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8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA  
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 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**  
**(AS MODIFIED BY THE COURT)**  
 Action Filed: January 25, 2018

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 20 **INTRODUCTION**

21 The parties, In Pro Se Plaintiff David Avila, and Defendant California Highway Patrol  
 22 (CHP) Officer Mark McMahon, through counsel, hereby jointly stipulate, as set forth below, to an  
 23 extension of the currently scheduled discovery and trial related dates to allow Plaintiff Avila to  
 24 complete deposition of Defendant Ofc. McMahon and allow parties to adequately prepare for  
 25 trial. Due to the unprecedented COVID-19 pandemic, the State of California is under an  
 26 emergency order, affecting the operations of CHP. Additionally, due the recent increase of the  
 27 rate of infections, the Governor has made additional modifications to the emergency order,  
 28

1 making impractical for In Pro Se Plaintiff to complete deposition of Defendant Ofc. McMahon  
2 prior to the close of discovery.

### 3 **RECITALS/GROUND FOR RELIEF**

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

- 15 (1) that [he or she] was diligent in assisting the court in creating a  
16 workable Rule 16 order; (2) that [his or her] noncompliance with a  
17 Rule 16 deadline occurred or will occur, notwithstanding [his or  
18 her] diligent efforts to comply, because of the development of  
19 matters which could not have been reasonably foreseen or  
20 anticipated at the time of the Rule 16 scheduling conference; and  
21 (3) that [he or she] was diligent in seeking amendment of the Rule  
22 16 order, once it became apparent that he or she could not comply  
23 with the order.

24 *Hood v. Hartford Life & Accident Ins. Co.*, 567 F.Supp.2d 1221, 1224 (E.D. Cal.  
25 2008) (citation omitted).

26 Good cause exists to justify a modification. On February 7, 2020, parties stipulated to  
27 continuance of discovery and trial related dates. (ECF 72.) Due to the industrial injury of  
28 Defendant Ofc. McMahon, parties required additional time to complete discovery including  
deposition of Defendant. On February 10, 2020, the Court entered its order continuing discovery  
and trial related dates (ECF 73.) On April 20, 2020, the Court entered the stipulated order

1 modifying discovery order as a result of the Governor's unprecedented COVID-19 open-ended  
2 emergency order and stay at home order. (ECF 76)

3 It was anticipated by the parties that the COVID-19 pandemic would have subsided by July  
4 2020. However, the pandemic has worsen, with increased infections rates in the state affecting the  
5 operations of CHP. Additionally, due to the recent civil unrest, Ofc. McMahon was not available  
6 at an earlier date for deposition. Parties had agreed to a July 8, 2020 deposition, anticipating  
7 subsidence of the COVID-19 pandemic.

8 Therefore, due to the ongoing COVID-19 pandemic, the completion of discovery by the  
9 current completion date of July 10, 2020 is not possible. In Pro Se Plaintiff is in the high risk age  
10 that is under advisement to avoid unnecessary travel. Thus the completion of deposition of  
11 Defendant Ofc. McMahon is impractical under the current conditions. Without the deposition of  
12 Defendant Ofc. McMahon, parties cannot adequately prepare for trial.

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

15 FOR THE FORGOING REASONS, AND GOOD CAUSE THEREIN, THE PARTIES  
16 STIPULATE AND AGREE TO THE FOLLOWING:

17 1. Discovery completion date shall be continued from July 10, 2020 to September 11,  
18 2020; a brief mid-litigation joint statement shall be filed no later than fourteen (14) days prior to  
19 close of discovery;

20 2. Discovery Motion completion date shall be continued from June 29, 2020 to  
21 September 4, 2020;

22 3. Expert Discovery completion date shall be continued from July 24, 2020 to  
23 September 25, 2020 (Parties have exchange expert disclosure);

24 4. All law and motion completion date shall be continued from August 21, 2020 to  
25 October 2, 2020;

26 5. Final Pretrial conference from September 25, 2020 to October 16, 2020 at 11:00 a.m.  
27 before District Judge John A. Mendez. Pretrial statements shall be filed in accordance to Local  
28 Rules 284 and 282;



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6. A jury trial is reset for January 11, 2021 at 9:00 a.m. before District Judge John A. Mendez.

**IT IS SO ORDERED**

Dated: July 13, 2020

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