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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCOIS P. GIVENS

Plaintiff,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants.

No. 2:15-cv-0720-KJN PS

PRETRIAL SCHEDULING ORDER

READ THIS ORDER CAREFULLY. IT CONTAINS IMPORTANT DATES THAT THE COURT WILL STRICTLY ENFORCE AND WITH WHICH ALL COUNSEL AND PARTIES, INCLUDING PRO SE PARTIES, MUST COMPLY. FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN THE IMPOSITION OF MONETARY AND ALL OTHER APPROPRIATE SANCTIONS, INCLUDING DISMISSAL OR AN ORDER OF JUDGMENT.

On March 16, 2017, the court conducted a status (pretrial scheduling) conference in this matter.¹ Plaintiff Francois Givens, who is incarcerated and proceeds without counsel, appeared

¹ All parties have consented to the jurisdiction of a United States Magistrate Judge for all purposes pursuant to 28 U.S.C. § 636(c). (ECF Nos. 7, 46, 48.) Consequently, the action was reassigned to the undersigned for all purposes, including the entry of final judgment. (ECF No. 49.)

1 by videoconference, and attorney Ashley Wisniewski appeared on behalf of defendants Adam
2 Taylor, Ken Becker, and the County of Sacramento. After considering the parties' status reports
3 (ECF Nos. 46, 48) and the parties' representations at the status conference, the court issues the
4 following pretrial scheduling order.

5 NATURE OF THE CASE

6 This action arises out of plaintiff's arrest by Sacramento County sheriff deputies Adam
7 Taylor and Ken Becker on April 11, 2014. Plaintiff's operative first amended complaint (ECF
8 No. 19), as narrowed by the court's November 7, 2016 order dismissing several claims and
9 defendants (ECF No. 25), asserts the following claims: (a) an excessive force claim in violation
10 of the Fourth Amendment pursuant to 42 U.S.C. § 1983 against defendants Taylor and Becker;
11 (b) a retaliatory arrest claim in violation of the First Amendment pursuant to 42 U.S.C. § 1983
12 against defendants Taylor and Becker; and (c) a claim under Title II of the Americans with
13 Disabilities Act against the County of Sacramento.

14 Defendants deny any liability and have asserted various affirmative defenses. (ECF No.
15 38.)

16 SERVICE OF PROCESS

17 Defendants answered plaintiff's first amended complaint as narrowed. Thus, no further
18 service is permitted except with leave of court, good cause having been shown.

19 JOINDER OF PARTIES/AMENDMENT OF PLEADINGS

20 No further joinder of parties or amendments to pleadings will be permitted except with
21 leave of court, good cause having been shown.

22 JURISDICTION/VENUE

23 Jurisdiction and venue are undisputed, and are hereby found to be proper.

24 INITIAL DISCLOSURES

25 The parties shall make initial disclosures pursuant to Federal Rule of Civil Procedure
26 26(a)(1) no later than **April 13, 2017**.

27 LAW AND MOTION

28 All motions, except as to discovery-related matters, shall be filed by **April 26, 2018**.

1 Upon the filing of a motion, the opposition or statement of non-opposition shall be filed with the
2 court 30 calendar days after service of the motion, and any reply brief shall be filed with the court
3 14 calendar days after service of the opposition. Thereafter the motion will be submitted for
4 decision on the record and written briefing pursuant to Local Rule 230(g). No further briefing
5 will be permitted, and no oral argument scheduled, unless otherwise ordered by the court.² This
6 paragraph does not preclude motions for continuances, temporary restraining orders, motions in
7 limine or other trial-related motions, motions for sanctions that could not have been reasonably
8 brought by the regular motion filing deadlines, or other emergency applications, which may be
9 filed on a good faith basis at any time, and for which the court may set a special briefing
10 schedule, if necessary.

11 Counsel³ and the parties should keep in mind that the purpose of law and motion is to
12 narrow and refine the legal issues raised by the case and to dispose of by pretrial motion those
13 issues that are susceptible to resolution without trial. To accomplish that purpose, the parties
14 need to identify and fully research the issues presented by the case, and then examine those issues
15 in light of the evidence obtained through discovery. If it appears to counsel after examining the
16 legal issues and facts that an issue can be resolved by pretrial motion, counsel are to file the
17 appropriate motion consistent with the law and motion filing deadline set forth above.

18 ALL PURELY LEGAL ISSUES ARE TO BE RESOLVED BY TIMELY PRETRIAL
19 MOTION. Counsel are reminded that motions in limine are procedural devices designed to
20 address the admissibility of evidence. COUNSEL ARE CAUTIONED THAT THE COURT
21 WILL LOOK WITH DISFAVOR UPON SUBSTANTIVE MOTIONS PRESENTED UNDER
22 THE GUISE OF MOTIONS IN LIMINE AT THE TIME OF TRIAL.

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25 ² In light of plaintiff's incarceration, the court anticipates resolving most motions based on the
26 record and written briefing pursuant to Local Rule 230(g). Nevertheless, if the court finds that
27 oral argument is necessary with respect to a particular motion, the court will notify the parties and
28 issue an appropriate writ to facilitate plaintiff's appearance by telephone or videoconference.

³ Any reference to "counsel" in this order includes parties appearing without counsel, otherwise
referred to as appearing *in propria persona* or *pro se*.

