

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**

JEAN-PIERRE K. THOMAS,	)	Case No.: 1:08-cv-00689 - JLT (PC)
	)	
Plaintiff,	)	ORDER DENYING IN PART AND DENYING IN
v.	)	PART AS MOOT PLAINTIFF’S MOTION TO
	)	MODIFY THE PRETRIAL ORDER TO LIST
M. GARCIA, et al.,	)	ADDITIONAL TRIAL EXHIBITS
	)	(Doc. 179)
Defendants.	)	
	)	ORDER GRANTING DEFENDANT’S MOTION
	)	FOR 1-DAY EXTENSION OF TIME TO SERVE
	)	SUMMARY OF FACTS AND OPINIONS OF
	)	DESIGNATED EXPERTS
	)	(Doc. 180)

Plaintiff Jean-Pierre K. Thomas (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with a civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the Court issued the Pretrial Order on June 11, 2013. (Doc. 170). Plaintiff has filed a motion to include additional exhibits which, he claims, were not included in the Court’s pretrial order and a motion to order Defendants to lodge the corrections previously made to his deposition with the Court. (Doc. 179). Defendants seek an extension of time to serve a summary of facts and opinions concerning their designated experts. (Doc. 180).

Accordingly, and for the reasons set forth below, the Court **DENIES in part** and **DENIES in part as moot** Plaintiff’s motion and **GRANTS** Defendants’ motion. **Nothing in this Order shall modify any other deadlines or rulings contained in the Pretrial Order (Doc. 170).**

1           **I. Plaintiff's Motion to Include Additional Exhibits for Trial.**

2           Plaintiff requests to present additional exhibits for trial. (Doc. 179). Specifically, Plaintiff seeks to  
3 include: (1) Defendant Garcia's amended response to interrogatory number 9, set 1; (2) Defendant  
4 Garcia's amended response to Plaintiff's first request for production of documents; (3) Defendant  
5 Garcia's opposition to Plaintiff's motion to compel; (4) Defendant Garcia's amended response to  
6 Plaintiff's second request for production of documents; and (5) Plaintiff's medical record from his  
7 visit with Dr. Shaw on June 4, 2013. *Id.* at 2-5. Plaintiff attaches these documents to his motion as  
8 Exhibits T, U, and V. *Id.* at 6-20.

9           With regard to Defendant Garcia's discovery responses, it appears that Plaintiff wishes to use  
10 these documents at trial for the purpose of impeachment. *See Id.* at 1-5. These documents have been  
11 identified in the pretrial order already under the heading, "Discovery Documents." (Doc. 170 at 9-10)  
12 Likewise, in the Court's pretrial order, the Court has already required Defendant to lodge a copy of  
13 Plaintiff's deposition transcript along with whatever corrections Plaintiff made. *Id.* at 10, n. 4. Thus,  
14 the motion as to these documents is **DENIED** as **MOOT**. Moreover, at the pretrial conference,  
15 Plaintiff argued extensively that the defendant's opposition to the motion to compel discovery should  
16 be identified as an exhibit. The Court denied the request. Thus, the motion in this regard is **DENIED**.

17           Plaintiff also seeks to add a medical record from his visit with Dr. Shaw. However, the Court  
18 notes that Plaintiff's entire medical file has been identified as an exhibit already. (Doc. 170 at 5 n. 1).  
19 The Court presumes that Dr. Shaw's medical note dated June 4, 2012, is contained in Plaintiff's  
20 medical file. Thus, granting Plaintiff's present motion would be redundant<sup>1</sup> to the Court's pretrial  
21 order. Therefore, Plaintiff's request to add the June 4, 2012 medical note is **DENIED**.

22           **II. Defendant's Nunc Pro Tunc Request for Extension of Time to Serve a Summary of**  
23 **Facts and Opinions of Designated Experts.**

24           Defendants seek to extend time to serve a summary of facts and opinions concerning their  
25 designated experts. (Doc. 180 at 1). Defense counsel explains that she intended to serve her "Expert  
26 Disclosure" along with the Defendants' pretrial statement, but inadvertently failed to do so. *Id.* at 2.

27 \_\_\_\_\_  
28           <sup>1</sup> Plaintiff may renew his request concerning Dr. Shaw's medical note dated June 4, 2012, in the event that this  
note is not contained in his medical file or upon good cause shown.

1 Nonetheless, Defense counsel reports that she verbally informed Plaintiff of the subject matter of the  
2 experts' testimony on June 10, 2013, and filed a written summary of the experts' testimony with the  
3 Court on June 25, 2013. Id. at 2-3.

4 The Court has not set a deadline for the disclosure of witnesses' facts and opinions. However,  
5 Fed.R.Civ.P. 26(2)(D) imposes a duty to disclose expert testimony 90 days prior to trial. Nonetheless,  
6 Plaintiff has been previously advised of the experts' testimony. Thus, the Court finds no manner in  
7 which Plaintiff would be prejudiced by granting Defendants' motion. Therefore, the Court **GRANTS**  
8 Defendants' nunc pro tunc request for extension of time to serve summary of facts and opinions of  
9 designated experts.

10 **ORDER**

11 Accordingly, the Court **ORDERS** that:

- 12 1. Plaintiff's request to modify the Pretrial Order, dated June 11, 2013, to include responses to  
13 discovery, specifically, Defendant Garcia's amended response to interrogatory number 9, set  
14 one; Defendant Garcia's amended response to Plaintiff's first request for production of  
15 documents; and Defendant Garcia's opposition to Plaintiff's motion to compel, page 6;  
16 Defendant Garcia's amended response to Plaintiff's second request for production of  
17 documents, is **DENIED as MOOT**;
- 18 2. Plaintiff's request to modify the Pretrial Order, dated June 11, 2013, to include Defendant's  
19 opposition to the motion to compel is **DENIED**;
- 20 3. Plaintiff's Motion for the Court to Order and/or Request Defense Counsel to Produce  
21 Plaintiff's Corrections to his Deposition (Doc. 179 at 19-23) is **DENIED as MOOT**; and
- 22 4. Defendants' nunc pro tunc request for extension of time to serve summary of facts and  
23 opinions of designated experts (Doc. 180) is **GRANTED**.

24  
25 IT IS SO ORDERED.

26 Dated: June 27, 2013

27 /s/ Jennifer L. Thurston  
28 UNITED STATES MAGISTRATE JUDGE