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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW R. LOPEZ,

Plaintiff,

No. CIV S-03-1605 GEB DAD P

vs.

S. COOK, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. The incidents giving rise to this action took place while plaintiff was incarcerated at High Desert State Prison (HDSP). Following multiple summary judgment motion, plaintiff is now proceeding to trial on his remaining claims of retaliation and procedural due process violations in connection with his gang validation and retention in administrative segregation as a result thereof.

On August 19, 2009, the undersigned issued an order resetting the jury trial in this action for May 4, 2010 before the assigned district judge. Thereafter, plaintiff filed a number of motions and requests that are now pending before the court. Below, the court addresses those various motions and requests.

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1 I. Plaintiff's Requests For Counsel

2 Plaintiff has filed a number of motions and requests with the court seeking the
3 assistance of counsel. In this regard, on May 1, 2009, plaintiff filed a document with the court
4 styled, "Notice of past and current intentional obstruction to court access by prison officials, and
5 fraud. And previous warning to prison officials by the United States District Court. [sic]
6 Request to hold officials in contempt and order they cease conduct. And request for counsel.
7 [sic]" (Doc. No. 193.) Next, on May 21, 2009, requested that the court use its "congressionally
8 authorized discretion" and ask counsel from its pro bono list to assist plaintiff. (Doc. No. 196)
9 Thereafter, on September 2, 2009, plaintiff filed a document with this court styled, "Notice Of
10 Additional Mental Incapacity, And, Request For This Court To Ask Counsel To Assist." (Doc.
11 No. 200.) On January 19, 2010, plaintiff then filed a document requesting, in part, that counsel
12 be sought to represent plaintiff and that the scheduled jury trial date be vacated until plaintiff had
13 been able to obtain expert witnesses to testify on his behalf. (Doc. No. 203.) Finally, on March
14 8, 2010, plaintiff filed a document with the court styled, "Plaintiff's Notice Of Impediments And
15 Suggestion By Expert Witness," in which he contends that "Corrections Expert Daniel B.
16 Vasquez" has suggested to plaintiff that he obtain counsel. (Doc. No. 206 at 1.)

17 Law and motion is closed in this action and the matter is set for trial. While
18 appointment of counsel was not previously deemed appropriate, the court is mindful of the
19 difficulty that a pro se litigant such as plaintiff encounters at trial in a civil rights action such as
20 this. Accordingly, plaintiff's requests that the court seek pro bono counsel on his behalf will be
21 granted at this time. The undersigned has referred this matter to the Eastern District's Pro Bono
22 Panel. The court's referral does not guarantee that counsel will be obtained to represent plaintiff
23 at trial. It merely means that the court will attempt to secure counsel for plaintiff from the Pro
24 Bono Panel if possible.

25 Unfortunately, in light of the number of cases pending in this district which are
26 similarly situated, the process of merely determining whether pro bono counsel can be located

1 will may take approximately two months. In light of the court's referral of this matter to the Pro
2 Bono Panel, the court will therefore vacate the May 4, 2010 trial date at this time. A new trial
3 date will be reset, as appropriate, after a determination has been made on the court's referral.

4 II. Plaintiff's Requests Concerning Trial Witnesses

5 Pursuant to the court's further scheduling order filed on March 3, 2009, on April
6 22, 2009 plaintiff filed his pretrial statement and his request for witnesses to be brought to court
7 for his trial. (Doc. No. 191.) Therein, plaintiff requests the attendance of twenty current or
8 former inmate witnesses, as well as several unincarcerated witnesses, at his trial. It appears that
9 several of the incarcerated witnesses identified by plaintiff would be capable of testifying only
10 regarding claims advanced by plaintiff that have previously been dismissed by the court. The
11 court will deny plaintiff's request for the attendance of witnesses at trial, without prejudice, at
12 this time.

13 In a subsequent order the court will set a new deadline for the filing of such
14 request. However, plaintiff is cautioned that the court will not order the attendance of multiple
15 prisoners witnesses at trial for the purpose of securing cumulative testimony. Plaintiff is advised
16 that he should carefully select his incarcerated witnesses and to make sure that he has provided to
17 the court in any future request all of the information concerning such witnesses required by the
18 court's March 3, 2009 further scheduling order.

19 Plaintiff is also advised that the court will not issue any orders compelling the
20 attendance of unincarcerated witnesses. Plaintiff must follow the procedures described in the
21 March 3, 2009 further scheduling order to obtain the attendance of unincarcerated witnesses at
22 trial.

