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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANNY MURPHY COSTON,
Plaintiff,
v.
ANDREW NANGALAMA, et al.,
Defendants.

No. 2:10-cv-02009-MCE-EFB

ORDER

On February 28, 2014, Defendants Nangalama and Hale objected to this Court’s January 31, 2014, Final Pretrial Order, ECF No. 80. Defendants request that the Court continue the March 31, 2014, trial date due to Defendant Hale’s deteriorating health or, in the alternative, that it dismiss Hale from this action and proceed to trial against Defendant Nangalama. Def.’s Objections, ECF No. 86. Defendants also seek to augment their trial witness list to add a newly discovered trial witness. Id.

Defendants previously advised the Court that Hale’s physical condition made it doubtful that he would attend the trial in this matter. Def.’s Pretrial Statement, July 15, 2013, ECF No. 79 at 10. However, Defendants now inform the Court that “Defendant Hale’s health ha[s] further deteriorated and [that] he has been declared mentally incompetent by his treating physician.” ECF No. 86 at 3. In support of their request for a continuance, Defendants submitted a partially redacted letter from that physician, Dinesh

1 Mantri, M.D., which indicates that Hale was admitted to Oak River Rehab from the “acute
2 hospital” on February 20, 2014. ECF No. 86-1 at 2. Dr. Mantri states that “[u]pon
3 evaluation, [Hale] was declared incapable of understanding his rights, privileges, and
4 informed consent.” Id. Defendants now ask that trial be continued “[d]ue to . . . Hale’s
5 current inability to participate or cooperate in any way in his defense of the action.” Id.
6 Specifically, Defendants contend that Hale’s due process rights are implicated by his
7 current inability to participate in his defense. ECF No. 86 at 3. Pursuant to Judge
8 Brennan’s January 31, 2014 Pretrial Order, Plaintiff had fourteen days to respond to
9 Defendants’ February 28, 2014 objections. See ECF No. 80 at 15. Defendants’
10 objections are currently unopposed.

11 The Court has substantial discretion to control its own calendar. Danjaq LLC v.
12 Sony Corp., 263 F.3d 942, 960–61 (9th Cir. 2001). The decision to grant or deny a
13 continuance of trial lies well within that discretion. Rios-Barrios v. I.N.S., 776 F.2d 859,
14 862-863 (9th Cir. 1985). In assessing the need for a continuance, four factors are
15 considered: (1) the requesting party’s diligence in preparing his case for trial; (2) the
16 need for the continuance; (3) whether granting the continuance will inconvenience the
17 court and the opposing party, including its witnesses; and (4) the extent to which the
18 party requesting the continuance will suffer harm as a result of the district court’s denial.
19 U.S. v. 2.61 Acres of Land, 791 F.2d 666, 670-71 (9th Cir. 1986). None of these factors
20 is alone dispositive; absent a showing of prejudice to the requesting party, a district
21 court’s refusal to grant a continuance will not be disturbed on appeal. Id. at 671.

22 In light of counsel for Defendants’ representations regarding Defendant Hale’s
23 deteriorating health, the Court will exercise its discretion to grant a continuance, but
24 denies without prejudice Defendants’ remaining requests.¹ Although Defendants are

25 ¹ The Court declines to address Defendants’ request to dismiss Defendant Hale and to augment
26 their witness list to add Correctional Sgt. Dana Boggs. Because the Court vacates the current trial date,
27 these requests are instead DENIED without prejudice. However, the Court notes that Defendants cited no
28 authority and provided almost no factual basis in support of these requests. Glaringly, counsel for
Defendants provided only a cursory explanation as to why Correctional Sgt. Dana Boggs should be added
to their witness list at this stage in the proceedings. See ECF No. 86 at 2 (“Upon my review of the case
file after I was recently assigned as trial counsel, I have discovered one additional trial witness who can

1 simultaneously attempting to augment their witness list, their request for a continuance
2 does not appear to be based on their lack of diligence in preparing the case for trial, but
3 rather on Defendant Hale's health and inability to participate in his defense. At this time,
4 the potential prejudice faced by Defendant Hale because of his inability to participate in
5 any manner in his own defense outweighs the inconvenience to the Court and to
6 Plaintiff. Thus, the March 31, 2014, jury trial in this matter, the Court's Supplemental
7 Pretrial Order (including the filing dates therein), ECF No. 81, and the Court's
8 February 21, 2014, Order and Writ of Habeas Corpus Ad Testificandum, ECF No. 83,
9 are VACATED. By separate order, this Court will set a new trial date, as well as new
10 deadlines associated with that new trial date.²

