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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH LEE TAYLOR,

Plaintiff,

v.

KUERSTON, et al.,

Defendants.

No. 2: 19-cv-00450 TLN 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 proceeds on plaintiff’s claim that defendants Medina and Chavez used excessive force in violation of the Eighth Amendment on June 28, 2017, when they allegedly threw plaintiff to the ground.

This action is set for jury trial before the Honorable Troy L. Nunley on July 25, 2022. On April 12, 2022, the undersigned issued a pretrial order. (ECF No. 111.) The undersigned also issued a separate order denying plaintiff’s requests for expert witnesses and to reopen discovery made in his pretrial statement. (ECF No. 112.)

Pending before the court are plaintiff’s objections to the pretrial order and the order denying plaintiff’s request to reopen discovery. (ECF No. 114.) Also pending are several other matters.

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1 Plaintiff's Objections

2 Plaintiff first objects to the order denying his request to seek additional discovery from  
3 defendants and California State Prison-Solano including electronically stored video tapes,  
4 photographs, tape recordings of any conduct leading up to, during and after the incident and  
5 plaintiff's staff complaint interview. (Id. at 1.)

6 Attached to plaintiff's objections is a letter dated March 9, 2022, from the Center for  
7 Human Rights and Constitutional Law addressed to the California Department of Corrections and  
8 Rehabilitation ("CDCR"). (Id. at 3-4.) This letter requests records in possession of CDCR for the  
9 purposes of inspection pursuant to the California Public Records Act ("CPRA), California  
10 Government Code § 6250 et seq., and Article I, § 3b of the California Constitution. (Id. at 3.)  
11 The letter states that the requesting parties are plaintiff and the Center for Human Rights and  
12 Constitutional Law. (Id.) This letter is hereinafter referred to as the "CPRA request."

13 The letter requests records regarding the alleged excessive force incident. In particular,  
14 the letter requests,

15 copies of all documents involving the above-described incident  
16 including but not limited to electronically stored video tapes,  
17 photographs and tape recordings of any conduct leading up to,  
18 during, and after the incident that in any way relate to the incident,  
19 and any 'writings' about the incident as defined in California  
20 Evidence Code § 250, including records in handwriting, typewriting,  
printing, photostating, photocopying, electronic mail, facsimiles, and  
every other means of recording upon any tangible thing, including  
letters, reports, forms and memoranda, regardless of the date of the  
records or the manner in which the records has been stored.

21 (Id.)

22 On May 5, 2022, defendants filed a response to plaintiff's objections. (ECF No. 117.)  
23 Defendants state that there is no videotaped recording of the incident. (Id. at 1.) Defendants also  
24 observe that the court denied plaintiff's request to reopen discovery. (Id.) Defendants contend  
25 that re-opening discovery on the eve of trial would severely prejudice defendants and  
26 significantly delay trial in this matter. (Id.)

27 Plaintiff's pending request to reopen discovery is not clear. In his pretrial statement,  
28 plaintiff requested that discovery be reopened so that he could seek from defendants the same

1 documents requested from CDCR in the CPRA request. (ECF No. 112 at 3.) As discussed  
2 above, the undersigned denied this request on April 12, 2022. (Id.) The undersigned affirms this  
3 order.

4 In the pending request, plaintiff may be requesting that discovery be reopened in support  
5 of his CPRA request. If so, this request is denied for the reasons stated in the April 12, 2022  
6 order. To the extent plaintiff is requesting that he be permitted to introduce as exhibits documents  
7 obtained pursuant to the CPRA request, plaintiff shall follow the procedures set forth in the  
8 pretrial order. (ECF No. 111 at 6.)

9 In his objections, plaintiff also objects to having no method to review six CD rom discs of  
10 evidence, which include an interview with defendant Medina taken on September 18, 2018. (ECF  
11 No. 114 at 2.) Plaintiff alleges that he requires a court order to review these discs. (Id.)

12 In their response, defendants state that it is unclear what plaintiff is seeking regarding the  
13 six CDs. (ECF No. 117 at 2.) Defendants contend that the court does not have jurisdiction to  
14 force prison officials to provide plaintiff with access to the CDs. (Id.) Defendants contend that if  
15 plaintiff wants to review the CDs, he should go through the proper channels provided by the  
16 prison. (Id.) Defendants also state that they are not aware of what plaintiff refers to when he  
17 states that there is an interview with defendant Medina taken on September 18, 2018. (Id.)  
18 Defendants contend that they do not believe any such interview exists. (Id.)

19 Other than the interview with defendant Medina, plaintiff does not describe the contents  
20 of the CDs. According to defendants, no such interview with defendant Medina exists. In  
21 addition, it is unclear where plaintiff obtained the six CDs.<sup>1</sup> While plaintiff claims he can only  
22 view the CDs with a court order, plaintiff provides no information supporting this claim. Plaintiff  
23 does not, for example, allege that prison officials denied his request to view the CDs.  
24 Accordingly, plaintiff's request for an order directing prison officials to allow him to view the six  
25 CDs is denied as unsupported.

