

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARREN HARRIS,

Plaintiff,

v.

KIM, et al.,

Defendants.

Case No. 1:05-cv-00003-AWI-SKO (PC)

ORDER GRANTING PLAINTIFF'S
MOTION FOR CONTINUANCE,
VACATING DATES SET IN PRETRIAL
ORDER, AND SETTING TELEPHONIC
STATUS CONFERENCE

(Docs. 194, 195, and 196)

Date: February 1, 2016
Time: 3:00 p.m.
Courtroom: 2 (AWI)

Plaintiff Darren Harris, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 3, 2005. This action is proceeding on Plaintiff's Fourth Amended Complaint against Defendants Olivarria, Williams, and Kim for violation of the Eighth Amendment, and against Defendants Olivarria and Lowden for violation of the First Amendment. This case is set for a telephonic trial confirmation hearing on December 7, 2015, and jury trial on January 26, 2016. On December 2, 2015, Plaintiff filed a Motion Requesting a Continuance, based on his pending transfer from California Men's Colony ("CMC") in San Luis Obispo to Deuel Vocational Institution ("DVI") in Tracy. Defendants filed a Statement of Non-Opposition on December 3, 2015.

Plaintiff represents that he was told on November 26, 2015, to pack his property for storage in property room at CMC pending a transfer to DVI. Once Plaintiff is transferred to DVI,

1 he will be without his property for approximately two weeks. Plaintiff estimates that he will need
2 at least one-hundred twenty days to adjust to the new prison, receive his property, and prepare for
3 trial; and he requests a new trial date of April 26, 2016.

4 Defendants do not oppose the continuance but counsel will be unable to prepare for a trial
5 on April 26, 2016, due to a trial set for April 11, 2016. Defendants' counsel proposes a trial date
6 in mid-March 2016 or May 2016. Defendants are also willing to consent to Magistrate Judge
7 jurisdiction, if Judge Oberto has more availability. Defendants request a telephonic trial setting
8 conference in early January 2016 to discuss potential trial dates.

9 Requiring Plaintiff to prepare for trial and try this case without access to his legal material
10 will unquestionably result in manifest injustice and therefore, pursuant to Fed. R. Civ. P. 16(e), the
11 Court will grant his motion and vacate all trial-related dates. It appears that Plaintiff is presently
12 en route from CMC to DVI, as the California Department of Corrections and Rehabilitation's
13 Inmate Locator website presently shows Plaintiff at Correctional Training Facility in Soledad.¹
14 The Court will set a telephonic status conference for February 1, 2016. At the hearing, the parties
15 shall be prepared to discuss the status of Plaintiff's property, possible trial dates, and consent to
16 Magistrate Judge jurisdiction.

17 Accordingly, the Court HEREBY ORDERS as follows:

- 18 1. Plaintiff's Motion Requesting a Continuance is GRANTED;
- 19 2. The telephonic trial confirmation hearing set for December 7, 2015, at 3:00 p.m.
20 and the jury trial set for January 26, 2016, at 8:30 a.m. are VACATED;
- 21 3. All dates set in the Pretrial Order are VACATED;
- 22 4. A telephonic status conference is set for February 1, 2016, at 3:00 p.m. before the
23 undersigned;
- 24 5. Defendants' counsel shall arrange for the participation of Plaintiff at the hearing
25 and shall initiate the conference call to (559) 499-5669; and
26


27
28 ¹ The Court may take judicial notice of information on government websites not subject to reasonable dispute. Fed. R. Evid. 201; *Daniels-Hall v. National Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. The Clerk's Office shall email a copy of this order to the Litigation Coordinator at DVI.

IT IS SO ORDERED.

Dated: December 3, 2015



SENIOR DISTRICT JUDGE