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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 LARRY SMITH,

12 Plaintiff,

13 vs.

14 J. GONZALES, et al.,

15 Defendants.
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1:17-cv-00436-ADA-GSA-PC

**ORDER GRANTING DEFENDANTS'
MOTION TO MODIFY SECOND
SCHEDULING ORDER**

(ECF No. 127.)

New Dates:

**Pretrial Conference: February 6, 2023
1:30 p.m.
Judge de Alba
Courtroom 1**

**Jury Trial: April 4, 2023
8:30 a.m.
Judge de Alba
Courtroom 1**

22 **I. BACKGROUND**

23 Larry Smith ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with
24 this civil rights case pursuant to 42 U.S.C. § 1983, against defendants Sergeant Gonzales,
25 Correctional Officer (C/O) Johnson, C/O Castro, C/O Meier, C/O Flores, and C/O Potzernitz for
26 use of excessive force in violation of the Eighth Amendment; against defendant C/O Scaife for
27 failure to protect Plaintiff in violation of the Eighth Amendment; and against defendant Sgt.
28 Gonzales for retaliation in violation of the First Amendment. (ECF No. 12.)

1 On September 27, 2022, Defendants filed a motion to modify the Second Scheduling
2 Order. (ECF No. 127.)

3 **II. MODIFICATION OF SCHEDULING ORDER**

4 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.
5 16(b), and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations,
6 Inc., 975 F.2d 604, 609 (9th Cir. 1992). To establish good cause, the party seeking the
7 modification of a scheduling order must generally show that even with the exercise of due
8 diligence, they cannot meet the requirement of the order. Id. The court may also consider the
9 prejudice to the party opposing the modification. Id. If the party seeking to amend the scheduling
10 order fails to show due diligence the inquiry should end and the court should not grant the motion
11 to modify. Zivkovic v. Southern California Edison, Co., 302 F.3d 1080, 1087 (9th Cir. 2002).

12 Defendants request 60-day continuations of the dates for the Pretrial Conference and Jury
13 Trial scheduled by the Court in its Second Scheduling Order.¹ The current date for the Pretrial
14 Conference is November 28, 2022 at 1:30 p.m., and the current date for Jury Trial is January 31,
15 2023 at 8:30 a.m. Defense Counsel informs the Court that he has conflicts with the scheduled
16 dates because trial in another case is starting on the day set for the pretrial conference, and
17 Counsel will also be in trial on another case during the week before the trial date set in this action.

18 The court finds good cause to modify the Second Scheduling Order based on Defendants'
19 requests. Therefore, Defendants' motion shall be granted.

20 **III. CONCLUSION**

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

- 22 1. Defendants' motion to modify the court's Second Scheduling Order, filed on
23 September 27, 2022, is GRANTED;

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28 ¹ At the conclusion of their Motion to Modify the Second Scheduling Order, Defendants request
an extension of time until February 8, 2022 to file pretrial motions. (ECF No. 127 at 4.) This request appears to
be out of place. Therefore, the Court shall disregard the request, without prejudice.

