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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

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11 MARCO A. GARCIA,

12 Plaintiff,

13 v.

14 GARCIA, *et al.*,

15 Defendants.

Case No. 1:17-cv-01313-BAM (PC)

ORDER GRANTING DEFENDANTS'
REQUEST FOR ORDER FOR EXTENSION
OF TIME TO TAKE THE DEPOSITION OF
PLAINTIFF
(ECF No. 42)

ORDER EXTENDING DISPOSITIVE
MOTION DEADLINE

Discovery Deadline: January 18, 2021
Dispositive Motion Deadline: March 18, 2021

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19 Plaintiff Marco A. Garcia ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
20 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on
21 Plaintiff's complaint against Defendants Garcia and Bursiaga for excessive force in violation of
22 the Eighth Amendment. All parties have consented to Magistrate Judge jurisdiction and the case
23 has been reassigned to the undersigned for all further purposes and proceedings, including trial
24 and entry of judgment. (ECF No. 28.)

25 Pursuant to the Court's December 12, 2018 discovery and scheduling order and June 19,
26 2020 order resetting discovery and dispositive motion deadlines, the deadline for completion of
27 all discovery is October 18, 2020 and the deadline for filing all dispositive motions (other than a
28 motion for summary judgment for failure to exhaust) is December 18, 2020. (ECF Nos. 26, 38.)

1 Plaintiff's responses to Defendants' written discovery requests were also due on or before
2 September 28, 2020. (ECF No. 40.)

3 Currently before the Court is Defendants' request for an extension of time to take
4 Plaintiff's deposition, filed October 14, 2020. (ECF No. 42.) Although Plaintiff has not had an
5 opportunity to respond to the motion, the Court finds a response unnecessary and the motion is
6 deemed submitted. Local Rule 230(l).

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

13 In their motion, Defendants state that they received Plaintiff's responses to their written
14 discovery requests on September 18, 2020. (ECF No. 42.) Having reviewed the responses,
15 Defendants would like to take Plaintiff's deposition, but are unable to do so before the October
16 18, 2020 discovery deadline. In addition, due to Plaintiff's incarceration, Defendants will need to
17 obtain permission from the institution to conduct Plaintiff's virtual deposition (as in-person
18 depositions are not allowed due to COVID-19) and to make arrangements for the necessary
19 technology to be provided to Plaintiff. Defendants state that good cause therefore exists to
20 continue the discovery cutoff to at least January 18, 2021. (Id.)

21 Having considered the request, the Court finds good cause to continue the discovery
22 deadline in this action. Defendants have been diligent in their efforts to obtain responses to their
23 written discovery requests and their prior attempt to take Plaintiff's deposition, and circumstances
24 outside of Defendants' control prevent their taking of Plaintiff's deposition prior to the current
25 discovery deadline. The Court finds that Plaintiff will not be prejudiced by the brief extension
26 here. Finally, as the extended discovery deadline exceeds the current deadline for the filing of
27 dispositive motions, the Court also finds it appropriate to extend the dispositive motion deadline.

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Accordingly, IT IS HEREBY ORDERED as follows:

1. Defendants' request for order for extension of time to take the deposition of Plaintiff, (ECF No. 42), is GRANTED;
2. The deadline for completion of all discovery is extended to **January 18, 2021**; and
3. The deadline for filing all dispositive motions (other than a motion for summary judgment for failure to exhaust) is extended to **March 18, 2021**.

IT IS SO ORDERED.

Dated: October 15, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE