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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MONTE L. HANEY,
Plaintiff,
v.
S. JOHNSON, et al.,
Defendants.

No. 2: 16-cv-1173 TLN KJN P

ORDER

Introduction

On February 1, 2019, the undersigned issued a further scheduling order setting the pretrial conference for March 29, 2019, and the jury trial for August 5, 2019, before the Honorable Troy L. Nunley. (ECF No. 68.) On February 6, 2019, defendants filed objections to the February 1, 2019 order and a request to modify the schedule. (ECF No. 70.) For the reasons stated herein, defendants’ request to modify the schedule is granted.

No scheduling order was issued in this action because defendants filed a summary judgment motion with their answer. (ECF Nos. 44, 45.) Discovery in this action has been stayed pending resolution of defendants’ motion to post security and motion for summary judgment. (See ECF Nos. 37, 57 (orders staying discovery).) In their objections and motion to modify the schedule, defendants request that the court open discovery for a period of ninety days. Good cause appearing, defendants’ request is granted. Because a dispositive motion has already been

1 filed and resolved, at this time the court will not set a deadline for filing additional dispositive
2 motions.

3 Pre-Trial Procedures

4 The parties will be required to file pretrial statements in accordance with the schedule set
5 forth below. In addition to the matters required to be addressed in the pretrial statement in
6 accordance with Local Rule 281, plaintiff will be required to make a particularized showing in the
7 pretrial statement in order to obtain the attendance of witnesses at trial. Plaintiff is advised that
8 failure to comply with the procedures set forth below may result in the preclusion of any and all
9 witnesses named in the pretrial statement.

10 At the trial of this case, the plaintiff must be prepared to introduce evidence to prove each
11 of the alleged facts that support the claims raised in the lawsuit. In general, there are two kinds of
12 trial evidence: (1) exhibits; and (2) the testimony of witnesses. It is the plaintiff's responsibility
13 to produce all of the evidence to prove the case, whether that evidence is in the form of exhibits
14 or witness testimony. If the plaintiff wants to call witnesses to testify, plaintiff must follow
15 certain procedures to ensure that the witnesses will be at the trial and available to testify.

16 I. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Agree to
17 Testify Voluntarily

18 An incarcerated witness who agrees voluntarily to attend trial to give testimony cannot
19 come to court unless this court orders the warden or other custodian to permit the witness to be
20 transported to court. This court will not issue such an order unless it is satisfied that:

- 21 1. The prospective witness is willing to attend;
22 and
23 2. The prospective witness has actual knowledge of relevant facts.

24 With the pretrial statement, a party intending to introduce the testimony of incarcerated
25 witnesses who have agreed voluntarily to attend the trial must serve and file a written motion for
26 a court order requiring that such witnesses be brought to court at the time of trial. The motion
27 must:

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- 1 1. State the name, CDC Identification number, and address of each such witness;
- 2 and
- 3 2. Be accompanied by affidavits showing that each witness is willing to testify
- 4 and that each witness has actual knowledge of relevant facts.

5 The willingness of the prospective witness can be shown in one of two ways:

- 6 1. The party can swear by affidavit that the prospective witness has informed the
- 7 party that he or she is willing to testify voluntarily without being subpoenaed. The
- 8 party must state in the affidavit when and where the prospective witness informed
- 9 the party of this willingness;

10 Or

- 11 2. The party can serve and file an affidavit sworn to by the prospective witness, in
- 12 which the witness states that he or she is willing to testify without being
- 13 subpoenaed.

14 The prospective witness' actual knowledge of relevant facts can be shown in one of two

15 ways:

- 16 1. The party can swear by affidavit that the prospective witness has actual
- 17 knowledge. However, this can be done only if the party has actual firsthand
- 18 knowledge that the prospective witness was an eyewitness or an ear-witness to the
- 19 relevant facts. For example, if an incident occurred in the plaintiff's cell and, at
- 20 the time, the plaintiff saw that a cellmate was present and observed the incident,
- 21 the plaintiff may swear to the cellmate's ability to testify.

22 Or

- 23 2. The party can serve and file an affidavit sworn to by the prospective witness in
- 24 which the witness describes the relevant facts to which the prospective witness
- 25 was an eye- or ear-witness. Whether the affidavit is made by the plaintiff or by the
- 26 prospective witness, it must be specific about what the incident was, when and
- 27 where it occurred, who was present, and how the prospective witness happened to
- 28 be in a position to see or to hear what occurred at the time it occurred.

