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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN ELLIS PORTER,
Plaintiff,
v.
CHERYLEE WEGMAN,
Defendant.

Case No. 1:10-cv-01500-BAM (PC)
**ORDER GRANTING PLAINTIFF’S MOTION
FOR EXTENSION OF TIME TO FILE
NAME(S) AND LOCATIONS OF
UNINCARCERATED WITNESSES AND
PRETRIAL STATEMENT**

(ECF No. 153)

**ORDER SETTING TELEPHONIC STATUS
CONFERENCE**

Date: June 5, 2017
Time: 10:00 a.m.

Plaintiff Brian Ellis Porter (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this action under 42 U.S.C. § 1983. This action proceeds on Plaintiff’s claims against Defendant Wegman for violation of the Free Exercise Clause of the First Amendment. In particular, this action proceeds on Plaintiff’s claim that Defendant Wegman violated his right to free exercise of his religion by switching him from a kosher diet to a vegetarian diet and denying his requested dietary accommodations during multi-day Passover observances.

On May 15, 2017, Plaintiff filed the instant motion for extension of time to file the name(s) and location of unincarcerated witnesses and his pretrial statement. (ECF No. 153.)

1 Pursuant to the Court's April 17, 2017 Amended Scheduling Order, the current deadlines are as
2 follows:

- 3 1. Plaintiff's pretrial statement is due on or before May 23, 2017;
- 4 2. Defendant's pretrial statement is due on or before June 6, 2017;
- 5 3. Plaintiff's motion for attendance of unincarcerated witnesses is due on or before May
6 23, 2017;
- 7 4. Plaintiff's motion for attendance of incarcerated witnesses is due on or before May 23,
8 2017;
- 9 5. Any opposition to the motion for the attendance of incarcerated witness is due on or
10 before June 6, 2017;
- 11 6. Plaintiff must notify the Court of the names and locations of any unincarcerated
12 witnesses who refuse to testify voluntarily on or before May 9, 2017; and
- 13 7. Plaintiff must submit money orders to the Court to secure the attendance of
14 unincarcerated witnesses who refuse to testify on or before June 20, 2017.

15 (ECF No. 152, pp. 5–6.)

16 In his motion for extension of time, Plaintiff states that he has not had library access since
17 late January or early February, and therefore has been unable to obtain copies, conduct research,
18 or gather information needed to file his list of unincarcerated witnesses or his pretrial statement.
19 Plaintiff has been unable to access the library due to a combination of library renovations, lack of
20 Priority Legal User status, and multiple facility lockdowns of extended duration. In addition,
21 Plaintiff states that on April 11, 2017, much of his legal property relating to this case was
22 removed from his cell, and he has received no response to his April 13, 2017 request to access his
23 property. (Id.)

24 Defendant has not yet filed a response to Plaintiff's motion. Though the time to file an
25 opposition has not yet passed, in light of Plaintiff's difficulties complying with the Court's
26 deadlines, the Court finds good cause to grant Plaintiff a brief extension of time.¹ Fed. R. Civ. P.

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28 ¹ As the Court is setting a telephonic status conference for June 5, 2017 to discuss the scheduling order and trial date, the Court finds that Defendant will not be prejudiced by the inability to respond to Plaintiff's motion.

1 16(b)(4).

2 Accordingly, the Court HEREBY ORDERS as follows:

- 3 1. Plaintiff's motion for extension of time to file the name(s) and location of
4 unincarcerated witnesses and pretrial statement (ECF No. 153) is GRANTED;
- 5 2. The deadlines in the Court's April 17, 2017 Amended Scheduling Order (ECF No.
6 152) are extended as follows:
 - 7 a. Plaintiff shall serve and file a pretrial statement as described in the Court's
8 Amended Scheduling Order on or before **June 16, 2017**;
 - 9 b. Defendant shall serve and file a pretrial statement as described in this order on
10 or before **June 30, 2017**;
 - 11 c. If Plaintiff intends to call incarcerated witnesses at time of trial, Plaintiff shall
12 serve and file a motion for attendance of incarcerated witnesses as described in
13 the Court's Amended Scheduling Order on or before **June 16, 2017**;
 - 14 d. The opposition to the motion for the attendance of incarcerated witnesses, if
15 any, shall be filed on or before **June 30, 2017**;
 - 16 e. If Plaintiff wishes to obtain the attendance of unincarcerated witnesses who
17 refuse to testify voluntarily, Plaintiff must notify the Court of their names and
18 locations on or before **June 2, 2017**, and Plaintiff must submit the money
19 orders, as described in subsection 4 of the Court's Amended Scheduling Order,
20 to the Court on or before **July 14, 2017**;
- 21 3. This matter is set for a telephonic status conference on **June 5, 2017, at 10:00 a.m.**
22 before the undersigned. The parties shall appear telephonically by using the following
23 dial-in number and passcode at the time set for the hearing: dial-in number 1-877-411-
24 9748; passcode 3190866. Counsel for Defendant is required to arrange for Plaintiff's
25 participation by contacting the litigation coordinator at the institution where Plaintiff is
26 housed; and

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4. The parties shall be prepared to address whether a continuance of trial is warranted.

IT IS SO ORDERED.

Dated: May 26, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE