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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KASEY F. HOFFMAN,
Plaintiff,
v.
LASSEN ADULT DETENTION
FACILITY, et al.,
Defendants.

No. 2: 15-cv-1558 JAM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. This action is set for a jury trial before the Honorable John A. Mendez on June 18, 2018. On March 2, 2018, the undersigned issued the pretrial order. (ECF No. 108). Several matters are pending before the court.

Plaintiff's Supplemental Pretrial Statement

Pursuant to the mailbox rule, plaintiff filed his supplemental pretrial statement on February 28, 2018. (ECF No. 110 at 41.) On March 7, 2018, defendants filed an opposition to this pleading. (ECF No. 111.)

New Witnesses/Waiver of Fees

In the supplemental pretrial statement, plaintiff appears to request that the court order the U.S. Marshal to serve subpoenas on thirteen unincarcerated witnesses: Roger Stephens, J. Uberue,

1 Dr. Fithian, Michelle McGee, Keith Stewart, Dena Adams, Michele Spillers, Amy Foster, Luckey
2 Price, Monique Agee, Sergeant Grey, John Minaue, and Dean Growden. (Id. at 2.) Plaintiff
3 requests that the requirement that he pay witness fees and travel fees be waived based on his in
4 forma pauperis status. (Id. at 2-4.) The pretrial order identified plaintiff's witnesses as J.
5 Langslet, J. Utter, L. Price, A. Wilson, H. Hewitt, M. Agre, C. Mock, Reed, Foster, Uberue and
6 K. Jones. (ECF No. 108 at 3.)

7 Plaintiff's in forma pauperis status does not entitle him to waiver of witness fees and
8 travel fees. See Tedder v. Odel, 890 F.2d 210, 211 (9th Cir. 1989) ("Although the plain language
9 of section 1915 provides for service of process for an indigent's witnesses, it does not waive
10 payment of fees or expenses for those witnesses.") Accordingly, plaintiff's request for the court
11 to waive witness fees and travel fees, and to order the U.S. Marshal to serve his subpoenas, is
12 denied.

13 Defendants also object that plaintiff's supplemental pretrial statement names new
14 witnesses. Defendants argue that plaintiff did not comply with the procedures for naming new
15 witnesses, as set forth in the pretrial order. The pretrial order provided that no witnesses, other
16 than those identified in the pretrial order, would be permitted to testify unless: 1) the party
17 offering the witness demonstrated that the witness was for the purpose of rebutting evidence
18 which could not be reasonably anticipated at the pretrial conference; or 2) the witness was
19 discovered after the pretrial conference and the party demonstrated that the witness could not
20 have been reasonably discovered prior to pretrial. (ECF No. 108 at 4.)

21 Because plaintiff filed the supplemental pretrial statement before the court issued the
22 pretrial order, the undersigned finds that the procedures set forth above are not applicable to the
23 new witnesses named in the supplemental pretrial statement. Accordingly, the pretrial order is
24 amended to include the new witnesses identified by plaintiff in the supplemental pretrial
25 statement: Roger Stephens, Dr. Fithian, Monique Agee, Michelle McGee, Keith Stewart, Dena
26 Adams, Michele Spillers, Sergeant Grey, John Minaue and Dean Growden.

27 As stated in the pretrial order, each party may call any witnesses designated by the other.
28 (ECF No. 108 at 4.) However, it is plaintiff's obligation to bring to trial his witnesses not also

1 listed as defendants' witnesses.

2 *New Exhibits*

3 In the supplemental pretrial statement, plaintiff lists additional exhibits he intends to offer
4 at trial including his summary judgment motion, his declaration and exhibits submitted in support
5 of his summary judgment motion, his opposition to defendants' summary judgment motion, his
6 declaration and exhibits submitted in support of his opposition to defendants' summary judgment
7 motion, his motion of stipulated facts, and his request for admissions. (ECF No. 110 at 3-4.)

8 In their objections, defendants argue that plaintiff's request to supplement his pretrial
9 statement to include these exhibits should be denied because he did not follow the procedures set
10 forth in the pretrial order. (ECF No. 111 at 4.) The pretrial order stated that no exhibits, other
11 than those identified in the pretrial order, would be permitted to be introduced at trial unless:
12 1) the party proffering the exhibit demonstrated that the exhibit is for the purpose of rebutting
13 evidence which could not have been reasonably anticipated; or 2) the exhibit was discovered after
14 the issuance of the pretrial order. (ECF No. 108 at 5.)

