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8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
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11	ALLEN HAMMLER,	No. 2:15-cv-01645-TLN-EFB
12	Plaintiff,	
13	v.	ORDER
14	J. WRIGHT,	
15	Defendant.	
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17	This matter is before the Court pursuant to Defendant J. Wright's ("Defendant")	
18	unopposed motion to modify the Final Pretrial Order. (ECF No. 173.) Defendant seeks to add	
19	Nurse Yacoubou ("Yacoubou") as a witness to authenticate and provide testimony regarding the	
20	medical records Defendant identified as exhibits in the Pretrial Order. (ECF No. 173-1.)	
21	Defendant's motion is GRANTED for the reasons discussed herein.	
22	As noted in the Pretrial Order, any attempt to modify the Final Pretrial Order following	
23	the close of the 30-day period to file objections is governed by Federal Rule of Civil Procedure	
24	16. (ECF No. 106 at 14.) Rule 16 provides that the Court may modify the order issued after a	
25	final pretrial conference only to prevent manifest injustice. Fed. R. Civ. P. 16(e).	
26	The Ninth Circuit has held that a district court should consider the following factors when	
27	evaluating a motion to amend the pretrial order: (1) the degree of prejudice or surprise to the	
28	opposing party; (2) the ability of the moving party to cure any prejudice; (3) the impact of the	
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modification on the orderly and efficient conduct of the trial; and (4) any degree of willfulness or
 bad faith on the part of the party seeking the modification. Hunt v. County of Orange, 672 F.3d
 606, 616 (9th Cir. 2012).

4 On balance, the Court finds these factors weigh in favor of modifying the Pretrial Order. 5 First, Defendant notes that Yacoubou is the author of the medical report dated October 20, 2014, 6 which pertains to Plaintiff's medical examination following the alleged excessive force incident. 7 (ECF No. 173-1 at 2.) This report was previously identified in the August 14, 2018, Pretrial 8 Order as Defendant's Exhibit C (see ECF No. 106 at 10). (ECF No. 173-1 at 2.) Defendant 9 appears to seek to add Yacoubou as a witness in lieu of the previously identified custodian of 10 medical records, mainly to alleviate any potential evidentiary and hearsay issues with presentation 11 of those medical records. (See id. at 3.) Because Yacoubou's signature appears at the bottom of 12 the record, it does not appear that permitting Yacoubou to testify regarding the report he authored 13 would cause any prejudice or surprise to Plaintiff. (Id. at 2.) Similarly, amendment will not 14 negatively impact the orderly and efficient conduct of the trial where Defendant identified the 15 report in his Pretrial Statement, thus providing Plaintiff notice of the report, as early as April 18, 16 2018. (ECF No. 101 at 10.) Finally, there does not appear to be any bad faith on the part of 17 Defendant for not previously seeking to include Yacoubou as a witness for this purpose (see ECF 18 No. 173-1 at 3), and Plaintiff has not filed any opposition to the motion. For these reasons, the 19 Court finds amendment is appropriate.

Accordingly, IT IS HEREBY ORDERED that Defendant's Motion to Modify the Pretrial
Order to add Nurse Yacoubou as a witness (ECF No. 173) is GRANTED.

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IT IS SO ORDERED.

23 Dated: January 8, 2020

Troy L. Nunley United States District Judge