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

ORLANDO PAYNE,	1:09-cv-00127-AWI-GSA-PC
Plaintiff,	ORDER GRANTING REQUEST TO VACATE DISPOSITIVE MOTIONS DEADLINE
vs.	(Doc. 41.)
A. HEDGPETH, et al.,	Dispositive MotionsDeadline - VACATED
Defendants.	

**I. BACKGROUND**

Orlando Payne (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on January 21, 2009. (Doc. 1.)

On December 15, 2009, Defendants filed an unenumerated Rule 12(b) motion to dismiss. (Doc. 28.) On July 30, 2010, the court issued findings and recommendations, recommending that Defendants’ motion to dismiss be granted, dismissing this action in its entirety. (Doc. 40.) On August 3, 2010, Defendants filed an ex parte request to stay the pretrial dispositive motions deadline in this action until after the Court’s ruling on the motion to dismiss is known. (Doc. 21.)

**II. MODIFICATION OF SCHEDULING ORDER**

A court may modify a scheduling order for good cause. Fed.R.Civ.P 16(b)(4). This good cause standard “primarily considers the diligence of the party seeking the amendment.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir. 1992). “The district court may modify the pretrial

1 schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" Id.

2 The current deadline for the filing of pretrial dispositive motions, established by the court's  
3 scheduling order of October 15, 2009, is August 24, 2010. (Doc. 21.) Defendants request that the  
4 deadline be vacated until after the Court's ruling on their motion to dismiss is known. Defendants seek  
5 protection from the burden of preparing and filing a motion for summary judgment which will be  
6 unnecessary if the court grants the motion to dismiss.

7 The Court finds it reasonable and in the interest of judicial economy to vacate the dispositive  
8 motions deadline in this action pending resolution of the motion to dismiss.

9 **III. CONCLUSION**

10 Based on the foregoing and good cause appearing, IT IS HEREBY ORDERED that:

- 11 1. Defendants' ex parte request to vacate the dispositive motions deadline, filed August 3,  
12 2010, is GRANTED;
- 13 2. The August 24, 2010 deadline for the parties to filed pretrial dispositive deadlines is  
14 VACATED, pending resolution of the motion to dismiss filed by Defendants on  
15 December 15, 2009; and
- 16 3. Following the resolution of Defendants' motion to dismiss, the Court shall issue a new  
17 scheduling order if needed.

18  
19 IT IS SO ORDERED.

20 **Dated: August 4, 2010**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE