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

THORNELL BROWN,
Plaintiff,
vs.

Case No. 1:09-cv-00573 JLT (PC)
ORDER ON OBJECTIONS TO PRETRIAL
ORDER

JAWAYNE FAMBROUGH, et al.,
Defendants.

(Doc. 75)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

The Court held the pretrial conference in this matter on March 20, 2012. (Doc. 72) At the time, the Court had not appointed counsel for Plaintiff. After the hearing, the Court did so. (Doc. 71) Nevertheless, the pretrial order did not fully consider the impact of the order appointing counsel. The Court, ordinarily, would not burden an incarcerated pro se plaintiff with the full requirements of trial preparations, given the inmate’s lack of access to resources, like copy machines, etc. However, with the appointment of counsel, these burdens are eliminated. Therefore, upon this backdrop, the Court considers Defendants’ objections to the pretrial order.

A. Trial Exhibits

Defendants seek an order requiring the parties to provide copies of all documents intended to be used at trial as exhibits, except for those exhibits that will be used only for impeachment and that the

1 exhibits be pre-marked. To allow Defendant’s counsel, once this attorney is appointed, and Defendants’
2 counsel to be properly prepared, the requested modification is **GRANTED** as follows (changes in bold
3 and underlined):

4 On or before **June 1, 2012**, each party shall provide the other with a copy of any exhibit
5 not previously produced during discovery. **In addition, except for those documents**
6 **that will be used only for impeachment, each party SHALL specifically describe**
7 **any document that was not produced during discovery but will be used as an**
8 **exhibit at trial.** In addition, the original and four copies of all trial exhibits, along with
9 exhibit lists, shall be submitted to the Courtroom Deputy no later than July 6, 2012.¹
10 Plaintiff’s exhibits shall be pre-marked with the prefix “PX” and numbered sequentially
11 beginning with 1 (eg., PX-1, PX-2, etc.). Defendants’ exhibits shall be pre-marked with
12 the prefix “DX” and lettered sequentially beginning with 500 (eg., DX-500, DX-501,
13 etc.). **The parties SHALL also provide a copy of their pre-marked exhibits to**
14 **opposing counsel no later than July 6, 2012.**

10 B. Discovery Documents

11 Because Plaintiff failed to specify exactly which discovery documents he will use at trial, the
12 pretrial order is modified to correct this omission. Therefore, no later than **July 6, 2012**, Plaintiff shall
13 identify, by name of the discovery request and its number, the specific discovery document he intends
14 to use at trial.

15 C. Jury Instructions

16 Defendant seeks to modify the schedule by which proposed, non-joint instructions are filed and
17 the date for objections thereto and the date by which the joint verdict form, the proposed additions
18 thereto and any objections to the proposed additions. Likewise, rather than requiring Plaintiff to file his
19 proposed non-joint instructions and proposed additions to the verdict form, Defendants propose that
20 these filings occur simultaneously.

21 The explanation for these changes are vague.² However, because the changes proposed by
22 Defendants seek to shorten the amount of time they have to file the documents at issue, the Court will
23 grant the modification as follows:

- 24 1. No later than June 15, 2012, the parties SHALL exchange their proposed jury

26 ¹Original for the Courtroom Deputy, one copy for the Court, one copy for the court reporter, one copy for the witness
27 stand and one to retain for themselves.

28 ²The Court surmises that Defendants’ counsel is concerned that the conference re: the verdict form and instructions,
was ordered to occur on the same date that the joint verdict form was to be filed. Though why this is problematic is not
explained.

1 instructions and verdict form.

- 2 2. No later than June 29, 2012, the parties SHALL confer regarding the instructions and
3 verdict form for the purpose of developing a set of jointly requested jury instructions and
4 an agreed-upon verdict form.
- 5 3. No later than July 6, 2012, the parties SHALL file the joint jury instructions and agreed-
6 upon verdict form and SHALL lodge a copy of both with the Court via e-mail to
7 JLTOrders@caed.uscourts.gov.
- 8 4. No later than July 6, 2012, the parties each may file up to ten disputed jury instructions
9 and may file any proposed additions to the joint verdict form and SHALL lodge a copy
10 of both with the Court via e-mail to JLTOrders@caed.uscourts.gov.
- 11 5. No later than July 10, 2012, the parties SHALL file any objections to their opponent's
12 proposed jury instructions and proposed additions to the verdict form.

13 **ORDER**

14 For the reasons set forth above, the Court **GRANTS** Defendants' requests to modify the
15 pretrial order as follows:

- 16 1. On or before June 1, 2012, each party shall provide the other with a copy of any
17 exhibit not previously produced during discovery. In addition, except for those
18 documents that will be used only for impeachment, each party **SHALL** specifically
19 describe any document that was not produced during discovery but will be used as an
20 exhibit at trial;
- 21 2. The parties **SHALL** also provide a copy of their pre-marked exhibits to opposing
22 counsel no later than July 6, 2012;
- 23 3. No later than **July 6, 2012**, Plaintiff shall identify, by name of the discovery request
24 and the number of the specific discovery request, he intends to use at trial;
- 25 4. No later than June 15, 2012, the parties **SHALL** exchange their proposed jury
26 instructions and verdict form;
- 27 5. No later than June 29, 2012, the parties **SHALL** confer regarding the instructions and
28 verdict form for the purpose of developing a set of jointly requested jury instructions

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and an agreed-upon verdict form;

- 6. No later than July 6, 2012, the parties **SHALL** file the joint jury instructions and agreed-upon verdict form and **SHALL** lodge a copy of both with the Court via e-mail to JLTOrders@caed.uscourts.gov;
- 7. No later than July 6, 2012, the parties each may file up to ten disputed jury instructions and may file any proposed additions to the joint verdict form and **SHALL** lodge a copy of both with the Court via e-mail to JLTOrders@caed.uscourts.gov;
- 8. No later than July 10, 2012, the parties **SHALL** file any objections to their opponent's proposed jury instructions and proposed additions to the verdict form;
- 9. No other amendments to the pretrial order are authorized.

IT IS SO ORDERED.

Dated: April 2, 2012

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE