

BEFORE THE COURT is Defendant Hernandez' Motion to Vacate the Scheduling Order entered December 17, 2010. ECF 59. The discovery cut-off date is July 1, 2011 and dispositive motion deadline August 1. *Id.* Defense counsel asks the court to vacate the scheduling order pending resolution of the pending resolution of the issue of service on Defendant Medina. Defense counsel indicates he will be unable to timely file a dispositive motion on Medina' behalf, if Medina is served, because he will need to depose Plaintiff.

The court's Scheduling Order only applies to Defendant Hernandez, because he is the only Defendant who has appeared and Answered. Plaintiff's Second Amended Complaint contains a separate causes of action based on different facts against Defendant Medina (excessive force) and Defendant Hernandez (retaliation). Defense counsel's attached declaration indicates that he does not need to depose Plaintiff before filing a dispositive motion on Defendant Hernandez's behalf. Accordingly, there is no need to vacate the Scheduling Order as to claims against Defendant Hernandez. Once Defendant Medina is served and responds to the Second Amended Complaint, the court will issue an amended

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scheduling order which will include new deadlines pertaining to the claims against Defendant Medina.

The District Court Executive is directed to enter this Order and provide two copies to Plaintiff – one to his current address on file and one to his believed current location and address at Richard J. Donovan Correctional Facility, P.O. Box 799002, San Diego, CA 92179. The Court Executive shall also provide copies to counsel for the Defendants.

Dated this 1st day of June, 2011.

s/ Justin L. Quackenbush JUSTIN L. QUACKENBUSH SENIOR UNITED STATES DISTRICT JUDGE