23 In addition, on September 2, 2009, plaintiff filed a document styled, "Notice Of
24 Anticipated Prejudice And Request For Orders To Ensure That Felon Witnesses Are Produced,
25 At State Expense, For Trial." (Doc. No. 201.) It appears that plaintiff filed this document in
26 order to ensure that his incarcerated witnesses are made available to him at the time of trial. To

1 do so, plaintiff seeks a court order preventing his currently incarcerated witnesses from being
2 released on parole until after they have testified at his trial. Plaintiff's request in this regard is
3 frivolous and seeks an order which is beyond the court's authority. Accordingly, plaintiff's
4 request in this regard will be denied.

5 On January 7, 2010, plaintiff filed a request with the court seeking the
6 appointment of expert witnesses on his behalf. (Doc. No. 202.) Specifically, plaintiff requests
7 that Daniel Vasquez, Craig Haney, and Paul Good be appointed as his expert witnesses. In
8 support of this request plaintiff contends that these expert witnesses testified in the case of Lira v.
9 Cate, Case No. C-00-0905 SI (N.D. Cal.). According to plaintiff, the court in Lira found that
10 plaintiff's due process rights were violated because he was not provided notice and an
11 opportunity to be heard before he was validated as a gang member and placed in segregation.
12 Plaintiff contends that Daniel Vasquez testified on behalf of the plaintiff in the Lira case about
13 the evidence used in the validation process for inmate Lira and the reliability of such evidence.
14 Plaintiff also contends that inmate Lira was placed on contraband surveillance watch and that
15 "expert witnesses Craig Haney and Paul Good testified to the psychological effects resulting
16 from those conditions, and to the benefits that fair proceedings and acknowledging the erroneous
17 validation would produce." (Doc. No. 202 at 3.)

18 Plaintiff's request for the appointment of expert witnesses will be denied at this
19 time because plaintiff has failed to establish that the experts whose appointment he seeks could
20 provide relevant testimony in this action. The court has previously determined that the only
21 remaining issues which survived defendants' motion for summary judgment, are whether
22 plaintiff was provided an opportunity to express his views at the following stages of the gang
23 validation process: his initial placement in administrative segregation, his retention in
24 administrative segregation and his ultimate validation as a gang member. (See Findings and
25 Recommendations filed Sept. 29, 2008 (Doc. No. 178), at 35-46; Order adopting Findings and
26 Recommendations filed Jan. 16, 2009 (Doc. No. 184). Therefore, the reliability of evidence used

1 in plaintiff's gang validation, the psychological effects of being placed on surveillance watch and
2 being subjected to an erroneous validation process, are not claims or issues that will be resolved
3 at the trial of this action. Accordingly, plaintiff's request for appointment of expert witnesses
4 will be denied.

5 III. Plaintiff's Requests Concerning Defendants' Pretrial Statement

6 On May 21, 2009, plaintiff filed a document styled, "Notice Of Bias And
7 Prejudice; And, Opposition To Portions Of Defendant's Pre-Trial Statement." (Doc. No. 195.)
8 Therein, plaintiff complains that the undersigned is biased because defendants were allowed to
9 file their pretrial statement after having an opportunity to review plaintiff's pretrial statement.
10 Plaintiff also submits various objections and comments concerning defendants' pretrial
11 statement. In this regard plaintiff asserts that defendants have identified defendants Hansen,
12 Singletary and Farris as tentative witnesses. Plaintiff notes that the U.S. Marshall was unable to
13 executive service on defendants Hansen, Singletary and Farris and they were dismissed from this
14 action because they were not timely served. Because the defense apparently now proposes to call
15 the unserved defendants as witnesses at trial, plaintiff seeks a court order requiring counsel for
16 defendants to provide the contact information for the three defendants, reopening discovery as to
17 those previously unserved defendants, reinstating plaintiff's previously dismissed fifth, sixth,
18 fourteenth and nineteenth causes of action, and striking all of the "non-defendant witnesses"
19 listed in defendants' pretrial statement. (Id. at 4.)

20 The relief plaintiff seeks in this regard is overbroad and completely unsupported.
21 Accordingly, plaintiff's request will be denied. However, the court will order defendants'
22 counsel to inform the court as to how defendants Hansen, Singletary and Farris were apparently
23 located by defense counsel when service of process on those same individuals could not be
24 executed by the U.S. Marshall.

25 On May 21, 2009, plaintiff filed another document with this court styled,
26 "Request For Order Compelling The Addresses To Defendant's Listed Witnesses Hansen,

1 Singletary And Farris, And For Court To Order U.S. Marshall To Serve Summons And
2 Complaint Upon The[m] To Ensure They Stand Trial; And, Request For Court To Strike All
3 Other Non-Defendant Witnesses Listed In Defendant’s Pre-Trial Statement For Failure To
4 Comply With Local Rule 16-281(b)(10).” (Doc. No. 197.) Thereafter, on June 19, 2009,
5 plaintiff filed a document with the court styled, “Notice Of Remand And Request For Order For
6 Defense Counsel’s Office To Relinquish Contact Information For Troy Singletary; And, For U.S.
7 Marshall’s Service To Serve Summons And Complaint.” (Doc. No. 198.)

