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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT MASSIE,
Plaintiff,
v.
ARIK AMAYA, et al.,
Defendants.

No. 2:12-cv-0525 KJN P

ORDER

Plaintiff is a state prisoner proceeding without counsel. Appended to plaintiff’s pretrial statement was a document entitled “Federal Rules of Procedure Rule 36(a) Physical & Mental Examinations.” (ECF No. 43 at 2.) Plaintiff recites the language of Rule 35(a), and claims that “the court has the same authority to order a party to produce for examination a person who is in his custody under its legal control.” (ECF No. 43 at 2.) Plaintiff claims that some of the injuries sustained at the hands of defendants resulted in permanent injuries, and such injuries “need to be verified by a doctor.” (Id.) Plaintiff appears to claim that any report from such examination would be submitted at trial to prove that defendants used excessive force with great bodily injury to violate plaintiff’s Eighth Amendment rights. (Id.)

Rule 35(a) of the Federal Rules of Civil Procedure provides as follows:

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1 (a) Order for an Examination.

2 (1) In General. The court where the action is pending may order a
3 party whose mental or physical condition--including blood group--
4 is in controversy to submit to a physical or mental examination by a
5 suitably licensed or certified examiner. The court has the same
6 authority to order a party to produce for examination a person who
7 is in its custody or under its legal control.

8 (2) Motion and Notice; Contents of the Order. The order:

9 (A) may be made only on motion for good cause and on notice
10 to all parties and the person to be examined; and

11 (B) must specify the time, place, manner, conditions, and scope
12 of the examination, as well as the person or persons who will
13 perform it.

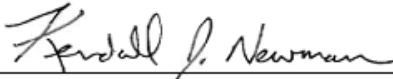
14 Fed. R. Civ. P. 35(a).

15 First, plaintiff's filing does not comport with Rule 35(a)(2). Plaintiff's filing is not filed
16 as a motion, and does not specify the type of examination he requests, or the injuries he claims
17 are permanent. In addition, plaintiff fails to identify the doctor from whom he seeks examination.
18 Finally, plaintiff does not allege facts demonstrating good cause for either a physical or mental
19 examination. Schlagenhauf v. Holder, 379 U.S. 104, 114-22 (1964).

20 Second, to prevail in the instant action, plaintiff must demonstrate that defendants used
21 unreasonable force in violation of the Fourth Amendment. In order to substantiate his damages,
22 plaintiff may submit as evidence authenticated medical records from his treating physicians.
23 Moreover, as set forth in the accompanying pretrial order, plaintiff may call as witnesses any
24 witness designated by defendants. In addition, plaintiff will be allowed to cross-examine any
25 witnesses called by defendants. Thus, it does not appear that an independent medical or physical
26 examination is required.

27 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for examination (ECF
28 No. 42 at 2) is denied.

Dated: September 18, 2014


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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