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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Jay Harold Wetmore,	)	
	)	
Plaintiff,	)	No. CV-08-0095-PHX-PGR (JRI)
vs.	)	
	)	
Charles Goldsmith, et al.,	)	<u>ORDER</u>
	)	
Defendants.	)	

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Having considered the plaintiff's Appeal to the District Court Judge of the Magistrate's July 29 Order (doc. #18), the Court finds that the appeal should be denied as premature.

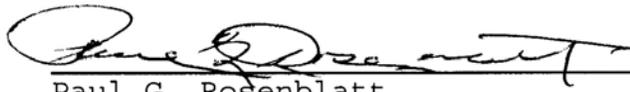
On May 27, 2008, Magistrate Judge Irwin entered a scheduling order (doc. #10). On July 18, 2008, the parties filed a Joint Discovery Plan (doc. #14) that adopted the deadlines set forth in the scheduling order. On July 30, 2008, Magistrate Judge Irwin entered an order (doc. #16) that stated that the scheduling order entered on May 27<sup>th</sup> would remain in effect because the parties had acceded to that schedule in their Joint Discovery Plan. On July 31, 2008, the plaintiff filed a Motion to Modify and Extend Time Limits on Scheduling Order (doc. #17), wherein he requests that the deadlines for submitting and completing discovery be extended by two months. The defendants filed a response to the

1 plaintiff's motion on August 8, 2008 (doc. #19), wherein they request that a three-  
2 month extension of the deadlines be entered.

3 In his appeal, the plaintiff requests that this Court vacate Magistrate Judge  
4 Irwin's order of July 29, 2008 [sic-July 30, 2008] and grant his motion to modify  
5 the scheduling deadlines. The Court concludes that the appeal is premature  
6 because it is based on the erroneous assumption that Magistrate Judge Irwin's  
7 July 30th order was a ruling on the plaintiff's motion. It was not in fact such a  
8 ruling inasmuch as the plaintiff's motion was not filed until the day after the order  
9 at issue was entered. Because there has to date not been a ruling by Magistrate  
10 Judge Irwin on the plaintiff's motion, given the pendency of the plaintiff's appeal,  
11 the Court declines to initially decide the propriety of the parties' requests to  
12 extend the scheduling deadlines. Under the Court's referral order, that decision  
13 must initially be made by Magistrate Judge Irwin. Therefore,

14 IT IS ORDERED that the plaintiff's Appeal to the District Court Judge of the  
15 Magistrate's July 29 Order (doc. #18) is denied.

16 DATED this 30<sup>th</sup> day of September, 2008.

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20 Paul G. Rosenblatt  
21 United States District Judge  
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