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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 KENYA DARRICK CALDWELL,

12 Plaintiff,

13 v.

14 CITY OF SELMA, et al.,

15 Defendants.  
16

Case No. 1:13-cv-00465-SAB

ORDER GRANTING DEFENDANTS'  
MOTION TO AMEND THE SCHEDULING  
ORDER

(ECF No. 58)

17 On August 29, 2014, an order was filed granting partial summary judgment in this action.  
18 On this same date, an order issued granting the parties' stipulation for Plaintiff to undergo an  
19 independent psychological examination. On September 3, 2014 an amended order issued  
20 granting Defendants' motion for partial summary judgment.

21 On October 30, 2014, Plaintiff's counsel filed a motion to withdraw as attorney, which is  
22 set for hearing on December 10, 2014. On November 5, 2014, Defendants filed a motion to  
23 amend the scheduling order. An informal teleconference was held on December 1, 2014 to  
24 address the motion to amend the scheduling order. Counsel M. Greg Mullanax appeared for  
25 Plaintiff and counsel David M. Overstreet and Rachelle Taylor Golden appeared for Defendants.

26 Following the order granting partial summary judgment in this action, the parties entered  
27 into an agreement to settle the outstanding claims in this action for a waiver of fees and costs.  
28 Subsequently, Plaintiff's counsel informed Defendant on October 29, 2014, that he would no

1 longer be representing Plaintiff. Defendants seek an amendment of the scheduling order to bring  
2 a second motion for summary judgment on the remaining claims and to reschedule the  
3 independent psychological examination.

4 Modification of a scheduling order requires a showing of good cause, Fed. R. Civ. P.  
5 16(b), and good cause requires a showing of due diligence, Zivkovic v. Southern California  
6 Edison Co., 302 F.3d 1080, 1087-88 (9th Cir. 2002). Defendants were informed that the  
7 settlement would not be consummated on October 29, 2014, and filed the instant motion on  
8 November 5, 2014. Based upon Plaintiff's decision not to consummate the settlement  
9 agreement, good cause exists to allow the amendment of the scheduling order to allow a second  
10 motion for summary judgment. Therefore, the Court will grant Defendants' motion to amend the  
11 scheduling order.

12 Defendants seek an order rescheduling the independent psychological examination,  
13 Plaintiff shall be ordered to file an opposition or statement of opposition to the request for an  
14 independent psychological examination on or before December 8, 2014. The Court will consider  
15 this request with the motion to withdraw as Plaintiff's attorney set for December 10, 2014 at  
16 10:00 a.m.

17 Defendants also seek amendment of the order granting partial summary judgment of the  
18 privacy claims to include any claims raised under the Ninth Amendment. Defendants only  
19 addressed the Fourth Amendment claims in their motion for summary judgment. Neither  
20 Defendants nor Plaintiff briefed whether a privacy claim exists under the Ninth Amendment or  
21 the merits of such a claim. Since Defendants did not move for summary judgment on the Ninth  
22 Amendment claim, the Court denies the request to amend the order on the motion for summary  
23 judgment.

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Defendants motion to amend the scheduling order to allow a second motion for  
26 summary judgment is GRANTED;
- 27 2. Defendants shall file a motion for summary judgment on all remaining claims on  
28 or before February 6, 2015;

- 1 3. Defendants' request to amend the order granting partial motion for summary  
2 judgment is DENIED;
- 3 4. Plaintiff shall file an opposition or statement of non-opposition to the request for  
4 an independent psychological examination on or before December 8, 2014;
- 5 5. All pending dates in this action are vacated; and
- 6 6. The Court shall set future dates as necessary following the order on Defendants'  
7 motion for summary judgment.

8 IT IS SO ORDERED.

9 Dated: December 1, 2014

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12 UNITED STATES MAGISTRATE JUDGE