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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DWAYNE MEREDITH,  
Plaintiff,  
v.  
D. OVERLEY, et al.,  
Defendants.

CASE NO. 1:12-cv-00455-MJS (PC)  
ORDER GRANTING DEFENDANTS'  
MOTION TO SUBSTITUTE EXPERT  
WITNESS (ECF No. 145)  
ORDER DENYING PLAINTIFF'S MOTION  
TO PRECLUDE DEFENDANTS FROM  
DISCUSSING THE CASE WITH INMATES  
(ECF No. 115)  
ORDER DENYING PLAINTIFF'S MOTION  
FOR SANCTIONS (ECF No. 129)  
ORDER REGARDING PLAINTIFF'S  
SEPTEMBER 3, 2015 NOTICE TO THE  
COURT (ECF No. 118)

**I. PROCEDURAL HISTORY**

Plaintiff is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. The action proceeds against Defendants D. Overley, Gamboa, and Benevidez on an Eighth Amendment conditions of confinement claim. (ECF No. 8.)

1 Before the Court is Defendants' motion to substitute expert witness (ECF No.  
2 145.), Plaintiff's motions to preclude Defendants from discussing the case and for  
3 sanctions (ECF Nos. 115 & 129.), and Plaintiff's September 3, 2015 notice to the Court  
4 regarding a subpoena for Officer Gaulden, his request for depositions, and his motion for  
5 reconsideration (ECF No. 118.). Defendants filed a response to Plaintiff's motion for  
6 sanctions. (ECF No. 137.)

7 **II. MOTION TO SUBSTITUTE EXPERT WITNESS**

8 Defendants seek to substitute their proposed expert witness Dr. Church with Dr.  
9 Wang. Defendants argue that Dr. Church lacks sufficient time to assist with the case,  
10 Dr. Wang is already planning to testify as the custodian of Plaintiff's medical records,  
11 allowing Dr. Wang to testify will streamline the trial, and said substitution will not  
12 prejudice Plaintiff who has not deposed Dr. Church.

13 The Court finds these reasons compelling and sees no prejudice to Plaintiff if Dr.  
14 Wang qualifies and is allowed to testify as a medical expert. To the extent that Dr. Wang  
15 is the witness Defendants planned to call as the custodian of Plaintiff's medical file, he  
16 will be permitted to provide expert opinion regarding Plaintiff's medical condition(s) if  
17 Defendants lay the proper foundation at trial. Defendants' motion is GRANTED.

18 **III. MOTION TO PRECLUDE DEFENDANTS FROM DISCUSSING THE CASE**

19 Pursuant to Title 15 of the California Code of Regulations ("CCR"), Plaintiff seeks  
20 to preclude Defendants from discussing the case with other inmates. Plaintiff argues  
21 that Defendant Overley discussed the case with an inmate and told the inmate that he  
22 wanted Plaintiff to "just die and go away." Plaintiff argues that this violates CCR  
23 regulations regarding confidentiality and unlawful influence.

24 The alleged conduct does not violate either regulation cited by Plaintiff. The  
25 regulations prohibit inmates from exerting unlawful influence over other inmates, staff or  
26 visitors, 15 C.C.R. § 3013, and discuss confidential materials, 15 C.C.R. § 3321. The  
27 facts of the case are part of the public (Court) record and not confidential. To the extent  
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1 Defendant Overley's alleged comment is perceived as an attempt to assert unlawful  
2 influence, the cited regulation does not apply as he is not an inmate. To the extent that  
3 Plaintiff interprets the alleged comment as a solicitation to other inmates to harm  
4 Plaintiff, no claim related thereto is before the Court in this case. Plaintiff is, in any  
5 event, no longer in prison and presumably no longer exposed to any such threat.  
6 Plaintiff's motion is DENIED.

7 **IV. MOTION FOR SANCTIONS**

8 Under Federal Rule of Civil Procedure 37(b), Plaintiff seeks monetary sanctions  
9 against Defendants and an order denying them the use of any exhibits at trial. Plaintiff  
10 argues that Defendants failed to respond to his discovery requests for transcripts of the  
11 staff depositions conducted by Defendants in investigating the case and failed to provide  
12 him with a copy of their trial exhibits.

