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3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA
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6 MITCHELL GARRAWAY,

7 Plaintiff,

8 vs.

9 JACQUILINE CIUFO, et al.,

10 Defendants.
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1:17-cv-00533-DAD-GSA-PC

**ORDER CONTINUING TELEPHONIC
TRIAL CONFIRMATION HEARING AND
SETTING RELATED DEADLINES**

From: Sept. 26, 2022 at 1:30 p.m.

**To: Oct. 17, 2022 at 1:30 p.m.
Courtroom 5 (DAD)**

Plaintiff's Pretrial Statement Due: 9/5/22

Defendants' Pretrial Statement Due: 10/5/22

**ORDER DIRECTING CLERK TO SEND
PLAINTIFF A COPY OF LOCAL RULE 281**

Jury Trial: TO BE SCHEDULED

18 **PLEASE TAKE NOTICE**

- 19 1. The telephonic trial confirmation (TTCH) hearing scheduled for September 26,
20 2022 at 1:30 p.m. in this action is **CONTINUED TO:**

21 **October 17, 2022 at 1:30 p.m.**

22 **Before District Judge Dale A. Drozd**

23 **In Courtroom 5**

- 24 2. The parties shall appear at the TTCH with each party connecting remotely either
25 via Zoom video conference or Zoom telephone number. The parties will be
26 provided with the Zoom ID and password by Judge Drozd's Courtroom Deputy
27 prior to the conference. The Zoom ID number and password are confidential and
28 are not to be shared. Appropriate court attire is required.

1 3. Counsel for Defendants is required to contact Plaintiff's institution to arrange for
2 Plaintiff's participation at the TTCH. Plaintiff is a federal prisoner proceeding
3 *pro se* and *in forma pauperis* with this civil rights action pursuant to Bivens vs.
4 Six Unknown Agents, 403 U.S. 388 (1971).

5 This case now proceeds with Plaintiff's original Complaint filed on April 17, 2017,
6 against defendants Jacqueline Ciufo (Unit Manager), K. Miller (Corrections Officer), and
7 Lieutenant J. Zaragoza (collectively, "Defendants"), for failure to protect Plaintiff in violation of
8 the Eighth Amendment. (ECF No. 1.)

9 On November 27, 2018, the court issued a Discovery and Scheduling Order establishing
10 deadlines for the parties, including a discovery deadline of May 27, 2019, and a dispositive
11 motion filing deadline of July 27, 2019. (ECF No. 26.) All of the deadlines have now expired,
12 and no motions are pending. On May 25, 2021 at 9:30 a.m., a settlement conference was held
13 before Magistrate Judge Stanley A. Boone, but the case did not settle. (ECF No. 131.) Therefore,
14 pursuant to Rule 16(b) of the Federal Rules of Civil Procedure, the court will, by this order, set
15 a further schedule for this litigation.

16 The parties are required to file pretrial statements in accordance with the schedule set
17 forth herein. In addition to the matters already required to be addressed in the pretrial statement
18 in accordance with Local Rule 281, Plaintiff will be required to make a particularized showing
19 in order to obtain the attendance of witnesses. The procedures and requirements for making such
20 a showing are outlined in detail below. **Plaintiff is advised that failure to comply with the**
21 **procedures set forth below may result in the preclusion of any and all witnesses named in**
22 **his pretrial statement.**

23 At the trial of this case, Plaintiff must be prepared to introduce evidence to prove each of
24 the alleged facts that support the claims raised in the lawsuit. In general, there are two kinds of
25 trial evidence: (1) exhibits and (2) the testimony of witnesses. It is Plaintiff's responsibility to
26 produce all of the evidence to prove his case, whether that evidence is in the form of exhibits or
27 witness testimony. If Plaintiff wants to call witnesses to testify, he must follow certain
28 procedures to ensure that the witnesses will be at the trial and available to testify.

