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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY VICTORY,

Plaintiff,

v.

SCHWARZENEGGER, et al.,

Defendants.

CASE NO. 1:05-cv-01578-LJO-DLB (PC)

ORDER DENYING MOTION FOR
CERTIFICATE OF APPEALABILITY AS
MOOT

(Doc. 63)

ORDER GRANTING EXTENSION OF TIME
FOR DISCOVERY AND VACATING APRIL
23, 2009 DISCOVERY AND SCHEDULING
ORDER

_____/ (Docs. 62, 70, 78)

Plaintiff Michael Anthony Victory (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Neubarth, Barber, Smith, Kushner, Bresler, Salazar, Sacks, and Ortiz for violation of the Eighth Amendment. Pending before the Court are several motions filed by the parties.

On June 3, 2009, Defendants filed a motion for certificate of appealability pursuant to 28 U.S.C. § 1292(b). (Doc. 63.) However, the order that Defendants sought to appeal was vacated by this Court on September 4, 2009. (Doc. 64.) Accordingly, Defendants’ motion for certificate of appealability, filed June 3, 2009, is DENIED as moot.

On November 17, 2009, Plaintiff filed a motion requesting that the discovery deadline be extended due to Plaintiff’s appeal. (Doc. 70.) On December 14, 2009, Defendants filed their

1 own motion requesting that the discovery deadline be extended. (Doc. 78.) The United States
2 Court of Appeals for the Ninth Circuit issued its order in this action on January 20, 2010,
3 dismissing Plaintiff's appeal for lack of jurisdiction. This Court issued an order adopting the
4 Findings and Recommendations resolving Defendants' motion to dismiss on January 28, 2010.
5 Good cause being presented, the Court HEREBY GRANTS Plaintiff and Defendants' motion for
6 extension of time for discovery, and VACATES its discovery and scheduling order, filed April
7 23, 2009. The Court will issue a new discovery and scheduling order in this action.

8 IT IS SO ORDERED.

9 **Dated: January 28, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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