

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

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

ROBERT MORRIS,)	1:08-cv-01422-AWI-MJS
)	
Plaintiff,)	ORDER RE: REQUEST TO
)	SUPPLEMENT WITNESS LIST
v.)	
)	(Doc. 193)
OFFICER CHRISTOPHER LONG,)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiff Robert Morris (hereinafter referred to as “Plaintiff”) has filed a request to supplement his witness list. For reasons discussed below, the request shall be denied.

II. FACTS AND PROCEDURAL BACKGROUND

On January 11, 2012, Plaintiff filed his ninth amended complaint, asserting one cause of action against defendant Officer Christopher Long (hereinafter referred to as “Defendant”) for federal civil rights violations (in particular, excessive force in violation of the Fourth Amendment right to be free of unreasonable searches and seizures) pursuant to 42 U.S.C. § 1983. On April 3, 2012, the Court issued a pretrial order containing lists of the witnesses the parties expected to call at trial. On April

1 25, 2012, Plaintiff filed a request to supplement his witness list.

2
3 **III. LEGAL STANDARD**
4

5 “District courts have ‘broad discretion to manage discovery and to control the court of litigation
6 under Federal Rule of Civil Procedure 16.’ [Citation.] Where . . . the district court has entered a
7 pretrial order, modifications are allowed ‘only to prevent manifest injustice.’ [Citation.]” *Hunt v.*
8 *County of Orange*, 672 F.3d 606, 616 (9th Cir. 2012). “ ‘The district court should consider four
9 factors in determining whether to modify the parties’ pretrial order: (1) the degree of prejudice or
10 surprise to the defendants if the order is modified; (2) the ability of the defendants to cure any
11 prejudice; (3) the impact of the modification on the orderly and efficient conduct of the case; and (4)
12 any degree of willfulness or bad faith on the part of the party seeking the modification. [Citation.]
13 It is the moving party’s burden to show that a review of these factors warrants a conclusion that
14 manifest injustice would result if the pretrial order is not modified. [Citation.] ” *Id.* (quoting *Byrd*
15 *v. Guess*, 137 F.3d 1126, 1132 (9th Cir. 1998) (abrogated on other ground as recognized in *Moreland*
16 *v. Las Vegas Metropolitan Police Dept.*, 159 F.3d 365, 369 (9th Cir. 1998)). “Where, upon
17 consideration of factors such as [these], the court determines that refusal to allow a modification
18 might result in injustice while allowance would cause no substantial injury to the opponent and no
19 more than slight inconvenience to the court, a modification should ordinarily be allowed.” *U.S. v.*
20 *First Nat. Bank of Circle*, 652 F.2d 882, 887 (9th Cir. 1981).

21
22 **IV. DISCUSSION**
23

24 Plaintiff seeks to add four newly discovered witnesses to his witness list. Having reviewed the
25 pleadings of record and all competent and admissible evidence submitted, the Court, applying the
26 foregoing principles, finds Plaintiff has failed to establish manifest injustice would result if
27

1 modification of the pretrial order to include these witnesses were not allowed. First, permitting
2 Plaintiff to supplement his witness list at this point in time would cause significant prejudice and
3 surprise to Defendant. Plaintiff first requested leave to supplement his list through the filing of this
4 motion on April 25, 2012, less than two weeks before the May 8, 2012 trial date, leaving the defense
5 with insufficient time to familiarize itself with the witnesses' expected testimony. Second, the only
6 way to cure any prejudice would be reopen discovery to allow Defendant to depose the witnesses.
7 Reopening discovery would in turn require a continuance of trial date, and thus the introduction of
8 new witnesses at this stage of the litigation would have an impact on the orderly and efficient
9 conduct of the case. Although the record does not reveal willfulness or bad faith on the part of
10 Plaintiff in seeking a modification, the foregoing circumstances weigh against modifying the pretrial
11 order.

12
13 **V. DISPOSITION**

14
15 Based on the foregoing, Plaintiff's request to supplement his witness list is DENIED.
16 IT IS SO ORDERED.

17 Dated: April 27, 2012

18 
19 _____
20 CHIEF UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27