8 These requests filed by plaintiff with the court are duplicative of those addressed
9 above and will likewise be denied.

10 IV. Miscellaneous Notices and Requests

11 On May 1, 2009, plaintiff filed with the court yet another document styled,
12 “Notice of past and current intentional obstruction to court access by prison officials, and fraud.
13 And previous warning to prison officials by the United States District Court. [sic] Request to
14 hold officials in contempt and order they cease conduct. And request for counsel. [sic]” (Doc.
15 No. 193.) Therein, plaintiff contends that “Corcoran officials are obstructing my court access by
16 not providing me copies of documents, and are fabricating reasons to justify those denials.” (Id.
17 at 1.) Specifically, plaintiff contends that he has requested a copy of his entire “CDC 114 files”
18 but his request was refused because he lacked the funds for photocopying and did not show
19 documentation that his request was made for legal purposes. (Id. at 2.) Plaintiff now requests
20 that the court order Warden Adams at CSP-Corcoran to provide him with copies of “all CDC
21 114A’s that pertain to me” and plaintiff’s entire central files. (Id. at 3.) Plaintiff also requests
22 that the court find Warden Adams and “all grievance Respondent be held in contempt of court,”
23 order Warden Adams “to forever cease impeding inmate’s court access necessities,” and “Ask
24 counsel to assist” plaintiff. (Id. at 3.)

25 Plaintiff’s request in this regard will again be denied as overly broad. Moreover,
26 plaintiff has not demonstrated the relevance of the documents he seeks to obtain by way of this

1 request to the trial of this action. Finally, plaintiff's various requests for counsel have been
2 addressed above.

3 On May 6, 2009, plaintiff filed another document with the court styled, "Notice
4 Of Obstruction To Court Access And Request For Order To Show Cause." (Doc. No. 194.)
5 Therein, plaintiff provides further information concerning his efforts to obtain copies of all
6 documents in his central file. Plaintiff again requests that the court issue a show cause order
7 directed at Warden Adams. Again, plaintiff has not demonstrated the relevance of the central file
8 documents he seeks to the trial of this action. Accordingly, this request will also be denied

9 On January 19, 2010, plaintiff filed a document with the court styled, "Objections
10 To Magistrate Judge's Failure To Act Upon Seven (7) Motions Submitted By Plaintiff Since
11 April 2009; Request For Extension Of Trial Date; And, Request For United States District Judge
12 To Utilize His Discretion Authorized Pursuant To 28 U.S.C. § 1915e(1) And Ask Counsel To
13 Assist Me." (Doc. No. 203.) This request will be denied as moot in light of the court's referral
14 to the Pro Bono Panel and vacating of the scheduled jury trial date in this action.

15 On February 22, 2010, plaintiff filed a document with the court styled, "Notice Of
16 Impending Obstruction To My Ability To Submit Trial Exhibits, And Contempt Of Court By
17 Prison Officials, And Request For Preliminary And Permanent Injunction." (Doc. No. 204.)
18 Therein, plaintiff contends that at CSP-Corcoran, where he is incarcerated, the law library no
19 longer has books and pamphlets necessary for legal research and that prisoners must now provide
20 specific titles or citations to obtain legal materials on computer disk. Plaintiff claims that he has
21 requested "Fed. Digest. 'order to show cause'" but such materials have not been made available
22 to him because his request was not specific enough and would require downloading more than
23 30-pages of legal materials. (Id. at 1.) In addition, plaintiff asserts that inmates have been told
24 that there is a fifty-page limit on photocopying services, which may be exceeded only if the
25 inmate submits a written explanation of the necessity of the requested materials and that
26 explanation is accepted after review. Based on these representations, plaintiff seeks an injunction

1 6. Plaintiff's February 22, 2010 request for preliminary and permanent injunction
2 (Doc. No. 204) is denied as defective; and

3 7. Within twenty-one days from the service of this order, counsel for defendants
4 shall provide the court with the following information: (a) the names of those defendants that
5 counsel represents¹; (b) clarification as to whether counsel or prior defense counsel have been in
6 contact with unserved, dismissed defendants Hansen, Singletary and Farris; and (c) how defense
7 counsel was able to locate these individuals when the U.S. Marshall was unable to execute
8 service upon them.

9 DATED: March 30, 2010.

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12 _____
13 DALE A. DROZD
14 UNITED STATES MAGISTRATE JUDGE

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25 ¹ In a Notice of Change in Designation of Counsel, filed with the court on March 16,
26 2010, counsel Christopher Becker is identified as counsel only for defendants Gillam, Statti,
Martinez and Shaver. However, there are other remaining defendants in plaintiff's claims that
are proceeding to trial.