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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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| ALFRED BROWN, | | 1:04-cv-06539-AWI-SMS-PC |
| | Plaintiff, | ORDER GRANTING MOTION TO VACATE AND REISSUE SCHEDULING ORDER (Doc. 45.) |
| v. | | |
| KYLE, et al., | | ORDER VACATING DISCOVERY/SCHEDULING ORDER OF OCTOBER 26, 2009 (Doc. 38.) |
| | Defendants. | ORDER DIRECTING CLERK TO ISSUE NEW DISCOVERY/SCHEDULING ORDER |

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Plaintiff, Alfred Brown (“Plaintiff”), is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint commencing this action on November 15, 2004. (Doc. 1.) This case now proceeds on the First Amended Complaint filed by Plaintiff on October 23, 2006, against defendants David Kyle, J. Klarich, T. Domingo and R. Ruff, for Plaintiff’s medical claims under the Eighth Amendment.¹ (Doc. 17.) Defendant Domingo filed an Answer to the complaint on October 23, 2009, and the Court subsequently issued a Discovery/Scheduling Order on October 26, 2009, establishing a deadline of December 26, 2009, for the filing of unenumerated Rule 12(b) motions. (Docs. 37, 38.) On December 23, 2009,

¹All other claims and defendants were dismissed from this action by the Court on March 13, 2009. (Doc. 24.)

1 defendants Domingo and Kyle (“Defendants”) filed a motion for the court to vacate and reissue the
2 Scheduling Order after defendant Kyle files a responsive pleading. (Doc. 45.) On January 7, 2010,
3 defendant Kyle filed an Answer to the complaint. (Doc. 46.)

4 “A scheduling order shall not be modified except upon a showing of good cause” and by
5 leave of court. Fed. R. Civ. P. 16(b). Defendants argue that good cause appears for the Court to
6 vacate and reissue the Scheduling Order after defendant Kyle files a responsive pleading, because
7 defendant Kyle’s responsive pleading is not due until January 8, 2009, twenty days after the
8 December 26, 2009 unenumerated 12(b) deadline. Defendants argue that if the date is not extended,
9 no exercise of due diligence could permit defendant Kyle to file an unenumerated 12(b) motion.
10 Defendants have shown good cause for the Discovery/Scheduling Order to be vacated and reissued,
11 and Defendant Kyle filed a responsive pleading on January 7, 2010.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Defendants’ motion for the court to vacate and reissue the Scheduling Order, filed
14 on December 23, 2009, is GRANTED;
- 15 2. The Court’s Discovery/Scheduling Order of October 26, 2009 is VACATED; and
- 16 2. The Clerk is DIRECTED to issue a new Discovery/Scheduling Order for all parties
17 to this action.

18 IT IS SO ORDERED.

19 **Dated:** January 10, 2010

20 /s/ Sandra M. Snyder
21 UNITED STATES MAGISTRATE JUDGE
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