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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARY R. XAVIER,  
Plaintiff,  
v.  
M. FRENCH, et al.,  
Defendants.

No. 2:09-cv-0783 KJM CKD P

ORDER

Before the court is plaintiff’s April 28, 2015 motion to re-open discovery (ECF No. 101), which closed on April 10, 2015. (ECF No. 93.) Defendants do not oppose the motion, so long as they may also conduct discovery during the extended period. (ECF No. 102.) Defendants request that the dispositive motion deadline be extended accordingly. (Id.)

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

1 1080, 1087 (9th Cir. 2002).

2 Here, plaintiff has shown sufficient diligence for the court to grant his unopposed motion.  
3 Essentially, he served untimely discovery requests on defendants because, as a pro se litigant  
4 without access to legal materials, he misunderstood the discovery deadline.

5 Good cause appearing, IT IS HEREBY ORDERED that:

6 1. Plaintiff's motion to re-open discovery (ECF No. 101) is granted;

7 2. Discovery is due by August 14, 2015. All requests for discovery shall be served not  
8 later than sixty days prior to that date. Any motions necessary to compel discovery shall be filed  
9 by that date; and

10 3. All pretrial motions, except motions to compel discovery, shall be filed on or before  
11 November 13, 2015.

12 Dated: May 29, 2015



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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