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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 ANTHONY L. ROBINSON,

12 Plaintiff,

13 vs.

14 DAVE DAVEY, et al.,

15 Defendants.  
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1:17-cv-01524-DAD-GSA-PC

**ORDER GRANTING DEFENDANTS  
PETERSON AND GERMAN'S MOTION  
TO MODIFY SCHEDULING ORDER  
(ECF No. 70.)**

**ORDER EXTENDING DISCOVERY  
DEADLINE AND DEADLINE TO FILE  
DISPOSITIVE MOTIONS FOR ALL  
PARTIES**

**New Discovery Deadline: April 2, 2021**

**New Dispositive Motions Deadline: June 2, 2021**  
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21 **I. BACKGROUND**

22 Anthony L. Robinson ("Plaintiff") is a prisoner proceeding *pro se* and *in forma pauperis*  
23 with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds on Plaintiff's  
24 First Amended Complaint filed on July 2, 2018, against defendant C/O H. German for use of  
25 excessive force and against defendants Sgt. A. Peterson and S. Gonzales-Thompson (LVN) for  
26 providing inadequate medical care in violation of the Eighth Amendment. (ECF No. 24.)

27 On January 2, 2020, the court issued a Discovery and Scheduling Order establishing  
28 pretrial deadlines for the parties, including a discovery deadline of July 2, 2020, and a dispositive

1 motions deadline of September 2, 2020. (ECF No. 61.) On April 15, 2020, the court granted  
2 defendants Peterson and German’s motion to modify the Scheduling Order, extending the  
3 discovery deadline to October 2, 2020, and the dispositive motions deadline to December 2, 2020,  
4 for all parties to this action. (ECF No. 64.) On August 3, 2020, defendants Peterson and German  
5 filed another motion to modify the Scheduling Order. (ECF No. 70.)

6 **II. MOTION TO MODIFY SCHEDULING ORDER**

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

15 Defendants Peterson and German request the court to extend the deadline to conduct  
16 discovery and the deadline to file dispositive motions by 120 days each because due to the  
17 COVID-19 crisis, defense counsel has still not been able to depose Plaintiff. This latest request  
18 will extend the deadline to conduct discovery to April 2, 2021, and the deadline to file dispositive  
19 motions to June 2, 2021. Defense counsel explains that the Office of the Attorney General  
20 (OAG) received a memorandum from the California Department of Corrections and  
21 Rehabilitation (CDCR) informing the AOG that CDCR is “attempting to maintain inmate and  
22 staff safety amid the COVID-19 pandemic” which makes “transport and inmate movement  
23 within the institutions difficult, and, in some cases, dangerous,” and CDCR is generally  
24 requesting continuances of all depositions through the end of August 2020. (Declaration of  
25 David E. Kuchinsky at ¶ 3, Exhibit A.)

26 The court finds good cause to extend the discovery and dispositive motions deadlines in  
27 the court’s Discovery and Scheduling Order. Defendants Peterson and German have shown that  
28 even with the exercise of due diligence they cannot meet the requirements of the above mentioned

1 order. Therefore, the motion to modify the Scheduling Order filed by defendants Peterson and  
2 German on August 3, 2020, shall be granted.

3 **III. CONCLUSION**

4 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 5 1. Defendants Peterson and German’s motion to modify the court’s Scheduling  
6 Order, filed on August 3, 2020, is GRANTED;
- 7 2. The deadline for the completion of discovery is extended from October 2, 2020  
8 to April 2, 2021, for all parties to this action;
- 9 3. The deadline for filing and serving pretrial dispositive motions is extended from  
10 December 2, 2020 to June 2, 2021, for all parties to this action; and
- 11 4. All other provisions of the court’s January 2, 2020 Discovery and Scheduling  
12 Order remain the same.

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14 **IT IS SO ORDERED.**

15 Dated: August 9, 2020

16 /s/ Gary S. Austin  
17 UNITED STATES MAGISTRATE JUDGE  
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