

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ROBERTO A. SOTELO,  
Plaintiff,  
v.  
T. BIRRING, et al.,  
Defendants.

Case No. 1:08-cv-01342-LJO-SKO (PC)  
  
ORDER ADDRESSING AMENDMENT,  
DIRECTING CLERK OF COURT TO  
ENTER FINAL JUDGMENT AGAINST  
PLAINTIFF, AND RELIEVING  
PLAINTIFF’S VOLUNTARY COUNSEL  
OF RECORD  
  
(Docs. 50, 156, and 165)

**I. Background**

Plaintiff Roberto A. Sotelo, a state prisoner proceeding in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 10, 2008. Prior to June 3, 2014, this action was proceeding on Plaintiff’s second amended complaint, filed March 22, 2012, against the sole remaining named defendant, Barry J. Green, for acting with deliberate indifference to Plaintiff’s medical needs, in violation of the Eighth Amendment of the United States Constitution.

On June 3, 2014, the Court granted Defendant Green’s motion for summary judgment and notified the parties that the case would remain open pending resolution of Plaintiff’s attempt to add a new party. That matter has now been submitted and it is denied for the reasons that follow.

**II. Discussion**

On May 21, 2014, in conjunction with his opposition to Defendant Green’s motion for summary judgment, Plaintiff filed a “Doe Amendment to Second Amended Complaint.” (Doc.

1 156.) Defendant Green filed an opposition on June 2, 2013. Plaintiff did not file a reply.

2 Plaintiff's "Amendment" consists of a notice he is substituting Dr. John Chau, M.D., for  
3 Doe 1. However, while the operative pleading does identify Doe defendants, the deadline for  
4 amending the pleadings was November 20, 2013, and modification of the pretrial scheduling order  
5 requires a showing of good cause. Fed. R. Civ. P. 16(b)(4). No good cause to modify the  
6 scheduling order has been shown. Fed. R. Civ. P. 16(b)(4); *Zivkovic v. Southern California*  
7 *Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002).

8 Accordingly, the Court HEREBY ORDERS as follows:

9 1. Plaintiff's notice of amendment, construed as a motion to amend, is DENIED for  
10 lack of good cause under Rule 16(b)(4);

11 2. The Clerk of the Court shall enter final judgment against Plaintiff and close this  
12 case; and

13 3. Plaintiff's counsel shall notify Plaintiff of the judgment and counsel is relieved of  
14 his appointment to represent Plaintiff.

15 **SO ORDERED**  
16 **Dated: June 16, 2014**

17 /s/ Lawrence J. O'Neill  
18 **United States District Judge**

19  
20  
21  
22  
23  
24  
25  
26  
27  
28