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<sup>1</sup> It is unclear whether plaintiff obtained the six CDs in response to the CPRA request.

1 Finally, plaintiff objects to defendants' referral to the abstract of judgment of plaintiff's  
2 crime during the trial. (ECF No. 114 at 1-2.) The pretrial order provides that each party will file  
3 objections to exhibits fourteen days before trial. (ECF No. 111 at 6.) Accordingly, plaintiff's  
4 objections to defendants' reference to the abstract of judgment should be raised in objections to  
5 defendants' exhibits, if appropriate.

#### 6 Defendants' Request for Writ of Habeas Corpus Ad Testificandum

7 On May 5, 2022, defendants filed a request for a writ of habeas corpus ad testificandum  
8 for the personal appearance of their inmate witness Andre Deshon Williams. (ECF No. 118.) In  
9 their pretrial statement, defendants state that inmate Williams agreed to testify at trial. (ECF No.  
10 110 at 7.)

11 The further scheduling order provides that the court will issue a writ of habeas corpus ad  
12 testificandum for incarcerated witnesses who agree to testify voluntarily upon a showing that the  
13 prospective witness is willing to attend and the prospective witness has actual knowledge of the  
14 relevant facts. (ECF No. 103 at 2.) A party may demonstrate the willingness of the prospective  
15 witness to testify by 1) the party swearing by affidavit that the prospective witness informed the  
16 party that they will testify voluntarily (including when and where the party informed the party of  
17 this willingness); or 2) an affidavit by the prospective witness. (Id. at 2.)

18 In addition, the prospective witness' actual knowledge of the facts can be shown by either  
19 an affidavit by the party that the prospective witness has actual knowledge or an affidavit by the  
20 prospective witness. (Id. at 3.)

21 Defendants did not make the required showing that inmate Williams is willing to testify  
22 and has knowledge of the relevant facts. Defendants are granted ten days from the date of this  
23 order to file a motion for the writ of habeas corpus ad testificandum for inmate Williams that  
24 makes this showing.

#### 25 Further Briefing Ordered in Pretrial Order

26 In the pretrial order, the undersigned ordered plaintiff to inform the court within fourteen  
27 days whether he stipulated to the authenticity of certain documents. (ECF No. 111 at 4.) On  
28 April 25, 2022, plaintiff filed a stipulation to the authenticity of his medical and mental health

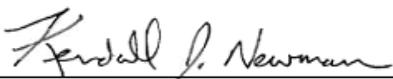
1 records. (ECF No. 113.) If defendants seek additional stipulations from plaintiff, they shall  
2 contact plaintiff.

3 In the pretrial order, filed April 12, 2022, the undersigned ordered plaintiff to inform the  
4 court within fourteen days whether he possessed a copy of CDCR's investigation of plaintiff's  
5 grievance attached as Exhibit I to ECF No. 58-3. (ECF No. 111 at 5.) Fourteen days passed and  
6 plaintiff did not respond to this order. Accordingly, no further orders regarding this matter will  
7 be issued.<sup>2</sup>

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The instant order resolves plaintiff's objections to the pretrial order (ECF No. 114);
- 10 2. Plaintiff's further request to reopen discovery, made in his objections to the pretrial  
11 order, is denied;
- 12 3. Plaintiff's request for an order directing prison officials to allow him to review six  
13 CDs, made in his objections to the pretrial order, is denied;
- 14 4. Plaintiff's objection to defendants' referral to his abstract of judgment shall be raised  
15 in objections to defendants' evidence; and
- 16 5. Defendants are granted ten days from the date of this order to file a motion in support  
17 of their request for issuance of the writ of habeas corpus ad testificandum for inmate  
18 Williams, as discussed above.

19 Dated: May 9, 2022

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21 \_\_\_\_\_  
22 KENDALL J. NEWMAN  
23 UNITED STATES MAGISTRATE JUDGE

24 Tay450.ord(req)

25 \_\_\_\_\_  
26 <sup>2</sup> In his objections, plaintiff requests that discovery be reopened so that he may obtain CDCR's  
27 investigation video tape recording of plaintiff's staff complaint interview. (ECF No. 114 at 1.)  
28 The video tape of plaintiff's interview appears separate from Exhibit I attached to ECF No. 58-3.  
Counsel filed a motion to seal exhibit I and referred to Exhibit I as containing documents AGO  
006597 through 006605. (ECF No. 60 at 1.) Counsel did not refer to Exhibit I as containing  
video tape evidence. As discussed in the pretrial order, the court does not possess Exhibit I.