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

JOSEPH B. MATTHEWS,

Plaintiff,

No. 2:09-cv-2415 GEB KJN P

vs.

LAHEY, et al.,

Defendants.

ORDER

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On November 5, 2010, plaintiff asked the court to reconsider the court's ruling on defendants' motion to modify the scheduling order after taking into consideration plaintiff's objections. Plaintiff's objections were docketed on the same day the order granting the motion to modify was granted and, as plaintiff explains, his objections were timely under the mailbox rule. Houston v. Lack, 487 U.S. 266, 270-72, 275 (1988) (situation of prisoners seeking to meet court deadlines is unique; therefore a document may be "filed" on the date that it is given by an inmate to prison authorities for mailing).

Good cause appearing, the court will grant plaintiff's request for reconsideration. The court has now considered plaintiff's objections to the modification of the scheduling order. However, in light of defense counsel's health issues, this court believes good cause existed for the modification granted by this court's October 22, 2010 order. Plaintiff has failed to

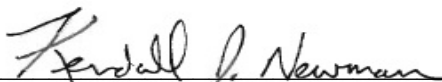
1 demonstrate that any prejudice he might suffer as a result of the delay outweighs defense  
2 counsel's need for an extension of time.

3           As for plaintiff's objections to the deposition, plaintiff's objections are untimely.  
4 In his July 23, 2010 motion to stay, signed on July 17, 2010, plaintiff requested "a stay of further  
5 proceedings, (e.g., deposing of plaintiff, etc.)" (Dkt. No. 47 at 2.) Despite recounting a history  
6 of written discovery requests, plaintiff failed to advise the court that plaintiff's deposition had  
7 been noticed or that his deposition had been scheduled. (Dkt. No. 47 at 2-3.) Plaintiff was  
8 deposed on July 20, 2010, prior to this court's August 5, 2010 order. Plaintiff did not raise any  
9 objection that his deposition was unwillingly or involuntarily taken until he filed his objections to  
10 defendants' request to modify the scheduling order on October 22, 2010, long after the deposition  
11 had taken place. (Dkt. No. 54.) Upon consideration of plaintiff's objections, this court declines  
12 to modify the October 22, 2010 order.

13           Therefore, IT IS HEREBY ORDERED that:

- 14           1. Plaintiff's November 5, 2010 request (dkt. no. 57) is granted.  
15           2. This court declines to modify the October 22, 2010 order.

16 DATED: November 10, 2010

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19 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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