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4 **UNITED STATES DISTRICT COURT**
5 **EASTERN DISTRICT OF CALIFORNIA**
6

7 LENDWARD ALTON MIXON, JR.,

8 Plaintiff,

9 v.

10 TYSON, et al.,

11 Defendants.

Case No. 1:16-cv-01868-DAD-BAM (PC)

**ORDER GRANTING DEFENDANTS’
MOTION TO MODIFY THE DISCOVERY
AND SCHEDULING ORDER**

(ECF No. 47)

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13 Plaintiff Lendward Alton Mixon, Jr. is a state prisoner proceeding *pro se* and *in forma*
14 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

15 On March 1, 2019, Defendants Jimenez and Metts filed a motion for summary judgment on
16 the ground that Plaintiff failed to exhaust his available administrative remedies prior to filing suit.
17 (ECF No. 39.) On April 8, 2019, Plaintiff filed an opposition to Defendants’ summary judgment
18 motion. (ECF No. 44.) On April 15, 2019, Defendants filed a reply. (ECF No. 45.)

19 Pursuant to the Court’s November 19, 2018 discovery and scheduling order, the deadline
20 for the completion of all discovery is July 19, 2019, and the deadline for filing all dispositive
21 motions is September 30, 2019. (ECF No. 33.)

22 Currently before the Court is Defendants’ motion to modify the discovery and scheduling
23 order, filed on July 3, 2019. (ECF No. 47.) The Court finds a response from Plaintiff is unnecessary
24 and the motion is deemed submitted. Local Rule 230(1).

25 Pursuant to Rule 16(b), a scheduling order “may be modified only for good cause and with
26 the judge’s consent.” Fed. R. Civ. P. 16(b)(4). The “good cause” standard “primarily considers
27 the diligence of the party seeking the amendment.” Johnson v. Mammoth Recreations, Inc., 975
28 F.2d 604, 609 (9th Cir. 1992). The court may modify the scheduling order “if it cannot reasonably

1 be met despite the diligence of the party seeking the extension.” Id. If the party was not diligent,
2 the inquiry should end. Id.

3 Defendants argue that good cause exists to modify the discovery and dispositive motion
4 deadlines because defense counsel was reasonably diligent in bringing the pending exhaustion-
5 based motion for summary judgment, but the Court is unlikely to issue a final ruling on the
6 summary judgment motion before the discovery cut-off. Further, since the pending summary
7 judgment motion will dispose of the case if the motion is granted, reasons of economy and
8 efficiency of resources warrant granting the instant motion to modify the discovery and scheduling
9 order. Finally, Defendants state that Plaintiff will suffer no prejudice if the instant motion is
10 granted.

11 Having considered Defendants’ request, the Court finds good cause to modify the discovery
12 and dispositive motion deadlines. Defendants have been diligent in filing the potentially dispositive
13 exhaustion-based summary judgment motion, and it would be a waste of the resources of the Court
14 and the parties to require the parties to conduct potentially unnecessary discovery or to file
15 potentially unnecessary dispositive motions. Further, Plaintiff will not be prejudiced by any
16 modification, as the Court will reset the applicable deadlines, if necessary, after Defendants’
17 exhaustion-based summary judgment motion is decided.

18 Based on the foregoing, Defendants’ motion to modify the discovery and scheduling order,
19 (ECF No. 47), is **HEREBY GRANTED**. The discovery and dispositive motion deadlines are
20 **VACATED**. If necessary, the Court will reset the deadlines following the resolution of Defendants’
21 pending exhaustion-based summary judgment motion.

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23 **IT IS SO ORDERED.**

24 Dated: July 9, 2019

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE
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