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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DAVID K. MEHL; LOK T. LAU;
FRANK FLORES,

NO. 2:03-cv-2682-MCE-KJM

Plaintiffs,

v.

ORDER

LOU BLANAS, individually and
in his official capacity as
SHERIFF OF COUNTY OF
SACRAMENTO; COUNTY OF
SACRAMENTO, SHERIFF'S
DEPARTMENT; BILL LOCKYER,
Attorney General, State of
California; RANDI ROSSI, State
Firearms Director and
Custodian of Records,

Defendants.

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Defendants Lou Blanas, County of Sacramento Sheriff's
Department and the County of Sacramento ("Defendants") bring the

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1 present motion under Federal Rule of Civil Procedure 41(b),¹
2 asking that the present action be dismissed due to Plaintiffs'
3 failure to prosecute this matter with reasonable diligence.

4 Rule 41(b) authorizes a defendant to move for dismissal "for
5 failure of the plaintiff to prosecute..." A federal action must
6 be pursued with "reasonable diligence" in order to avoid
7 dismissal. Anderson v. Air West, Inc., 542 F.2d 522, 524 (9th
8 Cir. 1976). Dismissal under Rule 41(b) rests with the sound
9 discretion of the court. Link v. Wabash R.R. Co., 370 U.S. 626,
10 633 (1970).

11 In the present case, while Defendants allege that Plaintiffs
12 failed to follow up on the development of a discovery plan after
13 October 2004, Plaintiff counters with the assertion that
14 Defendants failed to provide information they had agreed to
15 provide with respect to such plan. In addition, Plaintiffs
16 assert that they elected to monitor the progress of several cases
17 pending before the Supreme Court whose outcome could influence
18 the present proceedings, and argue that in the absence of a
19 pretrial scheduling order, that strategic decision was not
20 unreasonable.

21 Under the circumstances the Court does not believe that a
22 Rule 41(b) dismissal is appropriate. Both parties have now
23 complied with the terms of the Court's December 27, 2005 Minute
24 Order, and filed a Joint Status Report as required by that Order.
25 Given the apparent factual dispute as to development of a
26 discovery plan, as well as Plaintiffs' professed strategy in

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28 ¹All further references to "Rule" or "Rules" are to the
Federal Rules of Civil Procedure unless otherwise noted.

1 following the course of developing authority, the Court is unable
2 to conclude that Plaintiffs were not reasonably diligent in
3 prosecuting this action.

4 Defendants' Motion to Dismiss is accordingly DENIED.²

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6 IT IS SO ORDERED.

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8 DATED: February 7, 2006

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12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
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27 ²Because oral argument will not be of material assistance,
28 the Court orders this matter submitted on the briefs. E.D. Cal.
Local Rule 78-230(h).