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

CHARLES E. WALKER,

Plaintiff,

No. CIV S-07-2545 MCE DAD P

vs.

A. KARELAS,

Defendant.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. On August 27, 2010, defense counsel filed a motion requesting the modification of the scheduling order in this case. In that motion, defense counsel explains that he has been placed on medical leave and that replacement counsel has been unable to meet the August 31, 2010 deadline for the filing of defendant’s pre-trial statement. Counsel also indicates a concern that his replacement counsel may be unable to be adequately prepared to try this case by the current trial date of October 18, 2010. Accordingly, defendant seeks a modification of the scheduling order, including a continuance of the trial date in this action.

On September 1, 2010, plaintiff filed an opposition to defendant’s motion in which he requests the court deny defendant any extensions of time.

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1 A scheduling order cannot be modified “except upon a showing of good cause.”
2 Fed. R. Civ. P. 16(b). Good cause is present when the party requesting modification has been
3 diligent but nevertheless is unable to meet the timetable set forth by the court. See Zivkovic v.
4 Southern California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002). Here, the undersigned is
5 cognizant of the time constraints faced by defendant’s recent replacement counsel. The
6 undersigned has inquired as to the availability of other trial dates in the near future before the
7 assigned district judge. However, no trial dates are available that would avoid a lengthy
8 continuance. Defendant has not established good cause for a lengthy continuance of the trial,
9 particularly in light of the fact that this action was filed in 2007. Accordingly, the undersigned is
10 unable to grant defense counsel’s request for a continuance of the trial date. However, good
11 cause appearing, the court will grant the defense request for additional time to file defendant’s
12 pre-trial statement.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Defense counsel’s August 27, 2010 motion to modify the scheduling order in
15 this case (Doc. No. 63) is granted to the extent it seeks additional time to file defendant’s pre-
16 trial statement and denied with respect to the request to continue the trial date;¹ and

17 2. Defense counsel shall file defendant’s pre-trial statement in this case on or
18 before September 17, 2010. Defense counsel is cautioned that no further extensions of time will
19 be granted for this purpose.

20 DATED: September 3, 2010.

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23 DAD:sj
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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

¹ Any motion for reconsideration of this order should be addressed to the assigned district judge in accordance with Local Rule 303(c).