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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA

7
8 ESS'NN A. AUBERT,
9 Plaintiff,

10 v.

11 E. MADRUGA AND B. HOBBS,
12 Defendants.

1:13-cv-01659-DAD-EPG (PC)

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR AN AMENDED
SCHEDULING ORDER
(ECF NO. 67)

ORDER VACATING PRETRIAL
CONFERENCE, JURY TRIAL, PRETRIAL
STATEMENT DEADLINES, DEADLINES
RELATED TO MOTIONS FOR THE
ATTENDANCE OF INCARCERATED
WITNESSES, AND DEADLINES
RELATED TO HAVING THE UNITED
STATES MARSHAL SERVICE SERVE
UNINCARCERATED WITNESSES

ORDER SETTING PRETRIAL
CONFERENCE, JURY TRIAL, AND NEW
DEADLINES

Pretrial Conference: February 21, 2017, at
1:30 p.m. in Courtroom 5 (DAD)

Jury Trial: April 18, 2017, at 1:00 p.m. in
Courtroom 5 (DAD)

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Ess'nn Aubert ("Plaintiff") is a prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On October 3, 2016, the Court issued a scheduling order, which set a pretrial conference for December 5, 2016, and a jury trial for January 31, 2017. (ECF No. 57). The scheduling order also set deadlines related to motions for the attendance of incarcerated witnesses and deadlines related to having the United States

1 Marshal Service serve unincarcerated witnesses. On October 6, 2016, the Court issued a
2 minute order, requiring Plaintiff to file a pretrial statement by November 4, 2016, and requiring
3 the defendants file a pretrial statement by November 28, 2016. (ECF No. 60). On October 21,
4 2016, the Court set a settlement conference on November 23, 2016, at 10:00 a.m., before
5 Magistrate Judge Michael J. Seng. (ECF No. 63).

6 On November 9, 2016, the Plaintiff filed what the Court construes as a motion for an
7 amended scheduling order. According to Plaintiff, he was transferred to California State Prison
8 Corcoran on October 20, 2016. However, because he was only transferred so that he could
9 attend the settlement conference that was set in this case, his property was not transferred with
10 him. So, Plaintiff does not have access to his legal property and could not timely file his
11 pretrial statement. Plaintiff asks for a new scheduling order and an order that he receive access
12 to his property once he gets back to High Desert State Prison.

13 Because Plaintiff does not have access to his legal property, and apparently will not
14 have access to it until after the settlement conference, the Court will vacate the pretrial
15 conference, jury trial, pretrial statement deadlines, the deadlines related to motions for the
16 attendance of incarcerated witnesses, and the deadlines related to having the United States
17 Marshal Service serve unincarcerated witnesses. The Court will also set a pretrial conference, a
18 jury trial, and new deadlines, as laid out below. The Court notes that the date and time for the
19 settlement conference is not being changed.

20 As to Plaintiff's request that he receive immediate access to his property once he gets
21 back to High Desert State Prison, it is denied without prejudice. Plaintiff's motion is devoid of
22 both facts and legal arguments as to why he would not receive his legal property in the ordinary
23 course.

24 Accordingly, it is ORDERED that:

- 25 1. Plaintiff's motion for an amended scheduling order is GRANTED IN PART
26 AND DENIED IN PART;
- 27 2. The pretrial conference, jury trial, pretrial statement deadlines, the deadlines
28 related to motions for the attendance of incarcerated witnesses, and the deadlines

1 related to having the United States Marshal Service serve unincarcerated
2 witnesses are VACATED;

- 3 3. Plaintiff's pretrial statement is due December 30, 2016;
4 4. Defendant's pretrial statement is due January 27, 2017;
5 5. Motions for the attendance of incarcerated witnesses, if any, must be filed on or
6 before December 30, 2016. Oppositions, if any, must be filed on or before
7 January 27, 2017;
8 6. If Plaintiff wishes to have the United States Marshal Service serve any
9 unincarcerated witnesses who refuse to testify voluntarily, Plaintiff must submit
10 the money orders to the Court no later than January 27, 2017. In order to ensure
11 timely submission of the money orders, Plaintiff must notify the Court in writing
12 of the name and location of each unincarcerated witness no later than December
13 30, 2016.
14 7. The pretrial conference is set for February 21, 2017, at 1:30 p.m., in Courtroom
15 5, before District Judge Dale A. Drozd;
16 8. The jury trial is set for April 18, 2017, at 1:00 p.m., in Courtroom 5, before
17 District Judge Dale A. Drozd; and
18 9. Plaintiff's request for a Court order that he receive his property upon his arrival
19 to High Desert State Prison is DENIED without prejudice.

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22 IT IS SO ORDERED.

23 Dated: November 14, 2016

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE
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