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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Phillip Rosenblum,)	No. CV 1-08-0448-SMM
Plaintiff,)	ORDER
vs.)	
Mule Creek State Prison Medical Staff, et)	
al.,)	
Defendants.)	

Before the Court is Defendants’ Motion to Modify the Summary Judgment Motion Deadlines (Doc. 46). Defendants request that the current May 28, 2010 deadline for Defendants to file their summary judgment motion be modified due to Plaintiff’s recent motion seeking leave to amend his complaint (Doc. 45).

On March 25, 2010, the Court issued a Rule 16 Scheduling Order setting a May 28, 2010 deadline for Defendants to file their summary judgment motion (Doc. 44). Then, on May 7, 2010, Plaintiff filed a motion seeking leave to file an amended complaint regarding his claims against Defendants (Doc. 45). Plaintiff’s motion states that he intends to dismiss Count Two regarding his neurological condition, dismiss six Defendants, and add three new Defendants. As briefing is not yet complete, the Court has not ruled on Plaintiff’s motion. In their Motion to Modify the Summary Judgment Motion Deadlines, Defendants state that it is not possible for them to prepare and file a summary judgment motion while the final scope and extent of Plaintiff’s claims remain unsettled. Should the Court grant Plaintiff leave

1 to amend his complaint, defense counsel may need to conduct additional discovery or
2 investigations prior to the filing of a summary judgment motion.

3 Under Federal Rule of Civil Procedure 16, a pretrial scheduling order should not be
4 modified except upon a showing of good cause and with the judge's consent. Fed. R. Civ.
5 P. 16(b)(4). The decision to modify a scheduling order is within the broad discretion of the
6 district court. Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992).
7 Upon examination of Defendants' motion, the Court finds good cause to modify the summary
8 judgment motion briefing deadlines set forth in the Court's Rule 16 Scheduling Order (Doc.
9 44). The Court's ruling on Plaintiff's motion for leave to file an amended complaint may
10 alter the scope of the present litigation and affect which claims and/or Defendants remain,
11 which in turn, may change the grounds for Defendants' summary judgment motion.
12 Therefore, the Court will vacate the current deadlines and reset them upon its ruling on
13 Plaintiff's motion for leave to file an amended complaint.

14 Accordingly,

15 **IT IS HEREBY ORDERED GRANTING** Defendants' Motion to Modify the
16 Summary Judgment Motion Deadlines (Doc. 46).

17 **IT IS FURTHER ORDERED VACATING** the summary judgment motion briefing
18 deadlines set forth in the Court's March 25, 2010 Rule 16 Scheduling Order (Doc. 44). All
19 other provisions of the Scheduling Order remain in effect.

20 **IT IS FURTHER ORDERED** that the Court will issue an Amended Rule 16
21 Scheduling Order with a summary judgment briefing schedule upon its ruling on Plaintiff's
22 motion for leave to file an amended complaint (Doc. 45).

23 DATED this 18th day of May, 2010.

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26 _____
27 Stephen M. McNamee
28 United States District Judge