1 The court will review and rule on the motion for attendance of incarcerated witnesses,
2 specifying which prospective witnesses must be brought to court. Subsequently, the court will
3 issue the order necessary to cause the witness' custodian to bring the witness to court.

4 II. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse to
5 Testify Voluntarily

6 If a party seeks to obtain the attendance of incarcerated witnesses who refuse to testify
7 voluntarily, the party should submit with the pretrial statement a motion for the attendance of
8 such witnesses. Such motion should be in the form described above. In addition, the party must
9 indicate in the motion that the incarcerated witnesses are not willing to testify voluntarily.

10 III. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to
11 Testify Voluntarily

12 It is the responsibility of the party who has secured an unincarcerated witness' voluntary
13 attendance to notify the witness of the time and date of trial. No action need be sought or
14 obtained from the court.

15 IV. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Refuse to
16 Testify Voluntarily

17 If a prospective witness is not incarcerated, and he or she refuses to testify voluntarily, not
18 earlier than four weeks and not later than two weeks before trial, the party must prepare and
19 submit to the United States Marshal a subpoena for service by the Marshal upon the witness.
20 (Blank subpoena forms may be obtained from the Clerk of the Court). Also, the party seeking the
21 witness' presence must tender an appropriate sum of money to the witness through the United
22 States Marshal. In the case of an unincarcerated witness, the appropriate sum of money is the
23 daily witness fee of \$40.00 plus the witness' travel expenses.

24 A subpoena will not be served by the United States Marshal upon an unincarcerated
25 witness unless the subpoena is accompanied by a money order made payable to the witness for
26 the full amount of the witness' travel expenses plus the daily witness fee of \$40.00. As noted
27 earlier, because no statute authorizes the use of public funds for these expenses in civil cases, the
28 tendering of witness fees and travel expenses is required even if the party was granted leave to

1 proceed in forma pauperis.

2 Good cause appearing, IT IS HEREBY ORDERED that:

3 1. Defendants' request to modify the scheduling order (ECF No. 70) is granted;

4 2. Discovery requests shall be served by the party seeking the discovery on all parties to
5 the action.¹ Discovery requests shall not be filed with the court except when required by Local
6 Rules 250.1, 250.2, 250.3 and 250.4.

7 3. Responses to written discovery requests shall be due forty-five days after the request is
8 served.

9 4. The parties are cautioned that filing of discovery requests or responses, except as
10 required by rule of court, may result in an order of sanctions, including, but not limited to, a
11 recommendation that the action be dismissed or the answer stricken.

12 5. Pursuant to Federal Rule of Civil Procedure 30(a), defendants may depose, either in
13 person or by videoconference, plaintiff and any other witness confined in a prison upon condition
14 that, at least fourteen days before such a deposition, defendants serve all parties with the notice
15 required by Fed. R. Civ. P. 30(b)(1).

16 6. If disputes arise about the parties' obligations to respond to requests for discovery, the
17 parties shall comply with all pertinent rules including Rules 5, 7, 11, 26, and 37 of the Federal
18 Rules of Civil Procedure and Rules 134, 135, 130, 131, 110, 142, and 230(l) of the Local Rules of
19 Practice for the United States District Court, Eastern District of California; unless otherwise
20 ordered, Local Rule 251 shall not apply. Filing of a discovery motion that does not comply with
21 all applicable rules may result in imposition of sanctions, including but not limited to denial of the
22 motion.

23 7. The parties may conduct discovery until May 24, 2019. Any motions necessary to
24 compel discovery shall be filed by that date. All requests for discovery pursuant to Fed. R. Civ.
25 P. 31, 33, 34 or 36 shall be served not later than sixty days prior to that date.

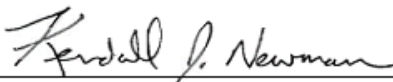
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28 ¹ If an attorney has filed a document with the court on behalf of any defendant, then plaintiff must
serve documents on that attorney and not on the defendant. See Fed. R. Civ. P. 5(b).

1 8. The pretrial conference set for March 29, 2019, is vacated and reset for September 27,
2 2019; plaintiff shall file and serve his pretrial statement and any motions necessary to obtain the
3 attendance of witnesses at trial on or before September 6, 2019; defendants' pretrial statement is
4 due on or before September 20, 2019;

5 9. The jury trial set before the Honorable Troy L. Nunley for August 5, 2019, is vacated
6 and reset for January 27, 2020, at 9:00 a.m.

7 Dated: February 20, 2019

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10 KENDALL J. NEWMAN
11 UNITED STATES MAGISTRATE JUDGE

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