15 Because plaintiff identified the new exhibits in a document he filed before the pretrial
16 order was issued, the procedures described above are not applicable. Good cause appearing,
17 plaintiff's request to supplement his exhibit list with these exhibits is granted. Plaintiff shall
18 provide defendants with copies of the new exhibits identified in his supplemental pretrial
19 statement thirty days prior to trial.

20 *Plaintiff's Objections to Defense Witness Simoni*

21 In the supplemental pretrial statement, plaintiff objects to defendants' witness Casey
22 Simoni. Attached to the supplemental pretrial statement are exhibits which plaintiff appears to
23 offer to impeach the proposed testimony of Casey Simoni.

24 Plaintiff may file a motion in limine addressing his objections to the testimony of Casey
25 Simoni.

26 In the opposition, defendants move to strike plaintiff's exhibits attached to the
27 supplemental pretrial statement offered for the purpose of impeaching Casey Simoni's testimony.
28 (ECF No. 111.) Defendants argue that these exhibits are confidential, juvenile dependency

1 records from Lassen County Superior Court Case no. J6134. (Id. at 4.) Defendants argue that
2 state court juvenile dependency proceedings are confidential, citing California Rule of Court,
3 Rule 5.552 and California Welfare and Institutions Code Sections 827 and 828. (Id.) Defendants
4 argue that the intentional violation of the confidentiality provisions of California Welfare and
5 Institutions Code Sections 827 and 828 may result in a misdemeanor. (Id.)

6 The undersigned orders the exhibits attached to plaintiff’s supplemental pretrial statement
7 from the juvenile court proceedings filed under seal. Defendants may object to these exhibits in a
8 motion in limine.

9 Motion for Appointment of Counsel and Motion for U.S. Marshal to Serve Subpoenas

10 On March 9, 2018, plaintiff filed a motion for appointment of counsel (ECF No. 112) and
11 a motion requesting that the court waive plaintiff’s payment of witness fees and travel fees, and
12 order U.S. Marshal to serve subpoenas on his witnesses (ECF No. 113.)

13 For the reasons discussed above, plaintiff’s motion for the U.S. Marshal to serve
14 subpoenas on his witnesses, and to waive plaintiff’s payment of witness fees and travel fees, is
15 denied.

16 Turning to plaintiff’s motion for appointment of counsel, district courts lack authority to
17 require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States
18 Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an
19 attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer,
20 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir.
21 1990). When determining whether “exceptional circumstances” exist, the court must consider
22 plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his
23 claims pro se in light of the complexity of the legal issues involved. Palmer v. Valdez, 560 F.3d
24 965, 970 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel).
25 The burden of demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances
26 common to most prisoners, such as lack of legal education and limited law library access, do not
27 establish exceptional circumstances that warrant a request for voluntary assistance of counsel.

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1 Having considered the factors under Palmer, the court finds that plaintiff has failed to
2 meet his burden of demonstrating exceptional circumstances warranting the appointment of
3 counsel at this time. The remaining issue for trial is whether defendant Jones denied plaintiff's
4 request for a kosher diet in violation of plaintiff's First Amendment rights. The main disputed
5 fact is the sincerity of plaintiff's beliefs in the Jewish religion. The remaining issues in this case
6 are not particularly complex. Plaintiff has competently litigated this action. For these reasons,
7 plaintiff's motion for appointment of counsel to represent him at trial is denied.

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff's request to name new witnesses, contained in his supplemental pretrial
10 statement, is granted; the pretrial order is amended to identify the follow additional witnesses for
11 plaintiff: Roger Stephens, Dr. Fithian, Monique Agee, Michelle McGee, Keith Stewart, Dena
12 Adams, Michele Spillers, Sergeant Grey, John Minaue and Dean Growden.

13 2. Plaintiff's request for the court to order the U.S. Marshal to serve subpoenas on his
14 witnesses, contained in his supplemental pretrial statement, is denied.

15 3. Plaintiff's request to supplement his exhibit list, contained in his supplemental pretrial
16 statement, is granted; the pretrial order is amended to include the additional exhibits identified by
17 plaintiff in his supplemental pretrial statement.


18 4. Plaintiff's motion for appointment of counsel (ECF No. 112) is denied.

19 5. Plaintiff's motion for the U.S. Marshal to serve subpoenas (ECF No. 113) is denied.

20 6. The Clerk of the Court is directed to file *under seal* all exhibits attached to plaintiff's
21 supplemental pretrial statement, i.e., ECF No. 110 at 10-41.

22 Dated: March 15, 2018

23
24 Hoff1558.31


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE