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

ROBERT MITCHELL, et al.,

Plaintiffs,

v.

MATTHEW CATE, et al.,

Defendants.

Case No. 2:08-CV-01196 JAM EFB
[PROPOSED] ORDER RE DISCOVERY DISPUTE

This case was before the undersigned on October 10, 2012, for a hearing on Plaintiffs’ discovery motion concerning site inspections. Attorney Rebekah Evenson appeared at the hearing on behalf of Plaintiffs, and attorneys Damon McClain and Christopher Becker appeared on behalf of Defendants. For the reasons set forth herein and stated on the record at the hearing, Plaintiffs’ motion is denied.

Plaintiffs’ motion sought an order permitting their experts to informally question prison staff during site inspections at three prisons, and an order requiring that Defendants allow Plaintiffs’ counsel to accompany Defendants’ experts on any prison visits.

Plaintiffs’ proposed informal questioning of prison staff would amount to a roving deposition taken without notice, and could lead to Plaintiffs’ experts relying on inaccurate or unreliable information. Additionally, such informal questioning would deprive Defendants of the

1 protections and safeguards prescribed by Rule 30 of the Federal Rules of Civil Procedure for oral
2 depositions, such as advance notice to the deponent, a formal record of the deposition to ensure
3 accuracy, and an oath or affirmation to ensure the veracity and reliability of the testimony. Fed.
4 R. Civ. P. 30(b). Accordingly, Plaintiffs' request to informally question staff at the prisons (Dckt.
5 No. 124) is denied.

6 Plaintiffs' request to accompany Defendants' experts on prison visits would constitute an
7 impermissible invasion into privileged communications between Defendants, their counsel, and
8 their expert consultants as they work together to evaluate Plaintiffs' claims and prepare a defense,
9 and would also violate the work-product privilege. *See* Fed. R. Civ. P. 26(b)(4)(C). Accordingly,
10 Plaintiffs' request that their counsel accompany Defendants' experts during any prison visits
11 (Dckt. No. 124) is denied.

12 Dated: October 17, 2012.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE