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

CHARLES CHATMAN,

Plaintiff,

v.

SERGEANT C. TYNER, et al.,

Defendants.

NO. 1:03-CV-6636-AWI-SMS PC

**ORDER VACATING TELEPHONIC
TRIAL CONFIRMATION HEARING
AND TRIAL DATES**

**ORDER GRANTING REQUESTS FOR
ADDITIONAL TIME IN WHICH TO
FILE PRETRIAL STATEMENTS**

**ORDER CONCERNING DEFENDANT
DURAN’S TESTIMONY**

(Documents #155, #158, #159)

BACKGROUND

This action proceeds on Plaintiff Charles Chatman’s Eighth Amendment claims concerning the conditions of his confinement and a First Amendment claim against Defendant Johnson. On April 1, 2009, the court issued its second scheduling order. This second scheduling order set trial for September 15, 2009 and a telephonic trial confirmation hearing for August 3, 2009. Defendants were ordered to file their pretrial statements by July 20, 2009.

On June 22, 2009, Defendant Duran filed a motion to continue the trial date or alternatively testify in this action by live video deposition. Defendant Duran states that he is currently in federal custody and will not be released until December of 2010. On July 13, 2009, the other defendants filed a statement of non-opposition to Defendant Duran’s request.

1 Defendants contend that they too desire a continuance because Defendant Jimenez is off of work
2 due to medical conditions. Given counsels' trial schedules, Defendants state it would be
3 difficult to have a trial much earlier than Defendant Duran's requested date. Defendants decline
4 to stipulate to depose Defendant Duran in Texas. On July 13, 2009, Plaintiff filed an acceptance
5 of Defendant Duran's request to testify by video deposition. Plaintiff does not agree to a
6 continuance. On July 16, 2009, Defendant Duran filed a reply brief. Defendant Duran argues
7 Plaintiff will not be prejudiced by any trial delay because he will remain in custody.

8 On July 15, 2009, Defendants filed a request for an extension of time to file a pretrial
9 statement until August 19, 2009.

10 On July 15, 2009, Defendant Duran filed a request for an extension of time in which to
11 file a pretrial statement until August 4, 2009.

12 **DISCUSSION**

13 Good cause exists to allow all Defendants additional time in which to file their pretrial
14 statements and to vacate the telephonic trial confirmation hearing. A review of the court's own
15 schedule reveals that the undersigned cannot try this action on September 15, 2009. Thus, some
16 delay in the trial date will be necessary. All Defendants' counsel desire additional time to
17 interview witnesses and travel to California Correctional Institution in Tehachapi. Thus, all
18 Defendants will be given until August 19, 2009 in which to file their pretrial statements.

19 The court has also reviewed Defendant Duran's request to continue the trial or testify by a
20 video deposition. The court is not inclined to continue a trial for almost a year and a half,
21 especially considering the fact this action was filed in 2003. While some continuance because of
22 the court's and counsels' schedules, along with the medical concerns of one defendant, are valid
23 reasons for a short continuance, the court declines to continue the trial until January 2011.

24 The court also declines to order the video deposition of Defendant Duran. Given
25 Plaintiff's status in custody, it would be impossible for Plaintiff to attend a deposition in Texas.
26 This courthouse is equipped with equipment to display a live video feed in the courtroom. The
27 court requests Defendant Duran's counsel and the Attorney General review the possibility of
28 having Defendant Duran testify from Texas during trial via live video feed. In addition, it may

1 be possible to compel Defendant Duran's presence to testify at trial through a writ of habeas
2 corpus ad testificandum.

3 Accordingly, the court ORDERS that:

- 4 1. Defendants' requests for an extension of time to file a pretrial statement
5 are GRANTED.
- 6 2. Defendants SHALL file their pretrial statements by August 19, 2009;
- 7 3. The August 3, 2009 telephonic trial confirmation hearing and September
8 15, 2009 trial date are VACATED.
- 9 4. This matter is set for a telephonic hearing on August 31, 2009 at 3:00 p.m.
10 to set a new trial date. The Deputy Attorney General assigned to this case
11 is required to arrange for the call and initiate the hearing at (559) 499-
12 5669.
- 13 5. Defendant Duran's motion to continue the trial until at least January 2011
14 or testify by way of video deposition is DENIED without prejudice to a
15 renewed request once counsel obtains further information on other
16 alternatives.

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18 IT IS SO ORDERED.

19 Dated: July 17, 2009

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE

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