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

CHRISTOPHER GRABEK,

Plaintiff,

No. CIV S-10-2892 GGH P

vs.

KATHLEEN DICKINSON, Warden, et al.,

Defendants.

ORDER

_____ /

Introduction

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court are: 1) plaintiff’s “motion for discovery,” filed on September 14, 2011, to which defendants filed their opposition on September 28, 2011; 2) plaintiff’s “motion for adjudication and settlement of case,” filed on September 30, 2011; 3) plaintiff’s renewed motion for appointment of counsel, filed on October 4, 2011; 4) plaintiff’s motion to extend the deadline for filing a pretrial dispositive motion and for a change of venue, filed on December 30, 2011; 5) defendants’ “requests for leave to act beyond time and to modify the scheduling order to extend time to move for summary judgment” and a “statement of non-opposition to plaintiff’s request for an extension of time,” filed on January 6, 2012.

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1 Motion for Discovery

2 Plaintiff filed a motion wherein plaintiff is evidently seeking to compel further
3 discovery; however, in doing so he fails to identify what discovery requests are at issue (possibly
4 interrogatories but that is not clear), whether the requests were directed to all defendants or to a
5 particular one, and precisely what the requests or the responses were. See Motion at docket # 29.
6 As defendants point out, plaintiff fails to comply with L.R. 250.2(c) and/or L.R. 250.3(c), by
7 failing to provide those interrogatories and/or requests for production and the responses to which
8 plaintiff takes issue. Opposition at docket # 30. Plaintiff states that he is seeking the names of
9 all persons “indirectly referred to,” referring to “unnamed” witnesses who could testify to matters
10 in the case for the purpose of “possible depositions and interrogatories.”

11 The Court does not hold prisoners proceeding pro se to the same
12 standards that it holds attorneys. However, at a minimum, as the
13 moving party plaintiff bears the burden of informing the court of
14 which discovery requests are the subject of his motion to compel
15 and, for each disputed response, why defendant’s objection is not
16 justified.

15 Waterbury v. Scribner, 2008 WL 2018432 *1 (E.D. Cal. 2008).

16 Plaintiff does state that he is also requesting the name of ““Head of Health Care
17 Billing’ up to December 2008 and through July 2009.” Motion at docket # 29. “[U]p to
18 December 2008 and through July 2009” does not frame a coherent starting deadline. Plaintiff
19 does not state clearly what he means, but he is apparently referencing his allegation that he was
20 improperly billed by the billing department at U.C.S.F. (University of California at San
21 Francisco) before further treatment at U.C.S.F. was allowed, after the prison facility had refused
22 to pay the medical bills. Plaintiff does not set forth what means he has employed to discover this
23 information, such as whether or not he served any defendant with an interrogatory seeking the
24 information. Indeed, defendants contend that plaintiff never did serve a discovery request
25 seeking that information. Opp. at docket # 30. The court cannot compel defendants to provide
26 such information if plaintiff never made any appropriate request for it. Plaintiff’s wholly

1 inadequate motion to compel must be denied.

2 Plaintiff's Motion to Settle Case

3 Plaintiff proposed an offer, which he filed in this court, for defendants to pay him
4 \$15,000.00 and court costs, for which he would agree to dismiss his case. See Docket # 31. He
5 also proposes that the state additionally rescind whatever restitution plaintiff has assessed against
6 him.

7 Defendants have filed no response to this proposal, indicating a lack of interest in
8 the proposed terms. This motion will be denied without prejudice to all parties informing this
9 court, within fourteen days, whether they believe that a settlement conference in this matter
10 might prove fruitful.

11 Appointment of Counsel

12 Plaintiff has again requested the appointment of counsel. As plaintiff has
13 previously been informed, the United States Supreme Court has ruled that district courts lack
14 authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United
15 States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court
16 may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v.
17 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
18 (9th Cir. 1990). Plaintiff has provided information to show he is seeking assistance himself but
19 asks that the court appoint counsel for him should he not be successful in retaining pro bono
20 counsel. Plaintiff states that he is retained in administrative segregation and that such assistance
21 as he had has become even more limited. However, subsequent to the filing of this request,
22 plaintiff filed a notice of change of address, so it is not clear whether plaintiff is retained in Ad
23 Seg at his new location. In any event, in the present case, the court does not find the required
24 exceptional circumstances. Plaintiff has exhibited enough knowledge about his case such that
25 the court finds appointment of counsel to be unwarranted. Plaintiff's renewed request for the
26 appointment of counsel will therefore be denied.

1 Plaintiff's Request for a Change of Venue

2 Plaintiff seeks a change of venue because he is now located within a different
3 district, and he contends that travel to Sacramento would be unnecessarily burdensome to both
4 the state and himself. Docket # 34. While it is true that it would be costly to the state to have to
5 transport plaintiff from San Diego (in the Southern District) to Sacramento (in the Eastern
6 District) for a trial, this is not, along with plaintiff's convenience, an apposite basis for a change
7 of venue. Under 28 U.S.C. § 1404(a), a district court can only transfer a civil action to another
8 district or division for convenience of the parties or witnesses if the action could have been
9 brought in that district.¹ The federal venue statute requires that a civil action, other than one
10 based on diversity jurisdiction, be brought only in "(1) a judicial district where any defendant
11 resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part
12 of the events or omissions giving rise to the claim occurred, or a substantial part of property that
13 is the subject of the action is situated, or (3) a judicial district in which any defendant may be
14 found, if there is no district in which the action may otherwise be brought." 28 U.S.C. § 1391(b).
15 In this case, none of the defendants reside in the Southern District and the claim arose in Solano
16 County, which is within the Eastern District of California. Plaintiff's request for a change of
17 venue to a more convenient forum must be denied.

