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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONALD GLASS,	CASE NO. 1:04-CV-05953-LJO-DLB PC
Plaintiff,	ORDER DENYING MOTION TO SEVER CLAIMS
v.	(DOC. 181)
D. BAILEY, et al.,	
Defendants.	

Plaintiff Donald Glass (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation, proceeding pro se. This action is proceeding against Defendants Bailey, Beebe, Botello, Lawton, Kraay, Bryant, Case, Dang, Diaz, and Tracy.

On September 20, 2010, Defendants filed a motion to sever the claims and parties into separate actions, or in the alternative, separate trials. (Doc. 181.) On October 21, 2010, Plaintiff filed his opposition. (Doc. 191.) The Court does not find a reply necessary for the adjudication of this motion. The matter is submitted pursuant to Local Rule 230(l).

Defendants contend that Plaintiff alleges two separate incidents. (Defs.’ Mot. 2:20-3:5.) On April 17, 2002, Defendants Beebe, Botello, Diaz, and Lawton allegedly used excessive force during a cell extraction. (*Id.* 1:21-22.) On May 5, 2002, Defendants Bailey, Bryant, Case, Kraay, and Lawton allegedly used excessive force or failed to intervene when excessive force was used. (*Id.* 1:22-24.) Defendant Dang allegedly failed to provide medical care for Plaintiff following the May 5 incident, in retaliation for Plaintiff filing inmate grievances. (*Id.* 1:24-26.)

1 Defendants contend that the claim against Defendant Lawton for the May 5 excessive
2 force incident was dismissed by their motion for summary judgment. Accordingly, Defendants
3 contend that the April 17 and May 5 incidents are separate claims and should be severed into
4 separate actions, or trials.

5 Plaintiff contends that his claims link the April 17 and May 5 incidents because
6 Defendants Dang and Lawton were involved in both. (Pl.'s Opp'n 2-4.)

7 A party who is asserting a claim may join as many independent or alternative claims as it
8 has against an opposing party. Fed. R. Civ. P. 18. Additionally, parties are properly joined as
9 defendants if there is any right to relief asserted against them jointly, severally, or in the
10 alternative with respect to or arising out of the same transaction, occurrence, or series of
11 transactions or occurrences. *Id.* 20(a)(2).

12 Defendants are in error. Defendants filed a motion for summary judgment on December
13 26, 2006. (Doc. 94.) On August 19, 2009, following further discovery, the Magistrate Judge
14 issued his Findings and Recommendation. (Doc. 154.) These Findings and Recommendation
15 were later adopted by the prior District Judge on April 9, 2010. (Doc. 174.) Defendant Lawton
16 was granted summary judgment as to the excessive force claim arising from the May 5, 2002
17 incident. However, the claims against Defendant Dang for deliberate indifference to a serious
18 medical need and retaliation still remain as to both the April 17 and May 5 incidents. Plaintiff's
19 claims of 1) retaliation against Defendants¹ for placing him on strip cell status from April 18 to
20 April 28, 2002 and 2) retaliation against Defendants Tracy and Lawton for placing him on strip
21 cell status from May 6 to May 16, 2002, also still remain in this action. Thus, the Defendants
22 here are properly joined in the same action.

23 In the alternative, Defendants contend that this Court should sever the claims into two
24 separate trials for purposes of convenience, to avoid prejudice, or where separate trials will be
25 conducive to expedition and economy. *U.S. v. 1,071.08 Acres of Land*, 564 F.2d 1350, 1352 (9th

26
27 ¹ Based on Plaintiff's verified complaint, Defendants Beebe, Botello, Diaz, Lawton, and Tracy were
28 involved in placing Plaintiff on strip cell status from April 18 onward. (Doc. 134-1, Ex. 1, Pl.'s Am. Compl. ¶ 35.)
Based on the filings regarding the motion for summary judgment, Plaintiff contends that Defendant Diaz was the one
who specifically placed Plaintiff on strip cell status on April 18 to April 28. (Doc. 133, Pl.'s Opp'n 78:19-21.)

1 Cir. 1977) (citing Fed. R. Civ. P. 42(b)). (Defs.' Mot. 3:7-11.) Defendants contend that to keep
2 these two separate incidents together would confuse the jury. (*Id.* 3:12-15.) Defendants contend
3 that Plaintiff would not likely be capable of a coordinated presentation to the jury because he is
4 not an experienced litigator and is a participant in the Mental Health Treatment Program at Kern
5 Valley State Prison. (*Id.* 3:16-19.)

6 The Court declines to order separate trials. As stated previously, these claims are not
7 unrelated. Plaintiff's lack of experience as a litigator and participation in the mental health
8 treatment program are not sufficient reasons to justify separate trials. Judicial economy favors
9 keeping these claims together in one trial.

10 The Court does not find severance of these claims appropriate. Accordingly, Defendants'
11 motion, filed September 20, 2010, is DENIED.

12
13 IT IS SO ORDERED.

14 **Dated: October 25, 2010**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE