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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AMILCAR GUEVARA,  
Plaintiff,  
v.  
A. RALLS,  
Defendant.

No. 2:09-cv-1132 TLN KJN P  
FURTHER SCHEDULING ORDER

Motions for summary judgment in this matter have been resolved pursuant to order filed October 2, 2013. Defendants Scruggs, Ramirez and McCarvel were granted summary judgment, and this action proceeds on plaintiff’s claim that defendant Ralls used excessive force on plaintiff on April 30, 2007. 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.

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

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

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

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

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

18 The motion must:

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

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

- 24 1. The party can swear by affidavit that the prospective witness has informed the  
25 party that he or she is willing to testify voluntarily without being subpoenaed. The  
26 party must state in the affidavit when and where the prospective witness informed  
27 the party of this willingness;

28 Or

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

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

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

12                  Or

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

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

22                  II.     Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to  
23                  Testify Voluntarily

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

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1 III. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to  
2 Testify Voluntarily

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

6 IV. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to  
7 Testify Voluntarily

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

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

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

22 1. Discovery is closed.

23 2. Law and motion is closed.

24 3. Plaintiff shall file and serve his pretrial statement and any motions necessary to obtain  
25 the attendance of witnesses at trial on or before December 13, 2013. Defendants shall file their  
26 pretrial statement on or before February 13, 2014. The parties are advised that failure to file a  
27 pretrial statement may result in the imposition of sanctions, including dismissal of this action.

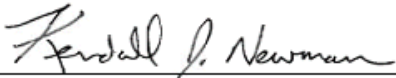
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4. Pretrial conference (as described in Local Rule 282) is set in this case for March 21, 2014, before the magistrate judge. The pretrial conference shall be conducted on the file only, without appearance by either party.

5. This matter is set for jury trial before the Honorable Troy L. Nunley on May 19, 2014, at 9:00 a.m., in Courtroom #2.

Dated: October 11, 2013

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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