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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 PLAINTIFF'S
MOTION TO MODIFY SCHEDULING
ORDER
(ECF No. 78.)**

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

New Discovery Deadline: August 2, 2021

New Dispositive Motions Deadline: October 4, 2021

**SIXTY-DAY DEADLINE FOR PLAINTIFF
TO SERVE RESPONSES TO
DEFENDANT PETERSON'S WRITTEN
DISCOVERY REQUESTS**

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23 **I. BACKGROUND**

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

1 On January 2, 2020, the court issued a Discovery and Scheduling Order establishing
2 pretrial deadlines for the parties, including a discovery deadline of July 2, 2020, and a dispositive
3 motions deadline of September 2, 2020. (ECF No. 61.) On April 15, 2020, the court granted
4 defendants Peterson and German's motion to modify the Scheduling Order, extending the
5 discovery deadline to October 2, 2020, and the dispositive motions deadline to December 2, 2020,
6 for all parties to this action. (ECF No. 64.) On August 3, 2020, defendants Peterson and German
7 filed another motion to modify the Scheduling Order. (ECF No. 70.) On August 10, 2020, the
8 court granted defendants Peterson and German's motion to modify the Scheduling Order,
9 extending the discovery deadline to April 2, 2021, and the dispositive motions deadline to June
10 2, 2021, for all parties to this action. (ECF No. 71.)

11 On February 22, 2021, Plaintiff filed a motion to modify the Scheduling Order. (ECF
12 No. 78.) Defendants have not filed an opposition. The motion is now before the court. Local
13 Rule 230(l).

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

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

23 Plaintiff requests the court to extend the deadlines to conduct discovery and file
24 dispositive motions by 120 days each because he is currently out to court at the Los Angeles
25 County Mens Central Jail on a criminal matter and does not have access to his legal property or
26 supplies needed to respond to discovery requests or otherwise litigate this case.

27 The court finds good cause to extend the discovery and dispositive motions deadlines in
28 the court's Discovery and Scheduling Order. Plaintiff has shown that even with the exercise of

1 due diligence he cannot meet the requirements of the order. Defendants have not opposed the
2 proposed modification. Therefore, Plaintiff's motion to modify the Scheduling Order, filed on
3 February 22, 2021, shall be granted. The deadline to conduct discovery shall be extended to
4 August 2, 2021, and the deadline to file dispositive motions shall be extended to October 4, 2021
5 for all parties.

6 **III. EXTENSION OF TIME TO RESPOND TO DEFENDANT PETERSON'S**
7 **WRITTEN DISCOVERY REQUESTS**

8 Pursuant to the court's Discovery and Scheduling Order issued on January 2, 2020, the
9 parties were informed that "[r]esponses to written discovery requests shall be due **30 calendar**
10 **days** after the request is served." (emphasis in original) (ECF No. 61 at 2:5.)

11 Plaintiff reports that he received written discovery requests from defendant Peterson on
12 February 11, 2020, but he is unable to respond to the discovery requests until he has access to his
13 legal property, ink pens, legal copies, legal supplies, and envelopes. Plaintiff states that he was
14 transferred out-to-court from California State Prison-Sacramento on December 6, 2019, and his
15 property is being held there until he returns. Plaintiff also alleges that the Los Angeles County
16 Mens Central Jail, where he is currently housed, does not provide him with the supplies he needs
17 to litigate this case.¹

18 The court finds good cause to grant Plaintiff a 60-day extension of time to respond to
19 defendant Peterson's discovery requests. Plaintiff's new deadline to serve responses to the
20 discovery requests shall be 60 days from the date of service of this order. If Plaintiff requires a
21 further extension of time, he should file a motion before the expiration of the prior deadline.

22 **IV. CONCLUSION**

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

- 24 1. Plaintiff's motion to modify the court's Discovery and Scheduling Order, filed on
25 February 22, 2021, is GRANTED;

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28 ¹ Plaintiff also requests CSP-SAC to send his property to him, and the Los Angeles County Mens
Central Jail to provide him with supplies needed to litigate this case. (ECF No. 78 at 4:19-26.) The court shall
address these requests by separate order.

