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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH BIVINS,  
Plaintiff,  
v.  
DR. JU,  
Defendant.

No. 2:16-cv-0389 MCE KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se. On December 15, 2017, defendant filed a motion to modify the scheduling order to extend the deadline for filing dispositive motions from December 15, 2017, to December 22, 2017, due to the unexpected unavailability of a declarant to defendant’s motion for summary based on plaintiff’s alleged failure to exhaust administrative remedies.

“The district court is given broad discretion in supervising the pretrial phase of litigation.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (citation and internal quotation marks omitted). Rule 16(b) provides that “[a] schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “The schedule may be modified ‘if it cannot reasonably be met despite the diligence of the party seeking the extension.’” Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting Johnson, 975 F.2d at 607).

1 Defendant has demonstrated good cause and diligence to extend the pretrial motions  
2 deadline. The deadline for filing a motion for summary judgment on the issue of exhaustion of  
3 administrative remedies is granted. If the motion is denied, the court will issue a revised  
4 scheduling order to provide for a minimum of sixty days in which to file dispositive motions on  
5 the merits.

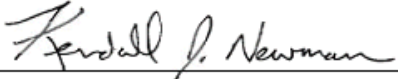
6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Defendants' motion (ECF No. 34) is granted;  
8 2. The December 15, 2017 pretrial motions deadline is extended to December 22, 2017;

9 and

10 3. The court will issue a revised scheduling order, if appropriate, following resolution of  
11 the motion for summary judgment.

12 Dated: December 19, 2017

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15 KENDALL J. NEWMAN  
16 UNITED STATES MAGISTRATE JUDGE

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