

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

SANTOS A. VILLEGAS,

1:09-cv-00493-MJS-PC

Plaintiff,

ORDER DENYING MISCELLANEOUS  
MOTIONS

v.

(ECF Nos. 107 & 108)

L. L. SCHULTEIS, F. RODRIGUEZ,  
G. ZUCKER, M. SOTO, F.  
MARTINEZ, L. KNIGHT, AND M.  
CARRASCO,

Defendants.

This action, brought pursuant to 42 U.S.C. § 1983, proceeds on the first Amended Complaint filed by plaintiff Santos A. Villegas ("Plaintiff") on August 24, 2009, against defendants Correctional Officer ("C/O") F. Rodriguez, C/O G. Zucker, Sergeant M. Soto, C/O F. Martinez, and C/O L. Knight for excessive force in violation of the Eighth Amendment and violation of the Equal Protection Clause of the Fourteenth Amendment; and defendants L. L. Schulteis (Chief Deputy Warden) and M. Carrasco (Associate Warden) for failure to protect in violation of the Eighth Amendment. (ECF No. 13.)

This case is presently set for trial on March 13, 2012. A telephonic trial confirmation hearing was held on February 6, 2012. (ECF No. 99.) At that time, the parties indicated they were prepared for trial to commence on March 13, 2012.

1 On February 23, 2012, Plaintiff filed a motion to compel, asking that the Court order  
2 the California Correctional Institution to provide supplies for him to copy the exhibits  
3 needed for trial. (ECF No. 107.) On February 28, 2012, Plaintiff filed a motion for a  
4 continuance, asking that the trial be postponed for sixty days. (ECF No. 108.) Plaintiff's  
5 motions are now before the Court.

6 **I. MOTION TO COMPEL**

7 In his motion to compel, Plaintiff asks that the California Correctional Institution be  
8 ordered to provide supplies needed for Plaintiff to prepare and submit his exhibits for his  
9 upcoming trial. (ECF No. 107.) Plaintiff alleges that Correctional Officers are not providing  
10 him with sufficient copies and legal materials for him to comply with the Court's Pretrial  
11 Order to submit five copies of his proposed exhibits by March 8, 2012. (Id.)

12 However, four days after Plaintiff filed this motion, he submitted five copies of what  
13 appear to be his trial exhibits to the Court. This set of documents was submitted without  
14 labels and not marked in the manner ordered in the Pretrial Order. (ECF No. 101 at 20).<sup>1</sup>

15 Thus, it appears to the Court that Plaintiff was able to obtain sufficient supplies to  
16 submit his exhibits. Accordingly, Plaintiff's motion to compel should be denied. If the  
17 documents submitted to the Court are *not* Plaintiff's intended exhibits, he should so inform  
18 the Court. Because the documents submitted have not been labeled or identified, the  
19 Court will return four of the five sets to Plaintiff. If he wants to use these documents as  
20 exhibits at trial, he must mark them in the manner directed in the Court's Pretrial Order and  
21 resubmit them prior to trial.

22 **II. MOTION FOR A CONTINUANCE**

23 Plaintiff asks that the Court continue the trial for sixty days so that Plaintiff can  
24 obtain witnesses. (ECF No. 108.) Plaintiff did not submit a request for witnesses prior to  
25 the deadline for doing so as set forth in the Court's Second Scheduling Order. Plaintiff has

---

26  
27 <sup>1</sup> Plaintiff was told to submit "The original and five copies of all trial exhibits, along with exhibit lists,  
28 shall be submitted to Courtroom Deputy Laurie Yu no later than March 8, 2012. Plaintiff's exhibits shall  
pre-marked with numbers preceded by the designation "P-\_\_\_" (e.g., P-1, P-2)." (ECF No. 101 at 20.)

1 not shown good cause for amending that Scheduling Order. Plaintiff having failed to  
2 comply with the requirements of the Scheduling Order, Defendants' objection to testimony  
3 from incarcerated witnesses is valid. Absent a showing of good cause pursuant to Rule  
4 15(b)(4) of the Federal Rules of Civil Procedure, the Court cannot modify the Second  
5 Scheduling Order and no incarcerated witnesses shall be called. The Court's Pretrial  
6 Order so provided. (ECF No. 101.)

7 Accordingly, since the reason for Plaintiff's motion for a continuance previously has  
8 been raised and denied, the motion itself must be denied on the same grounds.

9 **III. ORDER**

10 \_\_\_\_\_ It is hereby ORDERED that:

- 11 1. Plaintiff's motion to compel (ECF No. 107) is denied;
- 12 2. Plaintiff's motion for a continuance (ECF No. 108) is denied;
- 13 3. The Clerk shall return to Plaintiff four of the five sets of the documents sent  
14 to the Court on February 27, 2012; and
- 15 4. If Plaintiff intends to use documents (including those being returned to him)  
16 as exhibits in his upcoming trial, he must mark them as directed in the  
17 Pretrial Order (ECF No. 101) and resubmit them to Courtroom Deputy Laurie  
18 Yu prior to the trial.

19  
20 IT IS SO ORDERED.

21 Dated: March 1, 2012

*1st. Michael J. Song*  
UNITED STATES MAGISTRATE JUDGE