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

DANIEL TREGLIA,

Plaintiff,

No. 2: 09-cv-0352 MCE KJN P

vs.

DIRECTOR OF CALIFORNIA
DEPARTMENT OF CORRECTIONS,
et al.,

Defendants.

FURTHER SCHEDULING ORDER

_____/

Motions for summary judgment in this matter have been resolved pursuant to order filed February 7, 2011. Good cause appearing, the court will, by this order, set a further schedule for this litigation.

The parties will be required to file pretrial statements in accordance with the schedule set forth below. As set forth in this court’s initial scheduling order, in addition to the matters already required to be addressed in the pretrial statement in accordance with Local Rule 281, plaintiff will be required to make a particularized showing in the pretrial statement in order to obtain the attendance of witnesses. Plaintiff is advised that failure to comply with the procedures set forth below may result in the preclusion of any and all witnesses named in the pretrial statement.

1 At the trial of this case, the plaintiff must be prepared to introduce evidence to
2 prove each of the alleged facts that support the claims raised in the lawsuit. In general, there are
3 two kinds of trial evidence: (1) exhibits; and (2) the testimony of witnesses. It is the plaintiff's
4 responsibility to produce all of the evidence to prove the case, whether that evidence is in the
5 form of exhibits or witness testimony. If the plaintiff wants to call witnesses to testify, plaintiff
6 must follow certain procedures to ensure that the witnesses will be at the trial and available to
7 testify.

8 I. Procedures for Obtaining Attendance of Incarcerated Witnesses Who
9 Agree to Testify Voluntarily

10 An incarcerated witness who agrees voluntarily to attend trial to give testimony
11 cannot come to court unless this court orders the warden or other custodian to permit the witness
12 to be transported to court. This court will not issue such an order unless it is satisfied that:

- 13 1. The prospective witness is willing to attend;
- 14 and
- 15 2. The prospective witness has actual knowledge of relevant facts.

16 With the pretrial statement, a party intending to introduce the testimony of
17 incarcerated witnesses who have agreed voluntarily to attend the trial must serve and file a
18 written motion for a court order requiring that such witnesses be brought to court at the time of
19 trial. The motion must:

- 20 1. State the name and address of each such witness;
- 21 and
- 22 2. Be accompanied by affidavits showing that each witness is willing to
23 testify and that each witness has actual knowledge of relevant facts.

24 The willingness of the prospective witness can be shown in one of two ways:

- 25 1. The party can swear by affidavit that the prospective witness has
26 informed the party that he is willing to testify voluntarily without being

1 subpoenaed. The party must state in the affidavit when and where the
2 prospective witness informed the party of this willingness;

3 Or

4 2. The party can serve and file an affidavit sworn to by the prospective
5 witness, in which the witness states that he or she is willing to testify
6 without being subpoenaed.

7 The prospective witness' actual knowledge of relevant facts can be shown in one
8 of two ways:

9 1. The party can swear by affidavit that the prospective witness has actual
10 knowledge. However, this can be done only if the party has actual
11 firsthand knowledge that the prospective witness was an eyewitness or an
12 ear-witness to the relevant facts. For example, if an incident occurred in
13 the plaintiff's cell and, at the time, the plaintiff saw that a cellmate was
14 present and observed the incident, the plaintiff may swear to the cellmate's
15 ability to testify.

16 Or

17 2. The party can serve and file an affidavit sworn to by the prospective
18 witness in which the witness describes the relevant facts to which the
19 prospective witness was an eye- or ear-witness. Whether the affidavit is
20 made by the plaintiff or by the prospective witness, it must be specific
21 about what the incident was, when and where it occurred, who was
22 present, and how the prospective witness happened to be in a position to
23 see or to hear what occurred at the time it occurred.

24 The court will review and rule on the motion for attendance of incarcerated
25 witnesses, specifying which prospective witnesses must be brought to court. Subsequently, the
26 court will issue the order necessary to cause the witness' custodian to bring the witness to court.

1 II. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse
2 to Testify Voluntarily

3 If a party seeks to obtain the attendance of incarcerated witnesses who refuse to
4 testify voluntarily, the party should submit with the pretrial statement a motion for the attendance
5 of such witnesses. Such motion should be in the form described above. In addition, the party
6 must indicate in the motion that the incarcerated witnesses are not willing to testify voluntarily.

7 III. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who
8 Agree to Testify Voluntarily

9 It is the responsibility of the party who has secured an unincarcerated witness'
10 voluntary attendance to notify the witness of the time and date of trial. No action need be sought
11 or obtained from the court.

12 IV. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who
13 Refuse to Testify Voluntarily

14 If a prospective witness is not incarcerated, and he or she refuses to testify
15 voluntarily, not earlier than four weeks and not later than two weeks before trial, the party must
16 prepare and submit to the United States Marshal a subpoena for service by the Marshal upon the
17 witness. Also, the party seeking the witness' presence must tender an appropriate sum of money
18 to the witness through the United States Marshal. In the case of an unincarcerated witness, the
19 appropriate sum of money is the daily witness fee of \$40.00 plus the witness' travel expenses.

20 A subpoena will not be served by the United States Marshal upon an
21 unincarcerated witness unless the subpoena is accompanied by a money order made payable to
22 the witness for the full amount of the witness' travel expenses plus the daily witness fee of
23 \$40.00. As noted earlier, because no statute authorizes the use of public funds for these expenses
24 in civil cases, the tendering of witness fees and travel expenses is required even if the party was
25 granted leave to proceed in forma pauperis.


26 On November 29, 2010, plaintiff filed a motion to conduct discovery and to set a

1 trial date. Plaintiff has had adequate time to conduct discovery. Accordingly, the motion to
2 conduct additional discovery is denied. Because plaintiff's summary judgment has been
3 resolved, the motion to set a trial date is granted.

4 Good cause appearing, pursuant to Fed. R. Civ. P. 16(b), THIS COURT ORDERS
5 AS FOLLOWS:

- 6 1. Discovery is closed.
- 7 2. Law and motion is closed.
- 8 3. Plaintiff shall file and serve his pretrial statement and any motions necessary to
9 obtain the attendance of witnesses at trial on or before April 15, 2011. Defendants shall file their
10 pretrial statement on or before April 29, 2011. The parties are advised that failure to file a
11 pretrial statement may result in the imposition of sanctions, including dismissal of this action.
- 12 4. A Pretrial Conference (as described in Local Rule 282) is set in this case for
13 May 13, 2011, before the magistrate judge. The pretrial conference shall be conducted on the file
14 only, without appearance by either party.
- 15 5. This matter is set for jury trial before the Honorable Morrison C. England on
16 May 7, 2012, at 9:00 a.m., in Courtroom 7.
- 17 6. Plaintiff's motion to conduct additional discovery (Dkt. No. 59) is denied.

18 DATED: February 10, 2011

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20 
21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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