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

RAUL MONTANO,

Plaintiff,

No. 2:07-cv-0800 KJN P

vs.

DR. SOLOMON, et al.,

Defendants.

AMENDED ORDER

RE. MAY 19, 2011 STATUS CONFERENCE

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This order amends the undersigned’s order filed April 15, 2011 (Dkt. No. 63), for the limited purpose of informing the parties that the court will not be providing plaintiff with an interpreter at the May 19, 2011 Status Conference, or at any subsequent conference or hearing, for the reasons discussed below. All other matters set forth in the court’s prior order remain unchanged, and are repeated herein.

Plaintiff is a state prisoner proceeding in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case proceeds on plaintiff’s Second Amended Complaint against sole remaining defendant Dr. Richard Tan. The parties have agreed to the jurisdiction of the undersigned magistrate judge for all purposes. See 28 U.S.C. § 636(c); Local Rule 305(a).

The parties have filed separate status reports in compliance with this court’s

1 orders filed January 27, 2011, and March 7, 2011. This case is currently scheduled for trial to  
2 commence on September 19, 2011, with a pretrial conference scheduled for August 4, 2011.  
3 Discovery has closed, and the deadline for filing dispositive motions has expired. However, each  
4 party indicates an intent to seek leave of court to supplement the current record and/or to extend  
5 deadlines, and both request an early status conference prior to the scheduled pretrial conference.

6 Plaintiff states that he intends to seek leave of court to amend the operative  
7 Second Amended Complaint in order to add information pertaining to a related administrative  
8 grievance (“Medical Appeal Log Number CSQ-5-10-01876”). Although the grievance has not  
9 been administratively exhausted, plaintiff asserts that it “relates back” to the allegations of his  
10 Second Amended Complaint. See Fed. R. Civ. P. 15(a); Rhodes v. Robinson, 621 F.3d 1002  
11 (9th Cir. 2010). (Dkt. No. 62 at 3-4.) Plaintiff states that he “needs no further discovery at this  
12 time, and opposes re-opening discovery. . . .”<sup>1</sup> (Id. at 4.)

13 Defendant states that he intends to “ask[] the Court to reopen discovery for a short  
14 period of time so that [defendant] can complete the discovery needed to file a combined  
15 summary adjudication/judgment motion.” (Dkt. No. 59 at 3.) Defendant intends to assert, inter  
16 alia, that plaintiff’s “cause of action is barred by [his] failure to timely exhaust . . . administrative  
17 remedies and the applicable statute of limitations. . . .” (Id. at 2.)

18 Both parties express willingness to consider an early settlement conference or  
19 other form of Alternative Dispute Resolution, and both parties agree to the undersigned  
20 magistrate judge acting as the settlement judge. (Dkt. No. 62 at 4-5; Dkt. No. 59 at 3.) Both  
21 parties seek a status conference prior to the pretrial conference. (Dkt. No. 62, at 5; Dkt. No. 59 at  
22 3.) Plaintiff requests a Spanish interpreter for any court proceedings. (Dkt. No. 62 at 4.)

23 The authorization and funding for interpreters in the federal courts is provided  
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25 <sup>1</sup> Plaintiff notes that he has been relying on the legal assistance of another inmate, whose  
26 assistance is presently impeded by a medical quarantine of their prison unit commencing March  
6, 2011, and who cannot obtain preferred library use without court order. (Dkt. No. 62 at 2.)

1 solely to individuals appearing in criminal or civil actions initiated by the United States. See 28  
2 U.S.C. § 1827(a), (d), § 1828(a). There is no funding or personnel to accommodate the  
3 interpreter needs of civil litigants, including prisoner civil rights litigants. Accordingly, this  
4 court has no authorization to provide plaintiff with interpreter services for any conference or  
5 hearing that may take place in this action. The status conference scheduled in this matter will  
6 therefore proceed without a court-appointed interpreter for plaintiff. If plaintiff is certain that he  
7 requires the assistance of an interpreter, he may privately arrange for, and retain, the services of a  
8 certified or other judicially-designated interpreter,<sup>2</sup> for the limited purpose of assisting plaintiff  
9 from the courtroom at the May 19, 2011 telephone conference. Alternatively, for purposes of the  
10 May 19, 2011 conference only, the court will consider utilizing, in the courtroom, the translation  
11 assistance of one of plaintiff's friends or family members. If plaintiff intends to utilize any of  
12 these arrangements, he should make his proposal to the court no less than two weeks before the  
13 hearing, or by May 5, 2011. Finally, although the court takes no position on the matter, plaintiff  
14 may attempt to coordinate with prison officials to obtain the informal translation services of a  
15 correctional staff member or another inmate, to assist plaintiff at the prison during the telephone  
16 conference. Separate arrangements and court approval must be obtained for any future hearing in  
17 which plaintiff is certain he needs an interpreter, e.g., at settlement conference, at any hearing on  
18 a motion for summary judgment, at pretrial conference, or at trial.

19 Based on the foregoing, IT IS HEREBY ORDERED that:

20 1. A status conference is scheduled before the undersigned on Thursday, May 19,  
21 2011, at 10:00 a.m., in Courtroom No. 25. Arrangements will be made for plaintiff to appear  
22 telephonically; an Order and Writ of Habeas Corpus Ad Testificandum was issued on April 15,  
23 2011 (Dkt. No. 64).

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24 <sup>2</sup> Cf. Local Rule 403(a) (“only official, judicially-designated interpreters may interpret  
25 official courtroom proceedings in criminal actions”); see also 28 U.S.C. § 1827(d)(1) (judge must  
26 utilize services of certified interpreter or, if one is not available, “an otherwise qualified  
interpreter”).

1                   2. On or before May 12, 2011, **both parties shall** file a separate further status  
2 report that addresses the following:

3                   a. Proposed dates for a settlement conference; and

4                   b. Proposed rescheduled dates for pretrial conference and trial.

5                   3. In addition to the matters set forth in Item 2, **plaintiff shall**:

6                   a. Attach to his Status Report a proposed Third Amended Complaint that  
7 incorporates the allegations of his pending administrative grievance;

8                   b. Explain in his Status Report the current status of the subject  
9 administrative grievance; if the grievance has not yet been administratively exhausted, explain  
10 why amendment of the currently operative Second Amended Complaint would not be futile; and

11                   c. Explain in his Status Report why plaintiff opposes defendant's intended  
12 request to reopen discovery, especially why that is true if the court permits plaintiff leave to file a  
13 Third Amended Complaint.

14                   4. In addition to the matters set forth in Item 2, **defendant shall**:

15                   a. Address whether defendant opposes plaintiff's request to further amend  
16 his complaint and, if so, why;

17                   b. Identify the additional discovery defendant seeks, the estimated time  
18 for completing such discovery, and the proposed deadline for filing a dispositive motion; and

19                   c. Explain why such discovery and motion were not completed before  
20 expiration of the current deadlines.

21                   5. Each of these matters will be addressed by the court at the May 19, 2011 status  
22 conference.

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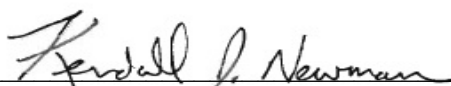
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SO ORDERED.

DATED: April 20, 2011

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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