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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 KENNETH WAYNE PARKS,

12 Plaintiff,

13 v.

14 JEFFREY ROHLFING, et al.,

15 Defendants.
16

No. 2:15-cv-1505 KJM CKD P

ORDER TO SHOW CAUSE

17 Plaintiff is proceeding with counsel with an action for violation of civil rights under 42
18 U.S.C. § 1983. The only remaining defendant, Rafael Miranda, was employed as a Physician's
19 Assistant at High Desert State Prison in Susanville at the relevant time. One claim against
20 defendant Miranda remains: whether he violated plaintiff's Eighth Amendment rights by denying
21 plaintiff ibuprofen on or around April 8, 2014.

22 On April 11, 2023, the court issued an order finding that plaintiff's pretrial statement was
23 not acceptable and ordering it stricken. The court indicated as follows with respect to exhibits:

24 [P]laintiff's identification of his exhibits is vague in that he describes
25 categories of documents, rather than the actual documents. Further, the
26 exhibits identified are overbroad (e.g. all of plaintiff's medical records
27 generated between 2012 and present). While not clear, it appears that
28 plaintiff identifies documents numbering in the thousands.

ECF No. 161 at 2.

1 Plaintiff was granted leave to file an amended pretrial statement as was instructed as
2 follows with respect to the identification of exhibits:

3 Plaintiff is granted thirty days within which to file an amended
4 pretrial statement. In the amended pretrial statement, plaintiff's list
5 of witnesses and exhibits must reflect the limited, discrete, and
6 relatively unsophisticated nature of the one remaining medical
7 claim that will be presented at trial. With respect to exhibits,
8 plaintiff cannot simply identify a class of documents; he must
9 identify the actual exhibits he intends to use. Further, plaintiff must
avoid identifying exhibits and witnesses that are cumulative or not
relevant toward a resolution of the only claim remaining. Plaintiff's
failure to comply with this order will result in sanctions which may
include a recommendation that this action be dismissed.

10 Id.

11 The amended pretrial statement was filed May 10, 2023. ECF No. 162. A review of the
12 portion of the pretrial statement in which plaintiff identifies his trial exhibits reveals that counsel
13 for plaintiff failed to, in any material respect, comply with that portion of the April 11, 2023 order
14 concerning exhibits. Again, the only claim which remains is whether plaintiff was denied over-
15 the-counter pain medication on or around April 8, 2014. Yet counsel for plaintiff identifies an
16 astounding 375 separate exhibits, most of which appear to comprise all of plaintiff's medical
17 records generated between September of 2013 and June of 2014. Some of the exhibits identified
18 (Exhibits 1-7) are categories of documents, despite the fact that counsel for plaintiff was
19 specifically instructed that merely listing categories is not appropriate in a pretrial statement.

20 In footnote 2 of the amended pretrial statement, counsel for plaintiff explains the large
21 number of exhibits as follows:

22 There are a large number of exhibits because it is necessary to
23 provide context for the actions that are alleged to be the subject of
24 the remaining claim in this case and because L.R. 281 states that only
25 exhibits listed can be used at trial. Counsel has reviewed each of the
26 listed exhibits and has also identified as exhibits summaries of
various categories of exhibits, which are intended to reduce the
number of exhibits. Exhibits marked with an asterisk will be used
only if necessary.

27 The court understands that context must be provided as to why plaintiff required ibuprofen
28 on April 8, 2014, and the why denial of ibuprofen may be found to have violated the Eighth

1 Amendment. But it is inconceivable that 375 exhibits reflective of approximately nine months of
2 medical treatment would be necessary to provide appropriate context for the jury to understand
3 plaintiff's claim, nor that counsel could have a good faith belief that all of those documents could
4 or would be properly admitted into evidence.

5 Counsel suggests Local Rule 281(b)(11), which concerns identification of exhibits in a
6 pretrial statement, requires identification of every possible exhibit plaintiff might offer. But that
7 is not what the rule says. The rule provides that a pretrial statement must include "[a] list of
8 documents or other exhibits that the party expects to offer at trial." Any reasonable interpretation
9 of this rule includes those exhibits a party intends to introduce in the case-in-chief and any
10 exhibits used to rebut evidence reasonably anticipated to be presented by the other party.

11 In light of the foregoing, IT IS HEREBY ORDERED that:

12 1. Plaintiff's amended pretrial statement (ECF No. 162) is stricken;

13 2. Counsel for plaintiff shall show cause in writing within 14 days why sanctions in the
14 amount of \$250 should not be ordered for counsel's willful failure to comply with the court's
15 April 11, 2023, order concerning the contents of plaintiff's amended pretrial statement.

16 3. Counsel for plaintiff shall file a second amended pretrial statement which complies
17 with the terms of the court's April 11, 2023, order within 30 days. Failure to comply with the
18 court's April 11, 2023, order a second time will result in further monetary sanctions or possibly
19 dismissal of this action.

20 4. Defendant shall file his response to plaintiff's second amended pretrial statement
21 within 30 days of filing of plaintiff's second amended pretrial statement.

22 Dated: June 1, 2023

23 
24 CAROLYN K. DELANEY
25 UNITED STATES MAGISTRATE JUDGE
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