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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAKEITH MCCOY,
Plaintiff,
v.
HOLGUIN, et al.,
Defendants.

Case No. 1:15-cv-00768-KES-HBK (PC)
AMENDED ORDER SETTING TRIAL
DATE, TELEPHONIC TRIAL
CONFIRMATION HEARING AND
RELATED DEADLINES¹
**Defendants’ Amended Pretrial Statement:
April 19, 2024**
**Telephonic Trial Confirmation Hearing:
May 13, 2024 at 1:30 p.m.**
Trial Date: July 16, 2024 at 8:30 AM

On December 22, 2023, the pretrial conference and trial dates were vacated due to the previously assigned district judge’s elevation to the Ninth Circuit Court of Appeals. (Doc. No. 222). On March 14, 2024, this case was reassigned to Judge Kirk E. Sheriff. (Doc. No. 223). The District Court now resets this matter for trial before Judge Kirk E. Sheriff to occur on **July 16, 2024 at 8:30 a.m.**, and a telephonic trial confirmation hearing before Judge Sheriff to occur on **May 13, 2024, at 1:30 p.m.**

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¹ The Telephonic Trial Confirmation Hearing (“TTCH”) is also known as a pretrial conference. The TTCH will function as a pretrial conference for this action. See Local Rules 280, 282.

1 **Incarcerated Witnesses Who Agree to Voluntarily Testify**

2 2. An incarcerated witness who agrees voluntarily to attend trial to give testimony cannot
3 come to court unless this Court orders the warden or other custodian to permit the incarcerated
4 witness to be transported to court. This Court will not issue such an order unless it is satisfied
5 that: (a) the prospective witness is willing to attend; and (b) the prospective witness has actual
6 knowledge of relevant facts.

7 3. Either party intending to introduce the testimony of incarcerated witnesses who have
8 agreed to voluntarily attend the trial must serve and file a written motion for a court order
9 requiring that such witnesses be brought to court at the time of trial. The motion must: (1) state
10 the name, address, and prison identification number of each witness; and (2) be accompanied by
11 declarations showing that each witness is willing to testify and that each witness has actual
12 knowledge of relevant facts. The motion should be entitled “Motion for Attendance of
13 Incarcerated Witnesses.”

14 4. The willingness of the prospective witness can be shown in one of two ways: (1) can
15 swear personally by declaration under penalty of perjury that the prospective witness has
16 information that the witness is willing to testify voluntarily without being subpoenaed. In the
17 declaration, the party must state when and where the prospective witness informed him of this
18 willingness; or (2) the prospective witness can sign a declaration under penalty of perjury in
19 which the witness states that he or she is willing to testify without being subpoenaed.

20 5. The prospective incarcerated witnesses’ actual knowledge of relevant facts can be
21 shown in one of two ways: (1) if the party has actual firsthand knowledge that the prospective
22 witness was an eyewitness or an ear-witness to the relevant facts, the party can swear by
23 declaration under penalty of perjury that the prospective witness has actual knowledge (e.g., if an
24 incident occurred in Plaintiff’s cell and, at the time, the party saw that a cellmate was present and
25 observed the incident, the party may swear to the cellmate’s ability to testify); or (2) the inmate-
26 witness can sign a declaration under penalty of perjury in which the inmate-witness describes
27 the relevant facts to which the prospective witness was an eye or ear witness. Whether the
28 declaration is made by the party or by the prospective witness, it must be specific about the

1 incident, when and where it occurred, who was present, and how the prospective witness
2 happened to be in a position to see or to hear what occurred at the time it occurred. The party
3 must serve and file the declaration made the inmate-witness or by himself.

4 **Incarcerated Witnesses Who Refuse to Testify Voluntarily**

5 6. If a party wishes to obtain the attendance of incarcerated witnesses who refuse to
6 testify voluntarily, the party should serve and file a written motion for a court order requiring that
7 such witnesses be brought to court at the time of trial. Such motion should be in the form
8 described above. In addition, the party must indicate in the motion that the incarcerated witnesses
9 are not willing to testify voluntarily.

