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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOSEPH USUNUBU ALUYA,

Plaintiff,

vs.

**MANAGEMENT & TRAINING
CORPORATION, and DOES 1-9,**

Defendants.

CASE NO. 1:13-CV-1345-AWI-JLT

**ORDER ON PLAINTIFF’S MOTION TO
CONSOLIDATE CASES FOR TRIAL**

(Doc. No. 92)

DEMOND HAMMOND,

Plaintiff,

vs.

**MANAGEMENT & TRAINING
CORPORATION, and DOES 1-9,**

Defendants.

CASE NO. 1:13-CV-1209-AWI-JLT

**ORDER ON PLAINTIFF’S MOTION TO
CONSOLIDATE CASES FOR TRIAL**

(Doc. Nos. 99)

BRUCE DWIGHT SUTTON,

Plaintiff,

vs.

**MANAGEMENT & TRAINING
CORPORATION, and DOES 1-9,**

Defendants.

CASE NO. 1:13-CV-1344-AWI-JLT

**ORDER ON PLAINTIFF’S MOTION TO
CONSOLIDATE CASES FOR TRIAL**

(Doc. No. 100)

1 In three separate but similar cases, Joseph Usunubu Aluya (“Aluya”), Demond
2 Hammond (“Hammond”), and Bruce Dwight Sutton (“Sutton), (collectively, “Plaintiffs”) make
3 claims against Defendant Management & Training Corporation (“MTC”) after allegedly
4 contracting Valley Fever while inmates at Taft Correctional Institution (“TCI”), which is
5 operated by MTC. Plaintiffs allege three negligence causes of action against MTC. On June 28,
6 2017, the parties appeared at a pretrial conference before the Court. Doc. No. 95. At the pretrial
7 conference, counsel for Plaintiffs raised the issue of consolidation of the cases for trial. On July
8 14, 2017, the parties appeared by phone at a status conference before the Court regarding
9 consolidation, and the parties agreed to a briefing schedule for Plaintiffs’ motion to consolidate.
10 Doc. No. 98. Having now reviewed the briefing from both parties, the Court will grant
11 Plaintiffs’ motion to consolidate for the reasons that follow.

12 13 **FACTUAL BACKGROUND**

14 All Plaintiffs allege they contracted Valley Fever while incarcerated at TCI due to the
15 negligence of MTC. All Plaintiffs were incarcerated at TCI during relatively close time periods.
16 All Plaintiffs allege that MTC was negligent in failing to implement preventative measures to
17 reduce the risk of infection in light of the danger of contracting Valley Fever in the area where
18 TCI is located.

19 20 **PLAINTIFFS’ MOTION**

21 **A. Plaintiffs’ Arguments**

22 Plaintiffs argue, *inter alia*, that their cases are materially identical in all aspects, save
23 damages. All three cases involve the same Defendant, MTC, the same lawyers, almost all of the
24 same witness, the same theories of liability, and the same experts. Plaintiffs argue that three
25 separate trials would involve unnecessary cost and delay in calling the same witnesses and
26 experts three separate times to provide repetitive testimony.

1 **B. MTC's Arguments**

2 MTC argues, *inter alia*, that a consolidated trial would be prejudicial and confusing to the
3 jury. MTC argues that causation and damages will be different for each Plaintiff. MTC argues
4 that each Plaintiff was at TCI for a different amount of time, spent different amounts of time
5 outside, had differences in their use of dust masks and understandings of warnings, and claim
6 widely different damages. MTC does not deny that there are some overlapping issues in this case
7 that were raised at summary judgment.

8 **C. Discussion**

9
10 **LEGAL STANDARD**

11 Pursuant to Rule 42(a) addressing consolidation: “If actions before the court involve a
12 common question of law or fact, the court may: (1) join for hearing or trial any or all matters at
13 issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid
14 unnecessary cost or delay.” Fed. R. Civ. P. 42(a). Under Rule 42, the Court has “broad
15 discretion” to consolidate cases pending in the same district either upon motion by a party or *sua*
16 *sponte*. In re Adams Apple, Inc., 829 F.2d 1484, 1487 (9th Cir. 1987). In exercising this
17 discretion, the Court “weighs the saving of time and effort consolidation would produce against
18 any inconvenience, delay, or expense that it would cause.” Huene v. United States, 743 F.2d
19 703, 704 (9th Cir. 1984).

20 **A. Common Questions of Law and Fact Predominate Over Individual Questions**

21 The case of *Young v. City of Augusta*, 59 F.3d 1160 (11th Cir. 1995), is instructive.
22 *Young* involved a Plaintiff's Eighth Amendment claim against prison officials for improper
23 treatment of her mental health condition. Plaintiff Young alleged that the City of Augusta failed
24 to adequately select or train jail personnel to deal with inmates suffering from mental illness. Id.
25 at 1165. Plaintiff sought to consolidate her case with the case of another of her attorney's clients
26 who also brought an Eighth Amendment claim against the City. Id. at 1165. The court found
27 that there were differences between the two actions in that each plaintiff alleged a different set of
28 facts concerning his or her particular medical needs and the responses made by jail employees.

1 Id. at 1168. However the court expressly rejected the magistrate judge's finding that there were
2 no common issues of law or fact in the cases and reasoned that consolidation would have been
3 appropriate. Id. at 1168-1169. According to the court, consolidation of both cases would have
4 made sense. Id. at 1170. Both actions contained the same allegations of deliberate indifference
5 to Plaintiffs' medical needs by jail officials. Id. Both actions claimed a city custom, practice, or
6 policy of deliberate indifference in providing mental health treatment. Id. The core issue of
7 liability was whether the city could be held accountable for Plaintiffs' alleged constitutional
8 deprivations. Id. Both cases were assigned to the same district judge and followed a similar
9 course of development. Id. at 1169. In both actions the parties would have to prove the same
10 elements to establish their claims. Id.