11 However, because of the limited information provided to the Court with respect to
12 Defendant Hale's condition and the uncertainty of whether Defendant Hale's condition is
13 expected to improve within a reasonable period of time, the Court is unable to set that
14 trial date with confidence on the current record. Accordingly, within thirty (30) days of
15 the electronic filing of this order, Defendants are ordered to submit a status report as to
16 Defendant Hale's condition and when Defendants expect that Defendant Hale will be
17 able to participate in his defense.³ At that time, if it remains Defendants' contention that

18 provide relevant testimony." Defendants did not explain why this witness was not disclosed earlier or
19 provide any justification for including her at this late date. The Court also DENIES without prejudice
20 Defendants' Motion for Leave to Submit an Additional Trial Exhibit, ECF No. 89. Defendants may (but are
21 not required to) renew some or all of these requests in a properly supported motion pursuant to Local Rule
22 230(l). If no renewed request is filed within thirty (30) days of the electronic filing of this order, these
23 requests will be denied with prejudice. If Defendants renew all of some of their requests, not later than
24 twenty-one (21) days after the date of service of Defendants' motion(s), Plaintiff must file, pursuant to
25 Local Rule 230(l), either an Opposition or a statement of non-Opposition. Failure to file an opposition or to
26 file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion
27 and may result in the imposition of sanctions.

24 ² Because the Court vacates both the March 31, 2014 jury trial in this matter and the Court's
25 Supplemental Pretrial Order (including the filing dates therein), ECF No. 81, Defendants' Motions in Limine
26 and Objections to Plaintiff's Trial Exhibits, ECF No. 88, and any other pending requests are DENIED
27 without prejudice. Plaintiff and Defendants must refile all papers in accordance with the new deadlines
28 that will be set by the Court.

27 ³ As Defendants may be aware, if appropriate under the circumstances, the Court may call
28 witnesses via videoconference or via telephone that are unable to be physically present for trial. Thus,
29 Defendant Hale need not be physically present in order for him to participate in his defense and testify at
30 trial.

1 Defendant Hale is unable to participate in his defense, Defendants must also submit
2 further documentation to establish Defendant Hale's condition and show cause as to
3 why this case should not proceed to trial on the next available date, as well as
4 supplemental briefing citing to relevant authority as to exactly how Defendant Hale's due
5 process rights are implicated in this matter. Specifically, Defendants should address
6 how and whether Defendant Hale's due process rights prevent the Court from
7 proceeding with trial without his full or limited participation within a reasonable amount of
8 time. Plaintiff may file an optional reply to Defendants' status report and supplemental
9 briefing within twenty-one (21) days of Defendants' filing.

10 Accordingly, IT IS HEREBY ORDERED that:

11 1. The Order and Writ of Habeas Corpus Ad Testificandum, ECF No. 83, for
12 Plaintiff Danny Murphy Coston, CDCR inmate # D-86227, issued by this Court on
13 February 21, 2014, is VACATED;

14 2. The Clerk of the Court is directed to serve by mail three (3) certified copies of
15 this order on the Warden of Corcoran State Prison, P.O. Box 8800, Corcoran, California
16 93212-8309;

17 3. The Clerk of the Court is directed to serve a courtesy copy of this order on the
18 Out-To-Court Desk;

19 4. The Clerk of the Court shall send a courtesy copy of this Order by fax to the
20 litigation coordinator of Corcoran State Prison at (559)-992-7372;

21 5. The March 31, 2014 jury trial in this matter and the Court's Supplemental
22 Pretrial Order (including the filing dates therein), ECF No. 81, are VACATED;

23 6. Defendants are ORDERED to file a status report as to Defendant Hale's
24 condition and supplemental briefing as outlined in this Order within thirty (30) days of the
25 electronic filing of this order. Plaintiff may file an optional reply to Defendants' status
26 report and supplemental briefing within twenty-one (21) days of Defendants' filing;

27 7. Defendants' requests to dismiss Defendant Hale, to augment their witness list,
28 and for leave to submit an additional trial exhibit, ECF No. 89, are DENIED WITHOUT

1 PREJUDICE. Defendants may (but are not required to) renew some or all three of these
2 requests in a properly supported motion pursuant to Local Rule 230(l). If no renewed
3 request is filed within thirty (30) days of the electronic filing of this order, these three
4 requests will be denied with prejudice; and

5 8. Defendants' Motions in Limine and Objections to Plaintiff's Trial Exhibits, ECF
6 No. 88, are DENIED without prejudice. Defendants must refile these motions in
7 accordance with the new deadlines that will be set by separate order.

8 IT IS SO ORDERED.

9 Dated: March 17, 2014

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MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT