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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Nicholaus James McDonald,

) No. CV 07-1022-PHX-GMS

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Plaintiff,

) **ORDER**

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vs.

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Ronolfo Macabuhay, M.D.,

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Defendant.

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Before the Court is Defendant’s Motion for Leave to File Motion to Dismiss on Ground of Qualified Immunity (Doc. # 63). The Court will deny the motion for two reasons.

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First, Defendant’s motion fails to comply with the Federal Rules of Civil Procedure.

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As Defendant notes, the dispositive motion deadline expired on December 1, 2008 (Doc.

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30). When a deadline has expired, and a Scheduling Order has been entered in the case,

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a request for a modification to the Scheduling Order must be supported by a showing of good

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cause. See Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 608 (9th Cir. 1992).

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Defendant does not articulate the appropriate standard and presents no argument that would

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support a good cause finding in this case. Defendant boldly asserts that the basis for his

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qualified immunity motion was not apparent until the Court entered its summary judgment

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order. The Court disagrees, but even if it did not, Defendant does not explain why his motion

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for leave was not filed for over two months after the summary judgment order.

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Again, however, even if the Court were to consider the motion for leave on its merits,

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it must still be denied because the motion distorts the Court’s finding in its summary


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judgment order. Contrary to Defendant’s contention, the Court did not find that Defendant

1 was personally responsible for the entirety of Plaintiff's medical care between November
2 2004 and July 2006. What the Court did find was that a reasonable jury could conclude that
3 Defendant's failure to obtain results or follow up on tests that he personally ordered was
4 deliberately indifferent to Plaintiff's health. See McGuckin v. Smith, 974 F.2d 1050, 1061
5 (9th Cir.1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133
6 (9th Cir.1997) (en banc) (finding that a single "egregious" failure can rise to the level of
7 deliberate indifference). Moreover, that inmates are entitled to acceptable medical care is
8 clearly established. Estelle v. Gamble, 429 U.S. 97, 104 (1976); McGuckin, 974 F.2d at
9 1061. Consequently,

10 **IT IS HEREBY ORDERED** that Defendant's Motion for Leave to File Motion to
11 Dismiss on Ground of Qualified Immunity (Doc. # 63) is **denied**.

12 DATED this 17th day of November, 2009.

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16 G. Murray Snow
17 United States District Judge
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