11 In this case, all the Plaintiffs bring identical claims for negligence causes of action
12 against the same Defendant, MTC, who managed the same prison facility, TCI, after Plaintiffs
13 allegedly contracting Valley Fever at TCI. All three cases are before the same district judge and
14 have followed a similar course of development, with uniform decisions on summary judgment.
15 Some small factual differences exist in Plaintiffs' cases, such as who asked for a dust mask or
16 who saw a poster on Valley Fever. However, Plaintiffs share the same core issues of whether
17 MTC breached the duty of care it owed to Plaintiffs and whether this breach caused Plaintiffs to
18 contract Valley Fever and the related suffering and costs associated with this condition. The
19 main thrust of Plaintiffs' cases goes to the practices and procedures that MTC had in place to
20 protect inmates from the dangers of contracting Valley Fever and whether such practices were
21 reasonable. These are universal questions to all three Plaintiffs, making consolidation
22 appropriate here. The question is whether the benefits of consolidating the cases for trial
23 outweigh the potential prejudice to the parties.

24 **B. The Value of Consolidation Outweighs Any Argument of Prejudice Here**

25 In *Finder v. Leprino Foods Co.*, 2016 WL 6875259 (E.D. Cal. Nov. 21, 2016) this Court
26 granted plaintiff's motion for consolidation, finding that "Litigating the two actions together is
27 likely to conserve judicial resources and decrease the likelihood of inconsistent factual or legal
28 determinations." Id. at *5; see also Morgan v. Napolitano, 2012 WL 4755034, at *2 (E.D. Cal.

1 Oct. 4, 2012) (granting consolidation where two trials would “present a significant risk of
2 inconsistent verdicts”).

3 The Plaintiffs are currently scheduled for three consecutive trials. The parties’ exhibit
4 lists for each trial are nearly identical, with the exception of each Plaintiffs’ medical records.
5 The parties’ witness lists are also nearly identical, with the exception of each Plaintiff and a few
6 witnesses who may be called on behalf of an individual Plaintiff. For example, if three separate
7 trials are held, the following witnesses will apparently be called three separate times:

- 8 1. Dr. Royce Johnson (Plaintiff’s expert);
- 9 2. Peter Jaramillo (Plaintiff’s expert);
- 10 3. Dr. George Thompson (Defendant’s expert);
- 11 4. Burnett Rucker, M.D. (Defendant Party Affiliate witness);
- 12 5. Lori Watts (Defendant Party Affiliate witness);
- 13 6. Michael Benov (Defendant Party Affiliate witness);
- 14 7. Dan Jones (Defendant Party Affiliate witness);
- 15 8. Diana Cormier (third party witness & government employee);
- 16 9. Kirt Emery (third party witness & County of Kern government official);
- 17 10. Dr. James Pelton (out-of-state third party witness & government employee);
- 18 11. Dr. Newton Kendig (out-of-state third party witness & former top government official);
- 19 12. Dr. Lauren Burwell (third party witness & government employee);
- 20 13. Custodian of records, MTC (Defendant Party Affiliate witness);
- 21 14. Custodian of records, Kern County Dept. of Public Health (third party witness &
22 government employee); and
- 23 15. Custodian of records, Bureau of Prisons (third party witness & government employee).

24 See Pretrial Order in each of the three cases: Doc. No. 89 (Aluya); Doc. No. 96 (Hammond);
25 Doc. No. 97 (Sutton). Calling 15 identical witnesses three times in a row and examining almost
26 identical exhibits three times in a row is not a conservation of judicial resources.¹ Further, since
27

28 ¹ The Court notes that MTC’s filings in this case specific to each Plaintiff have been substantially similar.

1 key questions of law of fact are common to all three cases, there is a high risk here of
2 inconsistent verdicts.

3 The Court finds that any risk of prejudice is minimal and outweighed by the benefits of
4 consolidation. First, there is almost no risk of delay here since the separate trials were scheduled
5 for three consecutive weeks. Therefore consolidating the trials is an insignificant delay of at
6 most one to two weeks. The Court can also provide cautionary instructions to the jury to reduce
7 the risk of confusion or prejudice. See, e.g., Johnson v. Celotex Corp., 899 F.2d 1281, 1284 (2d
8 Cir. 1990) (“When considering consolidation, a court should also note that the risks of prejudice
9 and confusion may be reduced by the use of cautionary instructions to the jury and verdict sheets
10 outlining the claims of each plaintiff.”); Lewis v. City of Fresno, 2009 WL 1948918, at *1 (E.D.
11 Cal. July 6, 2009) (same). Therefore, the Court will order Plaintiffs’ cases consolidated for trial.

12
13 **ORDER**

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s Motions to Consolidate the *Aluya*, *Hammond* and *Sutton* cases for trial is
16 GRANTED;
- 17 2. The Court will issue an amended Pretrial Order with the hearing date for the
18 consolidated trial beginning on September 19, 2017; and
- 19 3. The Clerk of the Court shall file this decision in each separate case:
20 *Aluya v. Management & Training Corp.* 13cv1345;
21 *Hammond v. Management & Training Corp.* 13cv1209; and
22 *Sutton v. Management & Training Corp.* 13cv1344.

23 IT IS SO ORDERED.

24 Dated: August 7, 2017

25 
26 SENIOR DISTRICT JUDGE