13 Defendants respond that the only deposition taken was of Plaintiff, and he has a  
14 copy of the transcript of his deposition. The Court has not ordered Defendants to  
15 provide Plaintiff with copies of any other deposition transcripts.

16 Plaintiff indicates he has received a copy of at least some of Defendants trial  
17 exhibits, but apparently he is missing others. Plaintiff does not describe or identify those  
18 he has not received. (ECF No. 132.)

19 Plaintiff's motion for sanctions will be DENIED, without prejudice to his resuming  
20 the motion at trial if he shows that he was not provided all the exhibits and if the failure to  
21 provide, or delay in providing, actually prejudiced him in some way. Defendants thus are  
22 encouraged to undertake to determine if all of their proposed trial exhibits have actually  
23 reached Plaintiff and, if not, provide the missing documents forthwith.

24 **V. SUBPOENA FOR OFFICER GAULDEN**

25 Plaintiff filed a notice with the Court, indicating that he has not yet been able to  
26 raise the fee required to subpoena his witness Officer Gaulden for trial. He asks that the  
27 Court subpoena Officer Gaulden and defer the fee until the end of trial.  
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1 In the Pre-trial Order, the Court advised Plaintiff that he had to comply with all  
2 applicable procedures for subpoenaing Officer Gauden, including paying the witness fee  
3 by August 14, 2015. (ECF No. 111.) Plaintiff has not complied; he has not arranged for  
4 payment of the witness fees. The Court cannot issue a subpoena without first receiving  
5 the necessary funds. Plaintiff's request is DENIED.

6 **VI. REQUEST FOR DEPOSITIONS AND RECONSIDERATION OF AMENDMENT**

7 In his September 3, 2015 notice to the Court, Plaintiff seeks transcripts of the  
8 depositions conducted by Defendants and asks the Court to reconsider allowing him to  
9 amend and increase his claim of punitive damages to \$90,000. (ECF No. 118.)

10 As noted above, the Court has previously ruled on Plaintiff's motion for deposition  
11 transcripts. To the extent Plaintiff is requesting the Court to reconsider its decision,  
12 Plaintiff's motion is DENIED. No such transcripts exist, and Plaintiff has not  
13 demonstrated otherwise.

14 The Court has previously denied Plaintiff's request for amendment of the amount  
15 of damages because his reasons for amendment did not relate to his Eighth Amendment  
16 claim. (ECF Nos. 67 & 111.) Plaintiff seeks reconsideration of the Court's denial,  
17 indicating he also sought increased damages because of the severe trauma he suffered  
18 in being confined to his cell for a 45-day period.

19 To the extent Plaintiff wishes to increase his Eighth Amendment claim for punitive  
20 damages, he may do so at appropriate times during the trial without amending his  
21 pleadings. If the jury finds in favor of Plaintiff it will be charged with determining whether  
22 punitive damages should be awarded to him and, if so, the amount of said damages. In  
23 that circumstance, Plaintiff can ask the jury to award whatever amount he deems  
24 appropriate. Fed. R. Civ. Proc. 54(c) provides that final judgments should grant the relief  
25 to which each party is entitled, even if they did not demand such relief in their pleadings

26 **VII. CONCLUSION AND ORDER**

27 Accordingly, it is HEREBY ORDERED that:  
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1. Defendants' motion to substitute expert witness is GRANTED (ECF No. 145.);
2. Plaintiff's motion to preclude Defendants from discussing the case is DENIED (ECF No. 115.);
3. Plaintiff's motion for sanctions is DENIED (ECF No. 129.); and
4. Plaintiff's requests for a subpoena for Officer Gauden, for deposition transcripts, and for reconsideration of the order denying his motion to amend are DENIED (ECF No. 118.).

IT IS SO ORDERED.

Dated: October 21, 2015

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE