exercise of due diligence, they cannot meet the requirement of the order. *Id.* The court
28 may also consider the prejudice to the party opposing the modification. *Id.*

1 This lawsuit is a *Bivens*¹ action filed by Williams, a federal inmate proceeding *pro se* against
2 former BOP Correctional Officer Christopher Baker, alleging a claim of excessive force and a separate
3 claim for retaliation arising from an incident on October 13, 2014, at United States Penitentiary Atwater.
4 ECF No. 12. The claim for retaliation was dismissed per order dated September 27, 2018. ECF No. 50.
5 Defendant also filed a dispositive motion for summary adjudication on the claim of excessive force,
6 which was only recently fully briefed, i.e., August 31, 2018, and is currently under submission. ECF
7 Nos. 45-46, 49. It is anticipated that after Findings and Recommendations are issued, the parties will
8 evaluate the need to respond before the Findings and Recommendations are sent to the District Judge for
9 a final ruling. The current discovery deadline of December 4, 2018, therefore, may expire prior to a
10 final ruling on Defendant's dispositive motion. Consequently, the parties' resources are conserved by
11 extending the current discovery deadline approximately ninety days to March 4, 2019, to allow for a
12 ruling on the motion that can potentially end this action. *See United States v. W.R. Grace*, 526 F.3d 499,
13 509 (9th Cir. 2008) (court's inherent power to control its docket). Additionally, no prejudice will be
14 suffered by this extension of approximately ninety days for the discovery deadline because no trial date
15 has been set in this action.² ECF No. 23.

16 Accordingly, for good cause showing, including the saving of time and resources in allowing
17 additional time for a ruling on the pending dispositive motion, Defendant requests the discovery
18 deadline be extended approximately ninety-days.

19 Respectfully submitted,

20 Dated: October 12, 2018

McGREGOR W. SCOTT
United States Attorney

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22 By: /s/Alyson A. Berg
23 ALYSON A. BERG
24 Assistant U.S. Attorney
Attorneys for Defendant

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26 ¹ *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

27 ² Williams is serving a 480-month aggregate sentence for one count of conspiracy to distribute and
28 possession with intent to distribute marijuana in violation of 21 U.S.C. § 846 and one count of money
laundering in violation of 18 U.S.C. § 1956(h). He is eligible for release for good time conduct on
April 16, 2044.

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ORDER

The discovery deadline is continued to March 4, 2019.

IT IS SO ORDERED.

Dated: November 23, 2018


UNITED STATES MAGISTRATE JUDGE