10 7. The Court will review and rule on the motion for attendance of incarcerated witnesses,
11 specifying which prospective witnesses must be brought to court. Subsequently, the Court will
12 issue the writs necessary to cause the witnesses' custodian to bring the witnesses to court.

13 8. A motion for the attendance of incarcerated witnesses, if any, must be filed on or
14 before **April 19, 2024**. An opposition(s), if any, must be filed on or before **May 3, 2024**.

15 **Nonincarcerated Witnesses Who Agree to Voluntarily Testify**

16 9. It is the responsibility of either party who has secured a nonincarcerated witnesses'
17 voluntary attendance to notify the witness of the time and date of trial. No action need be sought
18 or obtained from the Court.

19 **Nonincarcerated Witnesses Who Refuse to Testify Voluntarily**

20 10. If a prospective witness is not incarcerated, and he or she refuses to testify
21 voluntarily, the witness must be served with a subpoena. Fed. R. Civ. P. 45. In addition, the
22 party must tender an appropriate sum of money for the witness. *Id.* In the case of an
23 nonincarcerated witness, the appropriate sum of money is the daily witness fee of \$40.00 plus the
24 witnesses' travel expenses. 28 U.S.C. § 1821.

25 11. If Plaintiff wishes to obtain the attendance of one or more nonincarcerated witnesses,
26 who refuse to testify voluntarily, Plaintiff must first notify the Court in writing of the name and
27 location of each nonincarcerated witness. The Court will calculate the travel expense for each
28 nonincarcerated witness and notify Plaintiff of the amount(s). Plaintiff then, for each witness,

1 must submit a money order made payable to the witness for the full amount of the witnesses'
2 travel expenses plus the daily witness fee of \$40.00. The subpoena will not be served upon the
3 nonincarcerated witness by the United States Marshals Service unless the money order is tendered
4 to the Court. Because no statute authorizes the use of public funds for these expenses in civil
5 cases, the tendering of witness fees and travel expenses is required even if Plaintiff was granted
6 leave to proceed *in forma pauperis*. If Plaintiff wishes to have the Marshals Service serve any
7 nonincarcerated witnesses who refuse to testify voluntarily, Plaintiff must submit the money
8 orders to the Court no later than **May 10, 2024**. To ensure timely submission of the money
9 orders, Plaintiff must notify the Court of the names and locations of his or her witnesses, in
10 compliance with the instructions above, no later than **April 19, 2024**.

11 **CONSENT TO MAGISTRATE JUDGE IS AVAILABLE**

12 District Court Judges of the Fresno Division of the Eastern District of California have
13 among the heaviest caseloads in the nation. The COVID-19 pandemic exacerbated the backlog
14 and as a result trial for a District Judge cannot occur until the date set above. The parties can
15 consent to a United States Magistrate Judge conducting all proceedings, including trial and entry
16 of final judgment, pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local
17 Rule 305. The Eastern District Magistrate Judges, all experienced in trial, use the same jury pool
18 and same court facilities as United States District Court Judges. Since Magistrate Judges do not
19 conduct felony trials, they have greater flexibility and schedule firm trial dates. Judgment entered
20 by a United States Magistrate Judge is appealable directly to the United States Court of Appeal
21 for the Ninth Circuit. While there are scheduling benefits to consenting to Magistrate Judge
22 jurisdiction, substantive rulings and decisions will not be affected by whether a party chooses to
23 consent or not. The possibility of consenting may be addressed by the District Judge at the
24 TTCH.

25 **EFFECT OF THIS ORDER**


- 26 • Any party unable to comply with the dates outlined in this order shall immediately file an
27 appropriate motion or stipulation identifying the requested modification(s).
- 28 • *The dates set in this order are considered to be firm and will not be modified absent a*

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showing of good cause, even if a stipulation to modify is filed. Due to the impacted nature of the civil case docket, this Court disfavors requests to modify established dates.

- The parties are advised that failure to file amended pretrial statements as required by this Order or failure to comply with this Order may result in the imposition of appropriate sanctions, which may include dismissal of the action or entry of default.

Dated: March 25, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE