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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY VICTORY,  
Plaintiff,

v.

C. BARBER, et al.,  
Defendants.

CASE NO. 1:05-CV-01578-LJO-DLB PC

ORDER GRANTING DEFENDANTS’  
MOTION TO MODIFY TRIAL  
SCHEDULING ORDER AND VACATING  
JUNE 2, 2010 TRIAL SCHEDULING ORDER  
(DOC. 129)

ORDER DISREGARDING PLAINTIFF’S  
MOTION AS MOOT (DOC. 125)

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Plaintiff Michael Anthony Victory (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s first amended complaint against Defendants Barber, Smith, Kushner, Bresler, Salazar, Sacks, Neubarth, and Ortiz for violation of the Eighth Amendment. Pending before the Court is Defendants’ motion for modification of the June 2, 2010 Trial Scheduling Order, filed February 23, 2011. Doc. 129. Also pending is Plaintiff’s motion for an expedited order requesting communication with certain witnesses in preparation for trial, filed February 17, 2011. Doc. 125.

The Magistrate Judge has issued Findings and Recommendations regarding Defendants’ motion to dismiss on February 23, 2011. Doc. 128. If this Court adopts the Findings and Recommendations, Defendants contend that preparation for trial would be needless. Defendants cite to various deadlines listed in the Court’s Trial Scheduling Order, including the parties’ pretrial statements being due on March 1, 2011.

1 Modification of a scheduling order requires a showing of good cause. Fed. R. Civ. P.  
2 16(b)(4). The Court agrees that if the Findings and Recommendation are adopted, preparation  
3 for trial would be moot. Good cause being shown, the Court will vacate the June 2, 2010 trial  
4 scheduling order, and will issue a new scheduling order after resolution of the Findings and  
5 Recommendation, if necessary. Because the trial scheduling order will be vacated, Plaintiff's  
6 motion for an order to expedite communication with witnesses is moot.

7 Accordingly, it is HEREBY ORDERED that:

- 8 1. Defendants' motion for modification of the Court's June 2, 2010 Trial Scheduling  
9 Order, filed February 23, 2011, is GRANTED;
- 10 2. The trial scheduling order, filed June 2, 2010, is VACATED; and
- 11 3. Plaintiff's motion for an order to expedite communication with witnesses, filed  
12 February 17, 2011, is DISREGARDED as moot.

13 IT IS SO ORDERED.

14 Dated: February 24, 2011

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE