

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

ROBERT D. MIX,
Plaintiff,
v.
AUDREY KING, et al.,
Defendants.

CASE NO. 1:13-cv-00823-AWI-MJS (PC)
**ORDER GRANTING DEFENDANTS'
REQUEST FOR NEW TRIAL DATE
(ECF No. 84)**
Telephonic Trial Confirmation
Hearing: November 4, 2016, at 10:00 a.m.
in Courtroom 2 (AWI)
Jury Trial: January 10, 2017, at 10:00 a.m.
in Courtroom 2 (AWI)

Plaintiff is a civil detainee proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendants Cunningham and Saloum on Plaintiff's Fourteenth Amendment failure to protect claims. On May 10, 2016, the Court issued a scheduling order setting trial for November 1, 2016. (ECF No. 81.)

On May 17, 2016, Defendants filed a motion seeking a new trial date due to the unavailability of Defendant Saloum, who is the lead presenter in a workshop at the Research and Treatment Conference of the Association for the Treatment of Sex

1 Offenders in Orlando, Florida from November 2 through 5. (ECF No. 84.) Defendants are
2 available to reschedule to an earlier or later trial date.

3 Plaintiff opposes the motion primarily on the ground that he believes Defendant
4 Saloum unqualified to give such a presentation. He also questions the efficacy of the
5 Sexually Violent Predator Act, pursuant to which he is presently detained, and therefore
6 disputes the importance of the conference at which Defendant Saloum will present. (ECF
7 No. 86.) Nonetheless, Plaintiff requests that, if the trial date is reset, it be reset to a later
8 date so that he may continue to “check facts and obtain declarations” regarding newly
9 learned facts pertaining to his case.

10 Defendants have presented good cause for a new trial date. Plaintiff’s disputes
11 regarding the subject matter of the conference and Defendant Saloum’s qualifications do
12 not provide grounds for denying the request. The Court will continue trial and all pretrial
13 deadlines. The Court notes, however, that trial of this matter has now been continued
14 three times on the request of Defendants, resulting in a nearly nine month delay in
15 bringing this case to trial. While these requests were warranted, further such requests
16 will not be granted except upon a showing of unforeseen and presently unforeseeable
17 exceptional circumstances or other good cause.

18 Based on the foregoing, the deadlines set forth in the Court’s prior scheduling
19 order (ECF No. 81) are HEREBY VACATED. The provisions of the scheduling order
20 regarding the content of pretrial statements and Plaintiff’s witness motions will remain in
21 effect. The Court hereby sets the following schedule for this litigation:

- 22 1. This matter is set for telephonic trial confirmation hearing before the Honorable
23 Anthony W. Ishii on November 4, 2016, at 10:00 a.m. in Courtroom 2;
- 24 2. This matter is set for jury trial before the Honorable Anthony W. Ishii on
25 January 10, 2017, at 8:30 a.m. in Courtroom 2;

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

3. Counsel for Defendant is required to arrange for the participation of Plaintiff in the telephonic trial confirmation hearing and to initiate the telephonic hearing at (559) 499-5660;
4. Plaintiff may serve and file an updated pretrial statement as described in the Court's May 10, 2016 Scheduling Order on or before September 9, 2016;
5. Defendants may serve and file an updated pretrial statement as described in the Court's May 10, 2016 Scheduling Order on or before October 7, 2016;
6. In addition to electronically filing their pretrial statement, Defendants shall e-mail their pretrial statements to: awiorders@caed.uscourts.gov;
7. If Plaintiff intends to call additional incarcerated witnesses at trial, Plaintiff shall serve and file a motion for attendance of incarcerated witnesses as described in this Order on or before September 9, 2016;
8. The opposition to the motion for the attendance of incarcerated witnesses, if any, shall be filed on or before October 7, 2016;
9. If Plaintiff wishes to obtain the attendance of unincarcerated witnesses who refuse to testify voluntarily, Plaintiff must notify the Court of their names and locations on or before September 9, 2016, and Plaintiff must submit the money orders, as described in section I subsection D of the Court's May 10, 2016 Scheduling Order, to the Court on or before October 21, 2016;

IT IS SO ORDERED.

Dated: June 6, 2016

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE