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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARCO A. GARCIA,
Plaintiff,
v.
GARCIA, *et al.*,
Defendants.

Case No. 1:17-cv-01313-BAM (PC)
ORDER CONSTRUING DECLARATION OF
DEFENSE COUNSEL AS MOTION FOR
NEW TRIAL DATE
ORDER DENYING DEFENDANTS’
MOTION FOR NEW TRIAL DATE
(ECF No. 60)

Plaintiff Marco A. Garcia (“Plaintiff”) is a former pretrial detainee and current state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. All parties have consented to Magistrate Judge jurisdiction. (ECF No. 28.) This action is confirmed for a jury trial on November 1, 2021, and proceeds on Plaintiff’s Fourteenth Amendment claims against Defendants Garcia and Bursiaga for excessive force.

Currently before the Court is a declaration from defense counsel James J. Arendt, filed September 30, 2021. (ECF No. 60.) In this declaration, counsel notifies the Court of a trial conflict with another case, *A.F.C., a minor by and through her guardian ad litem, Angelica Bestafka v. County of Kings, et al.*, Case No. 18C 0256, scheduled for trial in the Kings County Superior Court on October 18, 2021, and requests a rescheduling of the trial date in the instant matter. Counsel states that he is the assigned trial counsel for both this matter and the *A.F.C.* matter. *A.F.C.* was originally filed on September 19, 2018, and the trial has been rescheduled at

1 least 4 or 5 times. The last rescheduling took place on August 25, 2021, when it was set for
2 October 18, 2021, but counsel was warned that the Superior Court had a criminal matter set to
3 start trial the same day. On September 24, 2021, counsel was informed that the criminal matter
4 had been resolved, and *A.F.C.* was confirmed for trial. Counsel states that at this point, there does
5 not appear to be any reason for counsel to believe that the October 18, 2021 trial date would be
6 again moved. As the trial is estimated to last two weeks, *A.F.C.* would end on Friday, October
7 29, 2021. The instant action is scheduled to begin trial the following Monday, November 1,
8 2021. Although this matter is a relatively straightforward use of force case, counsel states that
9 this would be insufficient time for counsel to prepare for and participate in the trial of this matter.
10 Counsel therefore requests that the trial in this matter be rescheduled to another date to be
11 determined. (*Id.*)

12 The Court construes the declaration from defense counsel as a motion for a new trial date.
13 Plaintiff has not yet had the opportunity to respond, but the Court finds a response is unnecessary.
14 The motion is deemed submitted. Local Rule 230(1).

15 The Court does not find good cause to continue the trial date. This matter was originally
16 filed on October 2, 2017, and is now four years old. The trial date in this action was set on May
17 18, 2021 during a status conference with the parties, including Mr. Arendt, who confirmed his
18 availability for trial on November 1, 2021. (*See* ECF Nos. 47, 48.) This federal case was set,
19 with the agreement of the parties as to the specific trial date and set well before the current trial
20 date in the *A.F.C.* matter. As it does not appear that Mr. Arendt has requested that the *A.F.C.*
21 matter be continued, or that the judge in *A.F.C.* has been alerted of a conflict with a previously set
22 and confirmed federal trial, any conflict does not now constitute good cause for a continuance.

23 Finally, as Mr. Arendt has confirmed, this matter is a relatively straightforward use of
24 force case, which the parties have estimated will last approximately two to three days. (ECF No.
25 56, p. 2.) Based on Mr. Arendt's estimate of the length of the *A.F.C.* trial, it does not appear that
26 it will actually overlap with the instant action. Even if that is the case and Mr. Arendt is
27 unavailable as trial counsel, the Court notes that Ashley N. Reyes is also designated as lead
28 attorney for these proceedings, and it does not appear that Ms. Reyes is unavailable on the

1 scheduled trial date. Furthermore, Ms. Reyes has been assigned to this action since at least
2 October 14, 2020, (*see* ECF No. 42), and has actively participated in Defendants’ trial
3 preparations—drafting Defendants’ pretrial statement, (ECF No. 52), and motions in limine,
4 (ECF No. 57), and appearing without Mr. Arendt during the September 1, 2021 trial confirmation
5 hearing, (ECF No. 55). The Court has no doubt that with two lead attorneys assigned to this
6 action, that it can be tried on the scheduled date and in the allotted time.

7 Based on the foregoing, IT IS HEREBY ORDERED as follows:

- 8 1. The declaration of James J Arendt, (ECF No. 60), is construed as a motion for a new trial
9 date;
- 10 2. Defendants’ motion for a new trial date, (ECF No. 60), is DENIED; and
- 11 3. This action proceeds according to the dates set in the Court’s September 1, 2021 Pretrial
12 Order.

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14 IT IS SO ORDERED.

15 Dated: October 1, 2021

16 /s/ Barbara A. McAuliffe
17 UNITED STATES MAGISTRATE JUDGE
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