

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
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5
6 MICHAEL TATER-ALEXANDER,

7 Plaintiff,

8 v.

9 LONNIE R. AMERJAN, CITY OF CLOVIS,
10 TINA STIRLING, COMMUNITY REGIONAL
11 MEDICAL CENTER, DR. THOMAS E.
12 MANSFIELD, MARY JO GREENE, and
13 DOES 1 through 100.

14 Defendants.

1:08-cv-00372 OWW SMS

MEMORANDUM DECISION AND ORDER
RE DEFENDANT'S MOTION TO ADD
WITNESSES AND EVIDENCE

(DOCS. 252).

15 I. INTRODUCTION

16 Defendant Fresno Community Hospital and Medical Center dba
17 Community Regional Medical Center ("Defendant") moves to add
18 witnesses and evidence that were not listed in the Supplemental
19 Joint Pre-Trial Statement (Doc. 211), but were included in the
20 Final Pre-Trial Order (Doc. 271). Doc. 252. Plaintiff opposes the
21 motion. Doc. 269. The matter was heard March 28, 2011.

22 II. FACTUAL BACKGROUND

23 Plaintiff proceeds with this action for damages and
24 equitable relief under the Americans with Disabilities Act
25 ("ADA"), Unruh Civil Rights Act ("Unruh Act"), Disabled Persons
26 Act ("DPA"), First Amendment, 42 U.S.C. § 1983, and Bane Civil
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Rights Act.

Plaintiff filed a complaint on March 14, 2008, amendments to the complaint, and a third amended complaint ("TAC") on May 27, 2009 (Doc. 72). On January 28, 2011, summary judgment was granted on all claims asserted against Corporal Amerjan, Officer Sterling, and the City of Clovis. Doc. 205. On February 16, 2011, Plaintiff voluntarily dismissed Dr. Mansfield with prejudice. Doc. 246.

A pretrial conference was held January 31, 2011. The court ordered the parties to submit a Supplemental Joint Pre-Trial Statement by February 4, 2011, and they did so. Doc. 211. On February 7, 2011, Defendant filed an Addition to the Exhibits to the Supplemental Joint Pretrial Statement. Doc. 213. A Final Pretrial Order was entered March 22, 2011. Doc. 271.

III. LEGAL STANDARD

A pretrial schedule may be modified "only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "A district judge is given broad discretion in supervising the pre-trial phase of litigation" *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27 (9th Cir. 1980) (quoting *FDIC v. Glickman*, 450 F.2d 416, 419 (9th Cir. 1971)). District courts should generally allow amendments of pre-trial orders when "no substantial injury will be occasioned to the opposing party, the refusal to allow the amendment might result in injustice to the movant, and the

1 inconvenience to the court is slight." *Campbell*, 619 F.2d at 27-
2 28 (quoting *Angle v. Sky Chef, Inc.*, 535 F.2d 492, 495 (9th Cir.
3 1976)).

4 IV. ANALYSIS

5 A. Ramon Flores, R.N., Adam Perez, Brian Pond, Garrett Waterson

6 Defendant moves to add four witnesses to the Final Pretrial
7 Statement: (1) Nurse Flores; (2) Officer Adam Perez; (3) Officer
8 Brian Pond; and (4) Officer Garrett Waterson. Nurse Flores and
9 the Officers would testify regarding Plaintiff's visit to
10 Defendant's Emergency Department on September 6, 2009, Nurse
11 Flores' notes from the visit, and the Officers' incident report
12 from the visit. Defendant contends that these witnesses'
13 testimonies demonstrate Plaintiff's bias against the hospital.
14

15 Plaintiff rejoins that he filed another lawsuit arising from
16 the September 6, 2009 incident, and Defendant's request to add
17 Nurse Flores and Officers Perez, Pond and Waterson contravenes
18 the court's grant of Plaintiff's motion in limine number 5 (to
19 preclude evidence of other claims and/or lawsuits).
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21 The 2003 Advisory Committee Notes to FRE 608 state that "the
22 admissibility of extrinsic evidence offered for other grounds of
23 impeachment (such as contradiction, prior inconsistent statement,
24 bias and mental capacity)" are governed by Rules 402 and 403.
25 Evidence which is not relevant is not admissible. Fed. R. Evid.
26 402. "'Relevant evidence' means evidence having any tendency to
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1 make the existence of any fact that is of consequence to the
2 determination of the action more probable or less probable than
3 it would be without the evidence." Fed. R. Evid. 401. "Although
4 relevant, evidence may be excluded if its probative value is
5 substantially outweighed by the danger of unfair prejudice,
6 confusion of the issues, or misleading the jury, or by
7 considerations of undue delay, waste of time, or needless
8 presentation of cumulative evidence." Fed. R. Evid. 403.

