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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION

12
 13 **JAIME BELTRAN,**
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 Plaintiff,
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 v.
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BAKER, et al. ,
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 Defendants.

2:17-cv-1520 TLN AC P

**THIRD STIPULATION TO MODIFY
 THE DISCOVERY AND SCHEDULING
 ORDER; PROPOSED ORDER**

Judge: The Honorable Allison Claire
 Trial Date: Not set
 Action Filed: July 21, 2017

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 20 The parties to this action (collectively referred to as “the parties”), Plaintiff Jaime Beltran
 21 (CDCR No. K87116) (“Plaintiff”), by and through his counsel of record, and Defendants E.
 22 Baker, B. Cross, D. Tran, M. Swett, G. Smith, and T. Guerra (“Defendants”) by and through their
 23 counsel of record, hereby stipulate and request that the Court modify the discovery and
 24 scheduling order to extend the deadline for the parties to: (1) complete non-expert depositions to
 25 August 31, 2021; (2) file any necessary motion to compel to September 13, 2021; and (3) file
 26 pretrial motions to November 22, 2021. This is the third stipulation seeking to accomplish this
 27 task.

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1 A scheduling order may be modified only upon a showing of good cause and by leave of
2 Court. Fed. R. Civ. P. 6(b)(1)(A), 16(b)(4); *see, e.g., Johnson v. Mammoth Recreations, Inc.*, 975
3 F.2d 604, 609 (describing the factors a court should consider in ruling on such a motion). In
4 considering whether a party moving for a schedule modification has shown good cause, the Court
5 primarily focuses on the diligence of the party seeking the modification. *Johnson*, 975 F.2d at
6 609 (citing Fed. R. Civ. P. 16 advisory committee's notes of 1983 amendment). When an act
7 must be done within a specified time, the court may, for good cause, extend the time with or
8 without motion or notice if the court acts, or if a request is made, before the original time expires.
9 Fed. R. Civ. P. 6(b)(1)(A).

10 Good cause exists to modify the discovery and scheduling order based on the following
11 procedural history of this matter:

12 1. On June 1, 2021, Defendants' counsel began the deposition of Plaintiff Jaime Beltran.
13 After several hours, Plaintiff indicated that he could not continue with the deposition due to a
14 personal health reason. The parties agreed on the record to temporarily halt the deposition and to
15 complete the deposition at a later date.

16 2. The parties agreed to finish Plaintiff's deposition on June 11, 2021. Defendants'
17 counsel sent a notice for the deposition, and all parties appeared via Zoom videoconference for
18 the deposition at 8:00 a.m. Although Plaintiff's correctional institution provided a room and
19 video equipment which Plaintiff used to appear for the deposition, Plaintiff could not be heard on
20 the video equipment because there was excessive background noise at the correctional institution.
21 The parties spoke with correctional staff who explained that the noise would not abate before
22 11:00 a.m. because other inmates were being transported back and forth from court appearances
23 in the hallway outside of the room. Correctional staff explained that there was no alternate
24 microphone or headset available that could be used to reduce the background noise interference.

25 3. In an attempt to continue with the deposition, the parties requested that Plaintiff be
26 placed in an alternate room. Unfortunately, the only available room was directly across the same
27 noisy hallway. Correctional staff moved Plaintiff to the other available room, but the excessive
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1 background noise continued to interfere with the parties' ability to hear Plaintiff. The parties
2 agreed that it was impossible to proceed with Plaintiff's deposition under the circumstances.

3 4. Defendants' counsel was unavailable due to personal leave from June 14-17, 22, 23,
4 29, 30, and July 6, and 7, 2021. Accordingly, Defendants' counsel was not able to re-schedule
5 Plaintiff's deposition.

6 5. Since the last stipulation to modify the discovery and scheduling order, Defendants'
7 counsel has accepted an offer of employment outside of state service. Defendants' counsel will
8 transition to new employment on July 23, 2021. Accordingly, new defense counsel will be
9 assigned in this matter in the near future. Defendants' new counsel will need an opportunity to
10 review the case file, prepare Defendants for deposition, and to complete Plaintiff's deposition.

11 6. The parties have also agreed that Defendants' responses to all pending written
12 discovery shall be due on August 11, 2021.

13 7. Thus, good causes exists to modify the discovery and scheduling order on the grounds
14 that Defendants' counsel attempted to take and complete Plaintiff's deposition, but was not able
15 to do so as a result of unanticipated circumstances beyond his control as described above.
16 Additionally, as Defendants will be assigned new counsel in the new future, there is good cause
17 to extend the existing deadlines.

18 8. Should the Court modify the discovery deadline, modification of the pretrial motion
19 deadline will be necessary in order to permit sufficient time between the close of discovery and
20 the pretrial motion deadline to prepare any such motion. Defendants assert that they will be
21 severely prejudiced without the ability to depose Plaintiff in this matter, which is critical to
22 Defendants' investigation of the matter, and to Defendants' ability to prepare and file a motion
23 for summary judgment.

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For these reasons, the parties hereby stipulate and agree to the following:

The parties request that the Court extend the deadlines to: (1) complete non-expert depositions to August 31, 2021; (2) file any necessary motion to compel to September 13, 2021; and (3) file pretrial motions to November 22, 2021. In all other respects, the discovery and scheduling order should remain unchanged. The parties have also agreed that Defendants' responses to all pending written discovery shall be due on August 11, 2021.

Dated: July 13, 2021

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Supervising Deputy Attorney General

/s/ Erik A. Gutierrez
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Dated: July 13, 2021

LAW OFFICE OF JARRETT ADAMS PLLC

/s/ Lillian C. Munoz
LILLIAN C. MUNOZ
Attorneys for Plaintiff Jaime Beltran

IT IS SO ORDERED.

DATED: July 14, 2021


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE