

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

MICHAEL LOUIS FOSTER,  
Plaintiff,  
v.  
A. ENENMOH,  
Defendant.

Case No. 1:08-cv-01849-LJO-SKO PC  
ORDER SUSTAINING IN PART AND  
OVERRULING IN PART DEFENDANT’S  
OBJECTIONS TO PRETRIAL ORDER  
(Docs. 113 and 116)

**I. Order Addressing Defendant’s Objections to Pretrial Order**

Plaintiff Michael Louis Foster, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 3, 2008. This action is proceeding on Plaintiff’s second amended complaint, filed on September 17, 2009, against Defendant Enenmoh for violation of the Eighth Amendment of the United States Constitution. Jury trial is currently set for February 4, 2014, and Defendant filed objections to the Pretrial Order on December 16, 2013.

**A. Objections to Plaintiff’s Proposed Undisputed Facts 5, 7, 9, 10, 11, 12, 14, 16, and 17**

Defendant’s objection to fact 5 is sustained and the fact is amended to: Within kidneys, there are occasional findings of deposits commonly known as “stones” which contain calcium as part of their chemical components. (Doc. 105, Pl. Pretrial Stmt., Enenmoh ROG 4, p. 32.)

1 Defendant's objection to fact 9 is sustained and the fact is amended to: as Chief Medical  
2 Officer, Defendant routinely approved non-formulary drug requests where there was a medical  
3 indication for doing so and the alternatives had been proven not to work. (Doc. 87-3, Enenmoh  
4 Dec., p. 6, ¶22.)

5 Defendant's objection to fact 11 is sustained and the fact will be moved to the disputed  
6 facts section.

7 Defendant's remaining objections are overruled. The parties have not stipulated to any  
8 facts, and each party is required to support his position at trial with admissible evidence,  
9 notwithstanding the proposed disputed facts set forth in the Pretrial Order. Defendant's desire to  
10 argue factual interpretation, add information, and/or lend context is not grounds for objection.<sup>1</sup>

11 **B. Objection Regarding Defense Witnesses**

12 Defendant also objects to having his witnesses, other than Defendant, here by 9:30 a.m. on  
13 the first day of trial. Plaintiff did not subpoena Dr. Barnett or Dr. Ugwueze for trial and therefore,  
14 he does not have the right to have either witness present in the morning to call for his case-in-  
15 chief. Defendant's objection must therefore be sustained. As discussed during the hearing, the  
16 Court will not recess to wait for witnesses to arrive and there is a possibility that jury trial may  
17 conclude in one day. Therefore, any witnesses Defendant plans to call must be present and ready  
18 to take the stand.

19 **II. Order**

20 As set forth herein, Defendant's objections to the Pretrial Order are sustained in part and  
21 overruled in part. An Amended Pretrial Order will be issued in due course.

22

23 IT IS SO ORDERED.

24 Dated: December 20, 2013

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

25

26

27

28 <sup>1</sup> With respect to fact 7 in particular, Defendant is referred to document 87-2, page 8, where pelvic calcifications are in fact noted in the medical record. To the extent Defendant seeks to argue the relevancy or irrelevancy of that notation, or otherwise interpret the record, he may do so at trial.