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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 AND REVISED

SCHEDULING ORDER

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On December 20, 2011, defendant Basi filed a motion to modify the court’s scheduling order. Because defendant Basi filed an answer on September 9, 2011, defendant Basi states he was unable to comply with the revised scheduling order requiring discovery requests to be propounded by October 31, 2011. Plaintiff objects to the modification of the scheduling order, claiming he had to wait a year and a half for defendant Basi to be served with process, and alleging defendant Basi failed to respond to plaintiff’s interrogatories. Plaintiff states that he will need an extension of the pretrial motions deadline if the discovery deadline is extended. In reply, defendant Basi points out that plaintiff propounded discovery requests in violation of the October 31, 2011 deadline, serving them on November 1, 2011, December 14, 2011, and December 28, 2011. Thus, defendant argues, extension of the discovery deadline will also benefit plaintiff.

“The district court is given broad discretion in supervising the pretrial phase of

1 litigation.” Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (citation
2 and internal quotation marks omitted). Rule 16(b) provides that “[a] schedule may be modified
3 only for good cause and with the judge's consent.” Fed. R. Civ. P. 16(b)(4). “The schedule may
4 be modified ‘if it cannot reasonably be met despite the diligence of the party seeking the
5 extension.’” Zivkovic v. Southern California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002)
6 (quoting Johnson., 975 F.2d at 607).

7 On September 14, 2011, the court set a discovery deadline for December 30,
8 2011, and a pretrial motions deadline for February 23, 2012. Because it appears both defendant
9 Basi and plaintiff require additional time to propound discovery, the discovery deadline will be
10 extended, which also requires the extension of the dispositive motion deadline. However, both
11 parties are advised that this court is not inclined to entertain further requests to extend these
12 deadlines. Good cause appearing, defendant’s motion is granted.

13 Plaintiff has renewed his request for the appointment of counsel. The United
14 States Supreme Court has ruled that district courts lack authority to require counsel to represent
15 indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298
16 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of
17 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
18 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). “A finding of
19 exceptional circumstances requires an evaluation of both the likelihood of success on the merits
20 and the ability of the petitioner to articulate his claims pro se in light of the complexity of the
21 legal issues involved.” Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986). In the
22 present case, the court does not find the required exceptional circumstances. To date, plaintiff
23 has competently and diligently represented himself in this action, and the court is unable to
24 determine the likelihood of success on the merits at this time. Plaintiff’s request for the
25 appointment of counsel will therefore be denied.

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