10 Defendant asserts that it recently discovered Plaintiff's
11 intention to use evidence of his September 6, 2009 visit to
12 demonstrate his repeated visits to the hospital, for purposes of
13 obtaining injunctive relief. Defendant contends that if Plaintiff
14 introduces evidence of the September 6, 2009 visit, Defendant
15 should be permitted to discuss Plaintiff's behavior during that
16 visit.
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18 The testimony of Nurse Flores and Officers Perez, Pond and
19 Waterson is relevant to show Plaintiff's bias and impeach his
20 testimony. Its relevance is potentially outweighed by the risk of
21 prejudice. The parties can stipulate that Plaintiff has visited
22 the hospital a number of times and is likely to visit the
23 hospital again. If the parties cannot agree to this stipulation
24 and Plaintiff introduces evidence of the September 6, 2009 visit,
25 Nurse Flores and Officers Perez, Pond and Waterson shall testify.
26 To provide otherwise would result in injustice to Defendant.
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1 Defendant's motion to add Nurse Flores and Officers Perez,
2 Pond and Waterson as witnesses is GRANTED.

3 B. Hospital Gown and Blanket

4 Defendant moves to add two exhibits to the Final Pretrial
5 Statement: (1) an example of the hospital gown Plaintiff refused
6 to wear; and (2) a blanket of the type kept in a warming oven in
7 Defendant's Emergency Department to provide to cold patients.
8 Defendant's counsel states it first thought to include these
9 items on February 2, 2011, and picked them up from Defendant on
10 February 3, 2011. Defendant contends that it inadvertently did
11 not submit these items to Plaintiff's counsel for inclusion in
12 the Supplemental Joint Pre-Trial Statement, but filed an Addition
13 to Exhibit to Supplemental Joint Pre-Trial Statement on February
14 7, 2011. Doc. 213.

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17 Plaintiff argues that the court previously granted
18 Plaintiff's motion in limine number 14, which excludes evidence
19 not produced during discovery. Plaintiff asserts that this motion
20 is an impermissible attack on the court's prior order.

21 Federal Rule of Civil Procedure 26(a)(1)(A)(ii) provides
22 that a party must, without awaiting a discovery request, provide
23 to the other parties "a copy--or a description by category and
24 location--of all documents, electronically stored information,
25 and tangible things that the disclosing party has in its
26 possession, custody, or control and may use to support its claims
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1 or defenses, unless the use would be solely for impeachment.”
2 Federal Rule of Civil Procedure 26(e) specifies the parties’ duty
3 to supplement or correct their disclosures. Federal Rule of Civil
4 Procedure 37(c) (1) provides:

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6 If a party fails to provide information or identify a
7 witness as required by Rule 26(a) or (e), the party is not
8 allowed to use that information or witness to supply
evidence on a motion, at a hearing, or at a trial, unless
the failure was substantially justified or is harmless.

9 Fed. R. Civ. P. 37(c) (1) .

10 Seeing the hospital gown and blanket might help the jury
11 understand the case. Admitting the blanket and gown will neither
12 prejudice Plaintiff nor inconvenience the court. The gown and
13 blanket may be added to Defendant’s exhibit list. Defendant shall
14 make the gown and blanket available to Plaintiff for inspection
15 and testing.

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17 Defendant’s motion to add a hospital gown and blanket to its
18 list of evidence is GRANTED.

19 C. Mary Contreras and David Arguijo

20 Defendant moves to add two witnesses to the Final Pretrial
21 Statement: (1) Mary Contreras, Defendant’s Chief Nursing Officer;
22 and (2) David Arguijo, Director of Admissions for Community
23 Regional Medical Center. Nurse Contreras is expected to testify:
24 (a) that she determines the need for, and is involved in
25 promulgating, policies for the nursing personnel; (b) that she
26 receives input from the Risk Management and Legal departments
27 when determining whether a new policy is needed; and (c) that the
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1 hospital has no intent to discriminate against people with
2 disabilities or to ignore any laws relating to them. Mr. Arguijo
3 is expected to testify regarding admission procedures at the
4 hospital.

5 Plaintiff has taken Nurse Contreras' and Mr. Arguijo's
6 depositions and does not oppose Defendant's motion. Adding Nurse
7 Contreras and Mr. Arguijo will not injure or prejudice the
8 Plaintiff or inconvenience the court. Refusing to add them may
9 result in injustice to Defendant.
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11 Defendant's motion to add Nurse Contreras and Mr. Arguijo as
12 witnesses is GRANTED.

13 V. CONCLUSION

14 For the reasons stated:

- 15
- 16 1. Defendant's motion to add witnesses and evidence is GRANTED.
 - 17 2. Defendant shall submit a proposed form of order consistent
18 with this memorandum decision within five (5) days of
19 electronic service of this memorandum decision.

20 SO ORDERED.

21 DATED: April 15, 2011

22 /s/ Oliver W. Wanger
23 Oliver W. Wanger
24 United States District Judge
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