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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERMAINE PADILLA,
Plaintiff,
v.
JEFFREY BEARD, et al.,
Defendants.

No. 2:14-cv-1118 KJM CKD

ORDER

Plaintiff’s motion to compel production of documents came on regularly for hearing January 13, 2016.¹ Lori Rifkin appeared for plaintiff. Diana Esquivel appeared for defendants. Upon review of the documents in support and opposition, upon hearing the arguments of counsel, and good cause appearing therefor, THE COURT FINDS AS FOLLOWS:

1. Plaintiff represents that the excerpts of the video of plaintiff’s cell extraction used for the regional training of Wardens and other high level officials is not available by subpoena due to a claim of Eleventh Amendment immunity. See Gonzalez v. Hickman, 466 F.Supp.2d 1226 (E.D. Cal. 2006) (Eleventh Amendment barred enforcement of subpoenas); cf. Allen v. Woodford, 544 F.Supp.2d 1074 (E.D. Cal 2008) (court found that because no judgment would be issued against

¹ After hearing on the motion to compel, the court recessed to chambers for an informal discussion regarding the status of plaintiff’s continued deposition and the setting of a settlement conference.

1 the State that could have any conceivable effect on the State treasury, Eleventh Amendment does
2 not apply to nor bar enforcement of the subpoenas). In the circumstances of this case, the court
3 finds defendant Davey has sufficient control over the excerpted video such that production should
4 be compelled.

5 Due to plaintiff's current mental status, the court, after discussion with counsel, has
6 determined that the continued deposition of plaintiff should be held in abeyance at this time.
7 Discovery will be left open so as to allow the reconvening of plaintiff's deposition after his
8 mental status has improved.

9 It appears to the court that a settlement conference would aid in the just resolution of this
10 action. The parties shall therefore advise the court of their available dates.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The motion to compel (ECF No. 89) is granted. Defendant Davey shall produce, no
13 later than January 22, 2016, the excerpted video of plaintiff's cell extraction and any training
14 materials associated therewith.

15 2. The amended status pretrial scheduling order (ECF No. 78) is amended as follows:
16 Discovery is left open until September 30, 2016 solely for the purposes of completing three
17 further hours of plaintiff's deposition. Plaintiff shall not testify at trial if plaintiff does not submit
18 to further deposition by September 30, 2016. In the absence of plaintiff submitting to further
19 deposition prior to May 13, 2016, no affidavit shall be submitted by plaintiff, in opposition to any
20 motion for summary judgment filed by defendants, which addresses issues not previously covered
21 in plaintiff's deposition testimony taken on October 9, 2015. Any further deposition, limited to
22 three hours, shall take place at the Sacramento federal courthouse, on a date coordinated with the
23 court's courtroom deputy, so as to allow court supervision of said deposition.

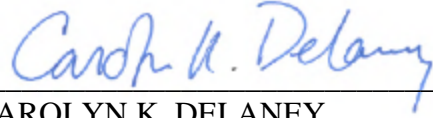
24 3. No later than January 27, 2016, the parties shall advise the court by e-mailing the
25 courtroom deputy of the undersigned of their available dates for settlement conference and their
26 preference, if any, of settlement judge. The court encourages the attendance at the settlement

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28 /////

1 conference of Patrick McKinney, Chief Counsel and Legal Affairs Assistant Secretary,
2 Department of Corrections and Rehabilitation, to aid in any resolution of this matter.

3 Dated: January 13, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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