1 DISCOVERY

2 All discovery shall be completed by **March 29, 2018**. The word “completed” means that
3 all discovery shall have been conducted so that all depositions have been taken and any disputes
4 related to discovery shall have been resolved by appropriate order if necessary and, where
5 discovery has been ordered, the order has been complied with. All discovery motions shall be
6 filed no later than **February 22, 2018**. Given plaintiff’s incarceration, the briefing deadlines and
7 the requirement of filing a joint statement regarding discovery disagreements outlined in Local
8 Rule 251 shall not apply in this case. Instead, upon the filing of a discovery motion, the
9 opposition or statement of non-opposition shall be filed with the court 14 calendar days after
10 service of the motion, and any reply brief shall be filed with the court 7 calendar days after
11 service of the opposition. Thereafter the motion will be submitted for decision on the record and
12 written briefing pursuant to Local Rule 230(g). No further briefing will be permitted, and no oral
13 argument scheduled, unless otherwise ordered by the court. Importantly, the parties are required
14 to meet and confer in good faith in an attempt to resolve their discovery disputes informally and
15 without court intervention prior to filing a discovery motion. Failure to do so may result in
16 summary denial of a discovery motion.

17 Additionally, the court strongly encourages the use of informal telephonic discovery
18 conferences with the court in lieu of formal discovery motion practice. The procedures and
19 conditions for requesting and conducting such an informal telephonic discovery conference are
20 outlined in Judge Newman’s “Order re Informal Telephonic Conferences re Discovery Disputes,”
21 posted on the court’s website at [http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-](http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/5046/)
22 [judges/5046/](http://www.caed.uscourts.gov/caednew/index.cfm/judges/all-judges/5046/). Additionally, subject to the court’s availability, the court will also rule on disputes
23 encountered at oral depositions, so as to avoid such depositions from breaking down. In the
24 course of the deposition, the parties may contact Judge Newman’s courtroom deputy clerk at
25 (916) 930-4187 to inquire regarding Judge Newman’s availability. However, the parties are
26 cautioned that these informal procedures are not to be abused, and the court may impose
27 appropriate sanctions on an offending party or parties, even in the course of informal discovery
28 conferences.

1 EXPERT DISCLOSURES

2 The parties shall disclose any expert witnesses in accordance with the specifications of
3 Federal Rule of Civil Procedure 26(a)(2) no later than **January 11, 2018**. Any rebuttal expert
4 disclosures shall be made in accordance with the specifications of Federal Rule of Civil
5 Procedure 26(a)(2) no later than **February 8, 2018**. Expert disclosures shall be filed with the
6 court and served upon all other parties.

7 An expert witness not timely disclosed will not be permitted to testify unless the party
8 offering the witness demonstrates that: (a) the necessity of the witness could not have been
9 reasonably anticipated at the time that the expert disclosures were due; (b) the court and opposing
10 counsel were promptly notified upon discovery of the witness; and (c) the witness was promptly
11 proffered for deposition. Failure to provide the information required by Federal Rule of Civil
12 Procedure 26(a)(2) along with the expert disclosures may lead to preclusion of the expert's
13 testimony or other appropriate sanctions.

14 FINAL PRETRIAL CONFERENCE/TRIAL SETTING

15 At least one party has requested a jury trial. As such, trial will be by jury.

16 However, the court declines to set final pretrial conference and trial dates at this juncture.
17 Instead, those dates will be scheduled upon the filing of the parties' Joint Notice of Trial
18 Readiness, as explained below.

19 The parties shall file a Joint Notice of Trial Readiness no later than 30 days after receiving
20 the court's ruling(s) on the last filed dispositive motion(s). If the parties do not intend to file
21 dispositive motions, the parties shall file a Joint Notice of Trial Readiness no later than 30 days
22 after the close of discovery and the notice shall include statements of intent to forgo the filing of
23 dispositive motions.

24 The parties shall set forth in their Joint Notice of Trial Readiness the appropriateness of
25 special procedures, whether this case is related to any other case(s) on file in the Eastern District
26 of California, the prospects for settlement, an updated estimate of trial length, any request for a
27 jury, and the parties' availability for trial. After review of the parties' Joint Notice of Trial
28 Readiness, the court will issue an order that sets forth dates for a final pretrial conference and

1 trial.

2 SETTLEMENT CONFERENCE

3 At the status conference, the parties agreed that an early settlement conference should be
4 set for about 90 days from the date of this order to allow the parties to conduct some initial
5 discovery.

6 Therefore, the Clerk of Court shall randomly assign another magistrate judge for purposes
7 of conducting a settlement conference in this matter. Once the assignment has been made,
8 defendants' counsel shall promptly contact the courtroom deputy clerk for the settlement judge to
9 obtain available dates for a settlement conference in approximately 90 days, or as soon as
10 possible thereafter (as well as a determination as to whether the settlement judge wants the
11 plaintiff to appear in person or by videoconference).


12 MISCELLANEOUS PROVISIONS

13 In light of plaintiff's incarceration, the parties are permitted to discharge any meet-and-
14 confer obligations required by the Federal Rules of Civil Procedure, the court's Local Rules, or
15 this court's orders by telephone or videoconference in lieu of meeting in person.

16 The parties are reminded that pursuant to Federal Rule of Civil Procedure 16(b)(4), this
17 order shall not be modified except by leave of court upon a showing of "good cause." See
18 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604 (9th Cir. 1992). Mere agreement by the
19 parties pursuant to a stipulation does not constitute good cause. Nor does the mere fact of
20 plaintiff's incarceration, or the unavailability of witnesses or counsel, except in extraordinary
21 circumstances, constitute good cause. Mindful of the logistical difficulties that go along with
22 plaintiff's incarceration, the court expects the parties to cooperate in good faith with respect to
23 scheduling matters, and to work diligently to both anticipate and comply with case deadlines.

24 IT IS SO ORDERED.

25 Dated: March 17, 2017

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28 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE