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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

HELEN WATHAN, et al.,)	1:05cv1609 AWI DLB
)	
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S MOTION
)	TO MODIFY THE SCHEDULING
v.)	CONFERENCE ORDER
)	(Document 119-2)
)	
MERCED COUNTY SHERIFF MARK N.)	Trial: June 1, 2009, 8:30 a.m.
PAZIN, et al.,)	Courtroom 4
)	The Honorable Lawrence J. O'Neill
)	
Defendants.)	Pretrial Conference: May 11, 2009, 8:15 a.m.
)	Courtroom 4

Plaintiffs Helen and James Wathan (“Plaintiffs”) filed the instant motion to continue the trial and pretrial conference on April 16, 2009. The matter was heard on April 24, 2009, before the Honorable Dennis L. Beck, United States Magistrate Judge. James Hoey appeared on behalf of Plaintiffs. James Arendt appeared on behalf of Defendants Doug Hays, Jon McKnight and Russ Sharrock (“Defendants”).

DISCUSSION

Trial is currently set for May 27, 2009. The pretrial conference was set for April 13, 2009, although the parties submitted a stipulation to continue the conference and were notified that the requested date was not available.

By this motion, Plaintiffs seek to continue the trial and pretrial dates. Defendants opposed the motion on April 22, 2009.

1 Federal Rule of Civil Procedure 16(b) provides that “[a] schedule shall not be modified
2 except upon a showing of good cause . . .”

3 Plaintiffs seek to modify the scheduling order to accommodate their police procedures
4 expert, Ronald Martinelli, Ph.D. Plaintiffs explain that in February 2009, Plaintiff’s counsel,
5 James Hoey, spoke with Dr. Martinelli. Dr. Martinelli did not indicate at that time that he was
6 unavailable on that date, though counsel admitted at the hearing that the conversation was
7 focused on ensuring that Dr. Martinelli understood that the action was going forward and
8 availability was not discussed. On April 13, 2009, Dr. Martinelli informed Mr. Hoey that he
9 would be out of the country for the month of May and was scheduled to testify at another trial
10 during the first week of June, and would therefore be unavailable if trial started on May 27.

11 Declaration of James Hoey, ¶ 4.

12 Plaintiffs believe that good cause exists because Mr. Hoey only recently learned that Dr.
13 Martinelli was unavailable for a May 27, 2009, trial date. They also contend that his testimony is
14 crucial to their action. While this may be true, the Court does not necessarily agree that it
15 constitutes good cause. Although Mr. Hoey talked to Dr. Martinelli prior to the continuance of
16 the trial date, he did not confirm that he was available to start trial on May 27, 2009. Moreover,
17 as the parties are aware, the Court has altered the schedule on more than one occasion to
18 accommodate Mr. Hoey.

19 Nonetheless, because prejudice to Defendants can be limited by moving the trial just a
20 few days, the Court GRANTS the motion. The parties have indicated that June 2, 2009, is an
21 acceptable date to start trial. However, the Court cannot accommodate date. Instead, trial is SET
22 for Monday, June 1, 2009, in Courtroom 4, at 8:30 a.m., before the Honorable Lawrence J.
23 O’Neill.¹

24 The pretrial conference is SET for May 11, 2009, in Courtroom 4, at 8:15 a.m., before the
25 Honorable Lawrence J. O’Neill. The parties are ordered to file a **Joint Pretrial Statement**
26 **pursuant to Local Rule 16-281(a)(2)** on or before May 6, 2009. The parties are further directed
27

28 ¹ Although this action is assigned to the Honorable Anthony W. Ishii, Judge O’Neill is the only district court
judge who can accommodate a date close to the requested date of June 2, 2009.

1 to submit a digital copy of their pretrial statement in Word Perfect X3² format, directly to Judge
2 O'Neill's chambers by email at LJOOrders@caed.uscourts.gov.

3 Counsels' attention is directed to **Rules 16-281 and 16-282 of the Local Rules** of
4 Practice for the Eastern District of California, as to the obligations of counsel in preparing for the
5 pre-trial conference. The Court will insist upon strict compliance with those rules.

6 **ORDER**

- 7 1. Plaintiffs' motion to modify the scheduling conference order is GRANTED;
8 2. Trial is set for Monday, June 1, 2009, in Courtroom 4, at 8:30 a.m., before the
9 Honorable Lawrence J. O'Neill;
10 3. The pretrial conference is set for May 11, 2009, in Courtroom 4, at 8:15 a.m.,
11 before the Honorable Lawrence J. O'Neill. The parties are ordered to file a joint
12 pretrial statement on or before May 6, 2009.

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14 IT IS SO ORDERED.

15 **Dated: April 29, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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² If WordPerfect X3 is not available to the parties then the latest version of WordPerfect or any other word processing program in general use for IBM compatible personal computers is acceptable.