## 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 MICHAEL MADDEN, Successor-in-Case No. 1:18-cv-00255-ADA-BAM (PC) Interest to Ryan P. Madden, et al., 12 ORDER GRANTING DEFENDANTS' Plaintiffs. MOTION TO MODIFY THE DISCOVERY 13 AND SCHEDULING ORDER v. 14 (ECF No. 67) HICKS, et al., 15 **Dispositive Motion Deadline (Exhaustion):** Defendants. **October 3, 2023** 16 17 Plaintiffs Michael Madden and Kathleen "Kathy" Madden ("Plaintiffs"), as Successors-in-18 Interest to Ryan P. Madden, are proceeding pro se and in forma pauperis in this civil rights action 19 pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Hicks for excessive force 20 and assault and battery claims, and against Defendants Silva and Hicks for California Bane Act 21 and retaliation claims. 22 The Court issued a discovery and scheduling order on May 3, 2023. (ECF No. 60.) That 23 order set the deadline for filing motions for summary judgment for failure to exhaust 24 administrative remedies for September 3, 2023 (a Sunday). (*Id.*) Currently before the Court is Defendants' motion to modify the discovery and scheduling 25 26 order to extend the exhaustion motion deadline, filed September 1, 2023. (ECF No. 67.) 27 In support of the motion, defense counsel declares that he is in the process of preparing 28 and has made substantial progress towards completing a motion for summary judgment based on

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the exhaustion of affirmative defenses. However, over the past sixty days, counsel has experienced a significantly high workload in other matters that has interfered with his ability to complete the motion and obtain declarations from any necessary witnesses. Counsel requires additional time to complete drafting Defendants' motion for summary judgment, and is also in the process of obtaining a necessary declaration from the CDCR Office of Appeals. A thirty-day extension of time, through October 3, 2023, would allow counsel time to complete the process of completing Defendants' motion. Defendants have not contacted Plaintiffs to request a stipulation to modify the exhaustion deadline, but Defendants do not believe this request will prejudice Plaintiffs or significantly delay the prosecution of this action. Discovery is still open and pending and this will not conflict with the merits-based dispositive motion deadline.

Plaintiffs have not yet had an opportunity to file a response, but the Court finds a response is unnecessary. The motion is deemed submitted. Local Rule 230(1).

Having considered the request, the Court finds good cause to grant the requested extension of the exhaustion summary judgment motion deadline. Fed. R. Civ. P. 16(b)(4). The Court finds that Plaintiffs will not be prejudiced by the extension granted here. No other deadlines are extended by this order. Any further requests must be supported by good cause which will be narrowly construed.

Accordingly, IT IS HEREBY ORDERED as follows:

- 1. Defendants' motion to modify the discovery and scheduling order to extend the deadline to file an exhaustion motion, (ECF No. 67), is GRANTED; and
- 2. The deadline for filing motions for summary judgment for failure to exhaust administrative remedies is extended from September 3, 2023 to **October 3, 2023**.

IT IS SO ORDERED.

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25 Dated: **September 5, 2023** 

/s/Barbara A. McAuliffe

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