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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 ESTATE OF JOSE HERRERA, et al.,

10 Plaintiffs,

11 v.

12 CALIFORNIA DEPARTMENT OF  
13 CORRECTIONS, et al.,

14 Defendants.

**Case No. 1:16-cv-01053-DAD-SKO (PC)**

**ORDER DIRECTING THIS ACTION TO  
PROCEED UNDER LOCAL RULE 230(I);  
STRIKING DEFENDANTS' FIRST MOTION TO  
DISMISS; AND VACATING THE HEARING ON  
DEFENDANTS' SECOND MOTION TO DISMISS**

**(Docs. 5, 6, 7, 8)**

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16 Plaintiffs, the Estate of Jose Herrera, Jose A. Herrera, Martha Herrera and Jose Herrera,  
17 named individually and as the Successors in Interest of Jose E. Herrera, a state prisoner at the  
18 time of his death, filed this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. 1.) This action  
19 involves past conditions of confinement at Kern Valley State Prison California Correctional  
20 Institution in Tehachapi.

21 On October 6, 2016, Defendants filed a motion to dismiss and set it for hearing before the  
22 District Judge. (Doc. 6.) Although Jose Herrera was not incarcerated when this action was filed,  
23 on October 12, 2016, the Court directed the Clerk of Court to amend the docket in this matter to  
24 reflect the designation of this case as a prisoner case by adding the suffix "PC" to the case  
25 number, vacated all pending hearing dates, and ordered that all pending motions be re-noticed for  
26 hearing before the undersigned magistrate judge. (Doc. 7.) Defendants thereafter filed a  
27 duplicative motion to dismiss set for hearing before the undersigned, but did not withdraw their  
28 original motion to dismiss. (Doc. 8.)

1 District courts have broad discretion to manage the course of litigation and their calendars.  
2 *Hunt v. County of Orange*, 672 F.3d 606, 616 (9th Cir. 2012); *see also U.S. v. Batiste*, 868 F.2d  
3 1089, 1091 n.4 (9th Cir. 1989).

4 In light of the above, it is HEREBY ORDERED that:

- 5 1. Local Rule 230(l) shall apply to this case;
- 6 2. The hearing on Defendants' motion to dismiss, filed on October 14, 2016, is  
7 vacated;
- 8 3. Within five (5) days of the date of service of this order, Defendants shall withdraw  
9 one of their motions to dismiss (either Doc. 6 or Doc. 8) via CM/ECF;
- 10 4. Within twenty-six (26) days of the date of service of this order, Plaintiffs shall file  
11 either an opposition to Defendants' remaining motion to dismiss, or a statement of  
12 non-opposition and a first amended complaint; and
- 13 5. If Plaintiffs file an opposition, Defendants shall file their reply within seven (7)  
14 days.

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16 IT IS SO ORDERED.

17 Dated: October 21, 2016

/s/ Sheila K. Oberto  
18 UNITED STATES MAGISTRATE JUDGE