1 1. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to
2 Testify Voluntarily - An incarcerated witness who agrees voluntarily to attend trial to give
3 testimony cannot come to court unless this court orders the warden or other custodian to permit
4 the 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 A party intending to introduce the testimony of incarcerated witnesses who have agreed
8 voluntarily to attend the trial must serve and file concurrent with the pretrial statement a written
9 motion for a court order requiring that such witnesses be brought to court at the time of trial. The
10 motion must: (1) state the name, address, and prison or state hospital identification number of
11 each such witness; and (2) be accompanied by declarations showing that each witness is willing
12 to testify and that each witness has actual knowledge of relevant facts. The motion should be
13 entitled “Motion for Attendance of Incarcerated Witnesses.”

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

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

1 the declaration is made by the party or by the prospective witness, it must be specific about the
2 incident, when and where it occurred, who was present, and how the prospective witness
3 happened to be in a position to see or to hear what occurred at the time it occurred.

4 The court will review and rule on the motion for attendance of incarcerated witnesses,
5 specifying which prospective witnesses must be brought to court. Subsequently, the court will
6 issue the order necessary to cause the witness's custodian to bring the witness to court.

7 **Motions for the attendance of incarcerated witnesses, if any, must be filed on or**
8 **before September 5, 2022. Oppositions, if any, must be filed on or before October 5, 2022.**

9 2. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to
10 Testify Voluntarily - If a party seeks to obtain the attendance of incarcerated witnesses who
11 refuse to testify voluntarily, the party should submit with his pretrial statement a motion for the
12 attendance of such witnesses. Such motion should be in the form described above. In addition,
13 the party must indicate in the motion that the incarcerated witnesses are not willing to testify
14 voluntarily.

15 3. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to
16 Testify Voluntarily - It is the responsibility of the party who has secured an unincarcerated
17 witness's voluntary attendance to notify the witness of the time and date of trial. No action need
18 be sought or obtained from the court.

19 4. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse
20 to Testify Voluntarily - If a prospective witness is not incarcerated, and he or she refuses to
21 testify voluntarily, the witness must be served with a subpoena. Fed. R. Civ. P. 45. In addition,
22 the party seeking the witness's presence must tender an appropriate sum of money for the witness.
23 Id. In the case of an unincarcerated witness, the appropriate sum of money is the daily witness
24 fee of \$40.00 plus the witness's travel expenses. 28 U.S.C. § 1821.

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

1 witness, submit a money order made payable to the witness for the full amount of the witness's
2 travel expenses plus the daily witness fee of \$40.00. The subpoena will not be served upon the
3 unincarcerated witness by the United States Marshal unless the money order is tendered to the
4 court. Because no statute authorizes the use of public funds for these expenses in civil cases, the
5 tendering of witness fees and travel expenses is required even if the party was granted leave to
6 proceed *in forma pauperis*.

7 **If Plaintiff wishes to have the Marshal serve any unincarcerated witnesses who**
8 **refuse to testify voluntarily, Plaintiff must submit the money orders to the court no later**
9 **than October 5, 2022.** In order to ensure timely submission of the money orders, Plaintiff must
10 notify the court of the names and locations of his witnesses, in compliance with step one, **no**
11 **later than September 5, 2022.**

12 The parties are advised that failure to file pretrial statements as required by this order may
13 result in the imposition of appropriate sanctions, which may include dismissal of the action or
14 entry of default.

15 *The dates set in this order are considered to be firm and will not be modified absent a*
16 *showing of good cause, even if a stipulation to modify is filed.* Due to the impacted nature of
17 the civil case docket, this Court disfavors requests to modify established dates.

18 Accordingly, the court HEREBY ORDERS as follows:

- 19 1. The telephonic trial confirmation hearing before the Honorable Dale A. Drozd,
20 scheduled for September 26, 2022 at 1:30 p.m. is **continued to October 17, 2022**
21 **at 1:30 p.m.** in Courtroom 5;
- 22 2. The jury trial for this case shall be scheduled in due course;
- 23 3. Counsel for Defendants is required to arrange for the participation of Plaintiff in
24 the Telephonic Trial Confirmation Hearing;
- 25 4. Plaintiff shall serve and file a pretrial statement as described in this order on or
26 before **September 5, 2022.**
- 27 5. Defendants shall serve and file a pretrial statement as described in this order on
28 or before **October 5, 2022;**

