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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAM CONSIGLIO, JR.,
Plaintiff,
v.
EDMUND G. BROWN, et al.,
Defendants.

Case No. 1:16-cv-01268-AWI-SAB (PC)
**ORDER DIRECTING PLAINTIFF TO FILE A
RESPONSE TO DEFENDANTS' EX PARTE
MOTION TO MODIFY RULE 28 AND
DEFENDANTS' AMENDED EX PARTE
MOTION TO MODIFY RULE 28**
(ECF Nos. 68, 69)

Plaintiff Sam Consiglio, Jr. is a civil detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On March 21, 2019, Defendants filed an ex parte motion to modify Rule 28 of the Federal Rules of Civil Procedure to permit the court reporter to attend Plaintiff's deposition, which will occur via videoconferencing, outside of Plaintiff's presence. (ECF No. 68.) In their motion, Defendants request that, since Department of State Hospitals, Coalinga ("DSH, Coalinga") does not have the resources to provide staff to attend and ensure the safety of a court reporter during a deposition held on its grounds, the Court should issue an order modifying Rule 28 and permitting the court reporter to administer the oath, transcribe the testimony, and perform any other official duties during Plaintiff's deposition from Defendants' counsel's office.

On March 22, 2019, Defendants filed an amended ex parte motion to modify Rule 28 to permit the court reporter to attend Plaintiff's deposition, which will occur via videoconferencing,

1 outside of Plaintiff's presence. (ECF No. 69.) In the amended motion, Defendants request that,
2 because DSH, Coalinga does not have the resources to provide staff to attend and ensure the
3 safety of a court reporter during a deposition held on its grounds and the videoconferencing
4 system used by DSH, Coalinga does not match or interface with the videoconferencing system
5 used by Defendants' counsel's office, the Court should issue an order modifying Rule 28 and
6 permitting the court reporter to administer the oath, transcribe the testimony, and perform any
7 other official duties during Plaintiff's deposition from the office of Esquire Deposition Solutions
8 in Sacramento, California, with Defendants' counsel also present in the same office of Esquire
9 Deposition Solutions.

10 However, the Local Rules of the Eastern District of California recognize limited situations
11 in which ex parte applications may be filed: an initial extension of time where a stipulation cannot
12 reasonably be obtained (L.R. 144(c)); applications to shorten time (L.R. 144(e)); injunctive relief
13 (L.R. 231); receivers (L.R. 232); and default judgment (L.R. 540). Since Defendants' ex parte
14 motion to modify Rule 28 does not fall within one of these limited situations and Defendants'
15 motions were served on Plaintiff, the Court declines to decide Defendants' motions ex parte.
16 Additionally, because no order shortening time was requested nor was the motion personally
17 served on Plaintiff due to the nature of the request and relief sought, the Court further declines to
18 decide the matter without an opportunity for the Plaintiff to be heard.

19 Instead, the Court finds that it is appropriate to require Plaintiff to file a response to
20 Defendants' motions within twenty-one days from service of this order. No extensions will be
21 granted after that date as the issue is quite limited. Further, if Plaintiff files an opposition to
22 Defendants' motions, Defendants may file a reply as permitted by Local Rule 230(l). The Court
23 acknowledges that Plaintiff's deposition is currently scheduled for April 2, 2019 and that the time
24 allotted to Plaintiff to file a response to Defendants' motions will not lapse until after that date.
25 Therefore, the Court determines that the April 2, 2019 deposition of Plaintiff will not go forward
26 unless Defendants' counsel and the court reporter are physically present in the same location as
27 Plaintiff at DSH, Coalinga at the time of the deposition. If the April 2, 2019 deposition of
28 Plaintiff does not go forward, then the Court will re-set Plaintiff's deposition after the Court rules

1 on Defendants' motion.

2 Based on the foregoing, the Court HEREBY ORDERS that:

- 3 1. Plaintiff shall file a response to Defendants' original and amended motions to
4 modify Rule 28 of the Federal Rules of Civil Procedure within **twenty-one (21)**
5 **days** from the date of service of this order;
- 6 2. If Plaintiff files an opposition to Defendants' Rule 28 motions, Defendants may
7 file a reply as permitted by Local Rule 230(1);
- 8 3. Plaintiff's April 2, 2019 deposition shall not forward unless Defendants' counsel
9 and the court reporter are physically present in the same location as Plaintiff at
10 DSH, Coalinga at the time of the deposition; and
- 11 4. If the noticed April 2, 2019 deposition does not go forward, the Court will re-set
12 Plaintiff's deposition after the Court rules on Defendants' Rule 28 motions.

13 IT IS SO ORDERED.
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15 Dated: March 26, 2019


UNITED STATES MAGISTRATE JUDGE

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