

1 (8) Defendants Vogel, Caldwell, and Cervantes for a state law claim for negligent infliction of
2 emotional distress.

3 On February 13, 2020, Defendants filed a motion for summary judgment on the ground
4 that Plaintiff failed to exhaust administrative remedies as to any claims against any Defendant,
5 and a motion for protective order. (ECF Nos. 52, 53.) Despite being granted several extensions
6 of time, Plaintiff has not yet filed an opposition to the motion for summary judgment.
7 Defendants' motion for protective order also remains pending before the Court.

8 On July 21, 2020, Defendants filed a motion for a stay of the discovery and dispositive
9 motion deadlines pending resolution of their exhaustion motion for summary judgment. (ECF
10 No. 65.) Pursuant to the Court's November 21, 2019 Discovery and Scheduling Order, the
11 deadline for the completion of all discovery is July 21, 2020, and the deadline for filing all
12 dispositive motions is October 1, 2020. (ECF No. 48.)

13 Although Plaintiff has not had the opportunity to file a response to Defendants' motion,
14 the Court finds a response unnecessary. The motion is deemed submitted. Local Rule 230(l).

15 Pursuant to Rule 16(b), a scheduling order "may be modified only for good cause and
16 with the judge's consent." Fed. R. Civ. P. 16(b)(4). The "good cause" standard "primarily
17 considers the diligence of the party seeking the amendment." Johnson v. Mammoth Recreations,
18 Inc., 975 F.2d 604, 609 (9th Cir. 1992). The court may modify the scheduling order "if it cannot
19 reasonably be met despite the diligence of the party seeking the extension." Id. If the party was
20 not diligent, the inquiry should end. Id.

21 In their motion, Defendants argue that the pending motion for summary judgment for
22 failure to exhaust administrative remedies may dispose of this case summarily and without the
23 need to take Plaintiff's deposition. (ECF No. 65-1.) Defendants further argue that due to the
24 ongoing COVID-19 pandemic and CDCR's restrictions on inmate movement and limited
25 videoconferencing equipment, defense counsel cannot reasonably conduct Plaintiff's deposition
26 at this time. Defendants therefore request that the Court stay the discovery and dispositive
27 motion deadlines until the motion for summary judgment on the issue of exhaustion is resolved.
28 (Id.)

