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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID MAURICE GOMEZ,

Plaintiff,

v.

A. K. SCRIBNER, et al.,

Defendants.

Case No.: 1:03-cv-06290 DLB PC

ORDER GRANTING REQUEST FOR
EXTENSION OF TIME TO FILE MOTION TO
DISMISS NUNC PRO TUNC

(Doc. 196)

ORDER VACATING TRIAL DATE

ORDER VACATING ORDERS AND WRITS
OF HABEAS CORPUS AD TESTIFICANDUM

(Docs. 190, 191)

_____ /

Plaintiff David Maurice Gomez (“plaintiff”) is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on plaintiff’s amended complaint, filed October 21, 2003, against defendants Saddi, Bailey and German for failure to protect, in violation of the Eighth Amendment. This matter is currently set for jury trial on May 5, 2009.

Defendants indicated in their pretrial statement that they intend to assert exhaustion as an affirmative defense, and requested that the trial be bifurcated to resolve the exhaustion issue first. On April 6, 2009, this Court issued a Pre-Trial Order. (Doc. 188). Defendants were ordered to file a pre-trial motion regarding the issue of exhaustion of administrative remedies on or before April 10, 2009, and Plaintiff was ordered to file an opposition no later than April 24, 2009. On April 16, 2009, Defendants filed an ex parte request nunc pro tunc for an extension of time, to April 16, 2009, to file their motion, which was filed concurrently.

1 GOOD CAUSE APPEARING AND GOOD CAUSE HAVING BEEN PRESENTED,
2 Defendants' request for an extension of time is granted nunc pro tunc. The Court shall also extend
3 the deadline for the service and filing of Plaintiff's opposition to **May 16, 2009** in order to allow
4 Plaintiff sufficient time to respond.

5 In the interests of judicial economy, the jury trial currently scheduled for May 5, 2009 is
6 HEREBY ORDERED VACATED. The deadlines for filing proposed jury instructions, motions
7 in limine, proposed verdict forms, and proposed statements of the case are also VACATED.

8 Further, the orders and writs of habeas corpus ad testificandum as to Plaintiff David Maurice
9 Gomez and witness David Wayne Smith, commanding their attendance at trial on May 5, 2009, are
10 HEREBY ORDERED VACATED. (Docs. 190, 191).

11 Finally, the Clerk of the Court is HEREBY DIRECTED to send, by mail, a copy of this order
12 to witnesses Dr. Kim and Jane Kahn. Neither Dr. Kim and Jane Kahn are required to appear at trial
13 on May 6, 2009 and the subpoenas commanding their attendance are HEREBY VACATED.

14 The Court will issue a further scheduling order resetting this matter for trial after defendants'
15 motion to dismiss for failure to exhaust administrative remedies is resolved, if necessary.

16
17 IT IS SO ORDERED.

18 **Dated: April 22, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE