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6 **THE UNITED STATES DISTRICT COURT**  
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
8 **SACRAMENTO DIVISION**

10	<b>LARRY GIRALDES, JR.,</b>	)	<b>2-01-cv-2110 LKK EFB P</b>
		)	
11		)	<b>PLAINTIFF'S REQUEST AND ORDER</b>
	<b>Plaintiff,</b>	)	<b>TO MODIFY SCHEDULING ORDER</b>
12	<b>v.</b>	)	
		)	<b>Date: December 14, 2012</b>
13	<b>T. PREBULA, et al.,</b>	)	<b>Judge Lawrence K. Karlton</b>
	<b>Defendants.</b>	)	

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16 **MOTION TO MODIFY SCHEDULE ORDER**

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18 **I.**

19 **MODIFICATION OF SCHEDULE ORDER**

20 "Orders entered before the final pretrial conference may be modified upon a showing of  
21 "good cause." FRCP 16(b). "A *schedule* may be modified only for *good cause* and with the  
22 judge's consent." FRCP 16(b)(4). The court may modify the schedule order if it cannot  
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1 reasonably be met despite the diligence of the party seeking the extension. *Johnson v. Mammoth*  
2 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992.) “The district court is given broad  
3 discretion in supervising the pretrial phase of litigation, and its decisions regarding the preclusive  
4 effect of a pretrial order ... will not be disturbed unless they evidence a clear abuse of discretion.”  
5 *Zivkovic v. Southern California Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002.)

6 Plaintiff is represented by *pro bono* counsel. Plaintiff's medical expert must be  
7 approved by the court before Plaintiff's *pro bono* counsel can be guaranteed reimbursement for  
8 the expert expenses. Counsel has been diligent in seeking a medical expert in this case, however,  
9 medical experts have been unable to agree to trial testimony because of the distant trial date of  
10 October 8, 2013. Plaintiff has recently obtained a medical expert who has agreed to trial  
11 testimony. Plaintiff has submitted the appropriate forms to obtain approval of the expert,  
12 however since at the time they were filed for pre-approval, the Complaint had been dismissed  
13 without prejudice (Order 11:16-18 ECF No. 209). Plaintiff subsequently timely filed his Second  
14 Amended Complaint, however there is now another Motion to Dismiss Second Amended  
15 Complaint pending before this Court to be heard December 17, 2012. Today, December 14,  
16 2012 is the Date for parties to file and serve their Designation of Expert Witness. For the  
17 foregoing reasons, Plaintiff is unable to comply with this order at this time.

18 Plaintiff intends and proposes the following. If the Defendant's Motion to Dismiss  
19 Second Amended Complaint is denied, Plaintiff intends to re-file his application for approval of  
20 expert witness fees. Then, if approved, the retained medical expert will be paid and begin work.  
21 His work will likely consist of reviewing the file, and preparing his report concerning his  
22 opinions. At that time Plaintiff will be in a position to meaningfully comply with the  
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1 Designation of Expert Witnesses obligation. Although it is uncertain how long it will take for  
2 Plaintiff's medical expert to complete his work to and including report completion, I would  
3 imagine it could take 60 days. Therefore, that is our request.

4 There will be no prejudice from the sought extension. On the evening of December 13,  
5 2012 Plaintiff's counsel emailed counsel for the Defense advising we will be seeking this order,  
6 and requesting their stipulation. As of this writing and filing, we have received no reply.

7 Plaintiff seeks this extension to comply with the pre-trial requirements of Federal procedure.

8 The case has been active for over 10 years and there are no surprises. New law and technicalities  
9 have lengthened the life of the case, but this extension will not prejudice or extend the trial date  
10 which is set for October 8th, 2012.

11 **II.**

12 **CONCLUSION**

13 Plaintiff respectfully requests the court to extend the deadline, under the court's  
14 discretion, for closure of discovery to allow Plaintiff to designate his experts within the ordered  
15 time.

16 Dated: December 14, 2012

Respectfully submitted,


17 LAW OFFICES OF DAVID L. MILLIGAN

18  
19 /s/David L. Milligan

20 By: \_\_\_\_\_  
21 David L. Milligan, Esq.,  
22 Attorney for Plaintiff,  
23 Larry Giraldes, Jr.

1           GOOD CAUSE APPEARING, it is so ORDERED that the current Scheduling Order and  
2 all pending deadlines are VACATED. Further status to be set upon the disposition of the  
3 pending motion, if necessary.

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5 Dated: December 14, 2012.

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8           LAWRENCE K. KARLTON  
            SENIOR JUDGE  
            UNITED STATES DISTRICT COURT