

1 XAVIER BECERRA, State Bar No. 118517
 Attorney General of California
 2 PETER A. MESHOT, State Bar No. 117061
 Supervising Deputy Attorney General
 3 JULIO A. HERNANDEZ, State Bar No. 260508
 Deputy Attorney General
 4 1300 I Street, Suite 125
 P.O. Box 944255
 5 Sacramento, CA 94244-2550
 Telephone: (916) 210-6238
 6 Fax: (916) 322-8288
 E-mail: Julio.Hernandez@doj.ca.gov
 7 *Attorneys for Defendant Mark McMahon*

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

11
 12
 13 **DAVID ANTHONY AVILA,**
 14
 Plaintiff,
 15
 v.
 16
 17 **M D MCMAHON, ET AL.,**
 18
 Defendant.

2-18-cv-00163 JAM AC (PS)
**STIPULATION AND ORDER TO
 CONTINUE DISCOVERY DEADLINES
 AND TRIAL RELATED DATES DUE TO
 COVID-19 RESTRICTIONS**
 Action Filed: January 25, 2018

19
 20 **INTRODUCTION**

21 The parties, In Pro Se Plaintiff David Avila, and Defendant Officer Mark McMahon,
 22 through counsel, hereby jointly stipulate, as set forth below, to an extension of the currently
 23 scheduled discovery and trial related dates to allow Plaintiff Avila to complete deposition of
 24 Defendant Ofc. McMahon and allow parties to adequately prepare for trial. Due to the
 25 unprecedented COVID-19 pandemic, the State of California is under a stay at home order,
 26 making impractical for In Pro Se Plaintiff to complete deposition of Defendant Ofc. McMahon
 27 prior to the close of discovery.
 28

1 **RECITALS/GROUND FOR RELIEF**

2 The district court is required to enter a pretrial scheduling order “within the earlier of 90
3 days after any defendant has been served with the complaint or 60 days after any defendant has
4 appeared.” Fed. R. Civ. P. 16(b)(2). The scheduling order “controls the course of the action
5 unless the court modifies it.” Fed. R. Civ. P. 16(d); See *Johnson v. Mammoth Recreations, Inc.*,
6 975 F.2d 604, 610 (9th Cir. 1992). Orders entered before the final pretrial conference may be
7 modified by motion upon a showing of “good cause.” Fed. R. Civ. P. 16(b)(4). As the Ninth
8 Circuit explained: Rule 16(b)’s “good cause” standard primarily considers the diligence of the
9 party seeking the amendment. The district court may modify the pretrial schedule if it cannot
10 reasonably be met despite the diligence of the party seeking the extension. *Johnson, supra*, 975
11 F.2d at 609 (internal quotation marks, citations omitted). A party may establish good cause by
12 showing:

- 13 (1) that [he or she] was diligent in assisting the court in creating a
14 workable Rule 16 order; (2) that [his or her] noncompliance with a
15 Rule 16 deadline occurred or will occur, notwithstanding [his or
16 her] diligent efforts to comply, because of the development of
17 matters which could not have been reasonably foreseen or
18 anticipated at the time of the Rule 16 scheduling conference; and
19 (3) that [he or she] was diligent in seeking amendment of the Rule
20 16 order, once it became apparent that he or she could not comply
21 with the order.

22 *Hood v. Hartford Life & Accident Ins. Co.*, 567 F.Supp.2d 1221, 1224 (E.D. Cal.
23 2008) (citation omitted).

24 Good cause exists to justify a modification. On February 7, 2020, parties stipulated to
25 continuance of discovery and trial related dates. (ECF 72.) Due to the industrial injury of
26 Defendant Ofc. McMahon, parties required additional time to complete discovery including
27 deposition of Defendant. On February 10, 2020, the Court entered its order continuing discovery
28 and trial related dates (ECF 73.) After a meet and confer, parties agreed to the deposition of
Defendant Ofc. McMahon to take place on April 9, 2020. Plaintiff promptly served the notice of
deposition.

1 However, the State of California is under a stay at home order issued by the Governor of
2 California in order to address the current COVID-19 pandemic. Due to the Governor's
3 unprecedented COVID-19 open ended order, completion of discovery by the current completion
4 date of May 8, 2020 is not possible. In Pro Se Plaintiff is in the high risk age that is under order to
5 avoid unnecessary travel. Thus the completion of deposition of Defendant Ofc. McMahon is
6 impractical under the current conditions. Without the deposition of Defendant Ofc. McMahon,
7 parties cannot adequately prepare for trial.

8 Therefore, as good cause exist, parties agree to this stipulation to continue discovery and
9 trial related dates.

10 FOR THE FORGOING REASONS, AND GOOD CAUSE THEREIN, THE PARTIES
11 STIPULATE AND AGREE TO THE FOLLOWING:

- 12 1. Discovery completion date shall be continued from May 8, 2020 to July 10, 2020; A
13 brief mid-litigation joint statement shall be filed no later than fourteen (14) days prior to close of
14 discovery;
- 15 2. Discovery Motion completion date shall be continued from April 30, 2020 to June 29,
16 2020;
- 17 3. Expert Discovery completion date shall be continued from May 24, 2020 to July 24,
18 2020 (Parties have exchange expert disclosure);
- 19 4. All law and motion completion date shall be continued from June 22, 2020 to August
20 21, 2020;
- 21 5. Final Pretrial conference from July 31, 2020 to September 25, 2020 at 10:00 a.m.
22 before District Judge John A. Mendez. Pretrial statements shall be filed in accordance to Local
23 Rules 284 and 282;

1 6. Trial date shall be continued from September 14, 2020 to November 16, 2020 at 9:00
2 a.m. before Judge John A. Mendez, as set by Order, ECF 73.

3 **IT IS SO STIPULATED.**

4 Dated: April __, 2020

5
6

David A Avila, In Pro Se

7
8 Dated: April __, 2020

9 California Office of the Attorney General

10
11

JULIO A. HERNANDEZ
12 Deputy Attorney General
13 *Attorney for Defendant Mark McMahon*

14 **ORDER**

15 The Court finds good cause to continue discovery and trial related dates, and adjust
16 scheduling order as follows:

- 17 1. All discovery shall be completed by July 10, 2020; A brief mid-litigation joint
18 statement shall be filed no later than fourteen (14) days prior to close of discovery;
- 19 2. Discovery motions to compel shall be heard no later than June 29, 2020;
- 20 3. Expert Discovery shall be completed no later than July 24, 2020;
- 21 4. All law and motion, except as to discovery, shall be completed no later than August
22 21, 2020;
- 23 5. The final pretrial conference is set before District Court Judge John A. Mendez on
24 September 25, 2020 at 10:00 a.m. Pretrial statements shall be filed in accordance to Local Rules
25 284 and 282;
- 26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. A jury trial is set to commence on November 16, 2020 at 9:00 a.m. before District Judge John A. Mendez, as set by Order, ECF 73.

IT IS SO ORDERED

Dated: 4/17/2020

/s/ John A. Mendez
UNITED STATES DISTRICT COURT JUDGE

SA2018300627
33974752.docx