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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC ZACHARY ANDERSON,
Plaintiff,
v.
TIM VIRGA, et al,
Defendants.

No. 2:15-cv-1148-KJM-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. A trial confirmation hearing is set for February 7, 2020, and a jury trial is scheduled to begin on March 20, 2020. ECF No. 129 at 10. On January 5, 2020, defendant moved to continue both dates due to the recent unavailability of his liability expert – Benjamin Tisa – caused by a medical emergency. ECF No. 131. Plaintiff filed an opposition, arguing that this expert had not previously been identified, and thus, would not be permitted to testify at trial. ECF No. 132 at 1. Plaintiff also expressed his preference “to get to trial as soon as possible.” *Id.* at 2. Defendant filed a reply. ECF No. 133. For the reasons stated below, defendant’s motion to continue the trial and trial confirmation hearing dates is granted.

In the Pretrial Order, dated December 27, 2019, the court granted defendant additional time to promptly identify his expert witnesses. ECF No. 129 at 6. Defendant did so by way of his motion to continue, filed within nine days of the Pretrial Order. Plaintiff’s contention that Mr. Tisa would not be permitted to testify at trial, therefore, lacks merit. Further, the court notes that

1 this case began nearly five years ago (ECF No. 1), but the docket reveals no intentional delay of
2 the proceedings by any party. Given the sudden and serious health condition of defendant's
3 expert, defendant's motion is well-founded and there is good cause to continue both the trial and
4 trial confirmation hearing dates.

5 Accordingly, IT IS ORDERED that:

- 6 1. Defendant's Motion to Continue Trial and Trial Confirmation Hearing Dates (ECF
7 No. 131) is GRANTED.
- 8 2. The trial confirmation hearing set before the district judge on February 7, 2020 is
9 VACATED and the Order and Writ of Habeas Corpus ad Testificandum issued on
10 December 27, 2019 for plaintiff's attendance at the trial confirmation hearing (ECF
11 No. 130) is WITHDRAWN.
- 12 3. The Clerk is directed to serve a copy of this order (1) by mail to the Warden,
13 California Medical Facility, and (2) by fax to the Litigation Coordinator, California
14 Medical Facility.
- 15 4. The jury trial set before the district judge on March 20, 2020 is VACATED.
- 16 5. The dates are continued as follows:
 - 17 a. A trial confirmation hearing is set before the district judge on September 4,
18 2020, at 10:00 a.m. in Courtroom No. 3, 15th Floor.
 - 19 b. Jury trial is scheduled to begin on October 26, 2020, at 1:30 p.m. in Courtroom
20 No. 3, 15th Floor, before United States District Judge Kimberly J. Mueller.
- 21 6. Writs of habeas corpus ad testificandum to provide for plaintiff's appearance at the
22 trial confirmation hearing and jury trial will issue at a later date.

23 DATED: January 23, 2020.

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25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE
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