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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEITH ZAVALA,

Plaintiff,

v.

CHRIS CHRONES, et al.,

Defendants.

CASE NO. 1:09-cv-01352-BAM PC

ORDER DENYING PLAINTIFF’S MOTION TO
CONTINUE TRIAL
(ECF No. 154.)

Plaintiff Keith Zavala is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Chris Chrones, D. Smith, S. Kays, S. Chandler, J. Soto and C. Martin for failure to protect in violation of the Eighth Amendment. The parties have consented to Magistrate Judge jurisdiction. A jury trial is set for February 12, 2013.

On January 28, 2013, Plaintiff filed a motion for extension of the trial date. (ECF No. 147.) Plaintiff requested a continuation of the trial because he anticipates legal representation by James M. Hodges, an attorney. Defendants opposed the motion on January 30, 2013, claiming that continuation of the trial would be highly prejudicial to the Defendants and to the Court. Defendants also noted that Mr. Hodges had not entered a Notice of Appearance as attorney of record in this matter pursuant to the Local Rules.

On February 5, 2013, the Court held a hearing and addressed Plaintiff’s motion to continue the trial. Thereafter, on February 6, 2013, the Court denied Plaintiff’s motion, finding that

1 continuation of the trial would be highly prejudicial to Defendants, who are prepared to proceed to
2 trial on the scheduled date. The Court also noted that was no assurance that Mr. Hodges would agree
3 to represent Plaintiff and would make an appearance in this matter. (ECF No. 153.)

4 On February 7, 2013, Mr. Hodges filed a notice stating that he has been retained to represent
5 Plaintiff in this matter. (ECF No. 154.) Mr. Hodges requests (1) a court order allowing him to
6 appear on behalf of Plaintiff and (2) a court order granting continuance of the trial.

7 As to the first request, a court order allowing Mr. Hodges to appear on behalf of Plaintiff is
8 unnecessary. Mr. Hodges entered his appearance on the record by filing his notice. Thus, his request
9 is moot.

10 As to the second request, the Court declines to continue the trial. In reaching this
11 determination, the Court reviewed Mr. Hodges' declaration in support of the request to continue
12 (ECF No. 154.) According to that declaration, Mr. Hodges has been attempting to meet with
13 Plaintiff since January 17, 2013, and only has spoken with Plaintiff on three occasions since that
14 time. Mr. Hodges has yet to meet with Plaintiff to review any evidence or to consider any proposed
15 witness testimony and has yet to be informed whether he will be able to meet with Plaintiff before
16 the February 12, 2013 trial date. Mr. Hodges seeks a continuance of the trial for at least 3 months
17 and reports that he is not available on February 12, 2013 trial date.

18 Mr. Hodges' declaration does not address the Court's previous determination that
19 continuation of the trial would be highly prejudicial to Defendants. This action has been pending
20 since August 3, 2009, and the last-minute efforts to forestall its resolution will prejudice not only
21 Defendants, but also witnesses, security personnel, counsel and the Court. Furthermore, this is not
22 an instance in which Plaintiff was recently appointed counsel, was left in pro per by counsel or is
23 unable to represent himself. Indeed, Plaintiff has been prosecuting this action for more than two
24 years without the assistance of counsel.

25 Accordingly, it is HEREBY ORDERED as follows:

- 26 1. Mr. Hodges' request for a court order allowing him to appear on behalf of Plaintiff
27 is DENIED as moot. Mr. Hodges has entered his appearance in this action;
- 28 2. The request to continue the trial is DENIED;

