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2
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-ADA-GSA-PC

ORDER GRANTING DEFENDANTS' EX
PARTE APPLICATION TO CONTINUE
PRETRIAL CONFERENCE
(ECF No. 145.)

AND

ORDER SCHEDULING TRIAL

Pretrial Conference

Continued From: October 17, 2022 at
1:30 p.m.

To: May 22, 2023 at 1:30 p.m.
District Judge Ana de Alba
In Courtroom 1, 8th floor

Defendants' Pretrial Statement Due:
May 8, 2023

Jury Trial

August 1, 2023 at 8:30 a.m.
District Judge Ana de Alba
In Courtroom 1, 8th floor

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23 **I. BACKGROUND**

24 Mitchell Garraway ("Plaintiff") is a federal prisoner proceeding *pro se* and *in forma*
25 *pauperis* with this civil rights action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388
26 (1971). This case now proceeds with Plaintiff's original Complaint filed on April 17, 2017,
27 against defendants Jacqueline Ciufo (Unit Manager), K. Miller (Corrections Officer), and
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1 Lieutenant J. Zaragoza (collectively, “Defendants”), for failure to protect Plaintiff in violation of
2 the Eighth Amendment. (ECF No. 1.)

3 On May 28, 2021, the Court issued the Second Scheduling Order which scheduled a
4 Telephonic Trial Confirmation Hearing (hereinafter “Pretrial Conference”) for September 26,
5 2022 at 1:30 p.m. before District Judge Dale A. Drozd, and set a further schedule for this
6 litigation. (ECF No. 132.) Jury trial was not scheduled. On August 5, 2022, the Court continued
7 the Pretrial Conference to October 17, 2022 at 1:30 p.m. (ECF No. 138.) On August 24, 2022,
8 due to the appointment of District Judge Ana de Alba to the bench of the Eastern District of
9 California, this case was assigned from District Judge Dale A. Drozd to District Judge Ana de
10 Alba for all further proceedings. (ECF No. 139.)

11 On September 1, 2022, Plaintiff filed his pretrial statement and motions for the attendance
12 of unincarcerated and incarcerated witnesses for trial. (ECF Nos. 140-142.) On September 8,
13 2022, Defendants filed an ex parte application to continue the Pretrial Conference and related
14 deadlines. (ECF No. 145.)

15 **II. DEFENDANTS’ EX PARTE APPLICATION**

16 Defendants request the Court to continue the Pretrial Conference currently set for October
17 17, 2022 at 1:30 p.m. to May 22, 2023. They also request an extension of the deadline for filing
18 their pretrial statement from October 5, 2022 to May 8, 2022. They request a continuance for
19 two reasons: 1) defense counsel will be on an airplane on the date and time currently scheduled
20 for the Pretrial Conference, returning from international travel spanning October 7 to 17, and will
21 be in trial in Fresno during the two weeks prior (September 26 to October 6). (See declaration
22 of Victoria Boesh, ECF No. 145-1 at 2 ¶¶ 2, 3). 2) Defendants intend to seek leave to file a
23 motion for reconsideration of their motion for judgment on the pleadings,¹ based on the United
24 States Supreme Court’s recent decision in Egbert v. Boule, No. 21-147, 2022 WL 2056291 (U.S.
25 June 8, 2022.) Because the motion for reconsideration may resolve this case, Defendants argue
26 that it makes sense to continue the Pretrial Conference to allow the court time to consider and
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28 ¹ Defendants’ motion for judgment on the pleadings was filed on February 26, 2019.
(ECF No. 42.) On April 8, 2020, the Court issued an order denying the motion. (ECF No. 106.)

1 resolve that motion. They also propose filing their motion for reconsideration by December 8,
2 2022.

3 **Discussion**

4 Defense counsel has shown that she is unable to participate in the Pretrial Conference
5 scheduled for October 17, 2022 at 1:30 p.m. Defendants have also shown good cause why the
6 Pretrial Conference should be continued to allow Defendants time to file a motion for
7 reconsideration, which may resolve the case. Accordingly, Defendants' application for a
8 continuance shall be granted. **The Pretrial Conference shall be continued to May 22, 2023 at
9 1:30 p.m., and Defendants' pretrial statement shall be due on May 8, 2023.**

10 The parties shall appear at the Pretrial Conference with each party connecting remotely
11 either via Zoom video conference or Zoom telephone number. The parties will be provided with
12 the Zoom ID and password by Judge de Alba's Courtroom Deputy prior to the conference. The
13 Zoom ID number and password are confidential and are not to be shared. Appropriate court attire
14 is required.

15 Counsel for Defendants is required to contact Plaintiff's institution to arrange for
16 Plaintiff's participation in the Pretrial Conference. Plaintiff is a federal prisoner proceeding *pro*
17 *se* and *in forma pauperis* with this civil rights action pursuant to Bivens vs. Six Unknown Agents,
18 403 U.S. 388 (1971).

19 **III. TRIAL DATE NOW SCHEDULED**

20 Jury trial for this case is scheduled for **August 1, 2023 at 8:30 a.m.** before District Judge
21 Ana de Alba in Courtroom 1 on the 8th floor.

22 **IV. CONCLUSION AND ORDER**

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

26 Based on the foregoing, the court **HEREBY ORDERS** as follows:

- 27 1. Defendants' ex parte application to continue the Pretrial Conference in this case,
28 filed on September 8, 2022, is GRANTED;