18 Motions to Extend Deadline for filing Pretrial Motions

19 Under Fed. R. Civ. P. 16(b)(4), "good cause" must be shown for a schedule to be
20 modified. Plaintiff's prior requests for extending the deadlines set forth in the Discovery and
21 Scheduling Order were denied because plaintiff simply did not make a showing of good cause as
22 to why any such extension was need. See Orders, filed on July 26, 2011 and on September 9,
23 2011. The deadlines set forth in the Discovery and Scheduling Order, filed on April 28, 2011, set

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25 ¹ "For the convenience of the parties and witnesses, in the interest of justice, a district court
26 may transfer any civil action to any other district or division where it might have been brought." 28
U.S.C. § 1404(a).

1 the cut-off for discovery as September 23, 2011, and the deadline for the filing of pretrial
2 dispositive motions at January 5, 2012. Docket # 17. Plaintiff has recently made another request
3 for an extension of time for the filing deadline for pretrial motions because his property,
4 including all his legal papers, were lost while he was being transferred from CMF-Vacalle to RJ
5 Donovan Correctional Facility in San Diego, where he is currently housed. Motion at docket #
6 34.

7 In defendants' request for an extension of time, filed on January 6, 2010 – one day
8 beyond the January 5, 2012, pretrial dispositive motion deadline for which they seek an extension
9 – defendants state that they were unable to meet the current deadline due to an inability to obtain
10 a declaration from Dr. Mo (one of the defendants) timely, evidently because he was unavailable
11 for the last two weeks in December and because he has been unable to review plaintiff's relevant
12 medical records because they were located at RJ Donovan while defendant Mo is employed at
13 CMF. See Request at dkt # 35. Defendants' counsel states that although he has obtained copies
14 of relevant medical records, he has requested supplemental records from the RJ Donovan
15 medical records custodian, but not yet received them, for defendant Mo's review. Id.

16 According to defense counsel, Deputy Attorney General James Flynn, the request
17 for modification of the scheduling order is late because although it was prepared on January 3,
18 2012, prior to the motion-filing deadline, counsel's supervising deputy failed to return it until
19 January 6, 2012. Request at dkt # 35 & Ex. A, Declaration of Supervising Deputy Attorney
20 General, Tracy Hendrickson. According to Ms. Hendrickson, she must review all pleadings
21 prepared by attorneys she supervises before they can be filed in court, that DAG Flynn had
22 prepared the request on Jan. 3, 2012 and informed her that it had to be returned on Jan. 4, 2010;
23 that in a mix-up involving a different case pleading, she failed to return it timely for Mr. Flynn to
24 file; and that she is solely responsible for the error. Hendrickson Dec.

25 The undersigned will permit defendants leave to act beyond time, given that the
26 tardiness of the request was not excessive (although because it was beyond the motion filing

1 deadline itself, the court would not characterize it as de minimis). As to the requested time
2 extension itself, it is not entirely clear to the court why all the relevant medical records for
3 defendant Mo's review could not have been obtained earlier, nor how it is that, since DAG Flynn
4 knew the filing deadline for any request, why he would not have reminded his supervisor that he
5 needed to file it at least by January 5th. In this case, however, since all parties are seeking an
6 extension of time and no pretrial conference or trial dates have yet been set, the undersigned will
7 extend the pretrial dispositive motion deadline. As to plaintiff's concern that his property has
8 been lost in transit, it has been the court's experience that prisoners who are transferred are
9 generally reunited with their personal and legal property within, at most, a few weeks after a
10 transfer. Plaintiff filed his change of address notice on November 21, 2011, and his motion for
11 an extension on December 30, 2011 (or December 21, 2011, by application of the mailbox rule).
12 Defendants seek a 45-day extension and plaintiff has requested an unspecified extension. The
13 undersigned will grant a 45-day extension. Plaintiff should, however, inform the court prior to
14 the new deadline if his personal legal property relevant to this action has not been restored to
15 him.

16 Accordingly, IT IS ORDERED that:

17 1. Plaintiff's "motion for discovery," filed on September 14, 2011 (docket # 29),
18 is denied as wholly inadequate.

19 2. Plaintiff's "motion for adjudication and settlement of case," filed on
20 September 30, 2011 (docket # 31), is denied without prejudice to all parties informing the court
21 within fourteen days whether they would be amenable to setting this matter for a settlement
22 conference.

23 3. Plaintiff's renewed motion for appointment of counsel, filed on October 4,
24 2011 (docket # 32), is denied.

25 4. Plaintiff's motion for a change of venue, filed on December 30, 2011 (docket #
26 34), is denied.

