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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TERRELL D. CURRY,
Plaintiff,
v.
JAMES TILTON; et al.,
Defendants.

No. C 07-775 MHP (pr)

**ORDER DENYING MOTION TO
DISMISS AND SETTING SCHEDULE**

United States District Court
For the Northern District of California

A. Motion To Dismiss

Defendants have moved to dismiss this action due to misjoinder, contending that plaintiff has "improperly asserted unrelated claims against different Defendants" and "failed to allege that Defendants participated in the same transaction or series of transactions or to allege that there is a question of fact that is common to all Defendants." Motion To Dismiss, pp. 1-2, citing Rules 18(a) and 20(a) of the Federal Rules of Civil Procedure. Plaintiff has opposed the motion.

In this action, Curry has asserted claims for an alleged ADA/Rehabilitation Act violation, as well as for deliberate indifference to his safety. The claims are connected. The complaint, as amended, alleged that from about December 30, 2004 until about October 2006, defendants SVSP and CDCR denied plaintiff a reasonable accommodation for his right arm paralysis that made it difficult/impossible to lift things. The complaint, as amended, also alleged that plaintiff fell down the stairs and hurt himself on April 4, 2006 while carrying materials and while restrained in handcuffs. At the time of the fall, plaintiff allegedly was being escorted by defendant correctional officer Caropreso, who (a) had

1 refused to get help to carry Curry's paperwork, (b) had refused to change the handcuffs
2 despite Curry's statement that he had a chrono for waist-chain handcuffs that would have put
3 his hands at his side, and (c) was not holding on to Curry when Curry descended the stairs.
4 In his deliberate indifference claim, Curry attributes the fall on the stairs at least in part to
5 having the wrong kind of handcuffs and not being held by Caropreso as he descended the
6 stairs. He also claimed that defendants Evans and Ponder were responsible for but failed to
7 properly train Caropreso about escorting inmates down stairs.

8 To join defendants together in one action, the complaint must meet two specific
9 requirements: (1) a right to relief must be asserted "against them jointly, severally, or in the
10 alternative with respect to or arising out of the same transaction, occurrence, or series of
11 transactions or occurrences;" and (2) the action must raise a question of fact or law common
12 to all defendants. See Fed. R. Civ. P. 20(a).

13 Defendants correctly argue that a plaintiff may not join together unrelated claims, but
14 incorrectly assert that plaintiff's claims against the two sets of defendants are unrelated.
15 Plaintiff's ADA/Rehabilitation Act claim spans a greater time period than his deliberate
16 indifference to safety claim, but part of the ADA/Rehabilitation Act claim overlaps with the
17 deliberate indifference to safety claim and arises out of the same occurrence. Adjudication of
18 plaintiff's claim about the fall on the stairs raises questions about whether it was due to the
19 failure to accommodate his disability *and/or* the individual defendants' deliberate
20 indifference, as plaintiff alleges that he was at the time of the fall carrying legal materials
21 (thus raising the possibility that his unaccommodated disability contributed to or caused the
22 fall) as well as that he was in the wrong kind of mechanical restraints and was not being held
23 by the escorting officer (thus raising the possibility that the individual defendants' deliberate
24 indifference to the risk to his safety contributed to or caused the fall). The possibility that
25 one set of defendants may be liable and the other may not be liable for the fall does not
26 compel severance of the claims. In fact, Rule 20(a)(2)(A) contemplates it as an instance in
27 which joinder would be proper: defendants may be joined where a right to relief is asserted
28 against them "jointly, severally *or in the alternative.*" The claim about the fall on the stairs

1 also will raise at least one question of fact common to the defendants: what caused plaintiff
2 to fall down the stairs? It would not promote judicial economy to have one trial to determine
3 whether plaintiff fell due to the unaccommodated disability and another trial to determine
4 whether plaintiff fell due to the failure to hold him and to provide a particular type of
5 mechanical restraints. Defendants' motion to dismiss is DENIED. (Docket # 22.)

6 B. Scheduling

7 In order to move this case toward resolution, the court sets the following schedule:

8 1. No later than **August 27, 2010**, plaintiff and defendants must propound any
9 written discovery requests (e.g., requests for production of documents, interrogatories, and
10 requests for admissions) they wish to make on each other.

11 2. If defendants wish to take plaintiff's deposition, they must do so no later than
12 **September 17, 2010**.

13 3. All discovery must be completed no later than **November 5, 2010**. Plaintiff is
14 cautioned that the court generally is not involved in the discovery process and only becomes
15 involved when there is a dispute between the parties about discovery responses. Discovery
16 requests and responses normally are exchanged between the parties without any copy sent to
17 the court. See Fed. R. Civ. P. 5(d) (listing discovery requests and responses that "must not"
18 be filed with the court until they are used in the proceeding or the court orders otherwise).

19 4. Any motion to compel discovery must be filed and served by **November 5,**
20 **2010**. If a motion to compel is filed, any opposition to it must be filed and served no later
21 than **fourteen days** after the motion is filed and any reply in support of the motion must be
22 filed and served no later than **fourteen days** after the opposition is filed. The parties are
23 reminded that they must make a good faith effort to meet and confer to attempt to resolve any
24 discovery dispute before filing any motion to compel.

25 5. Any motion for summary judgment (or other dispositive motion) must be filed
26 and served no later than **December 17, 2010**.

27 6. Any opposition to the dispositive motion must be filed and served no later than
28 **January 21, 2011**. Plaintiff is cautioned to read the notice regarding summary judgment

1 motions in the order of service as he prepares any opposition to a motion for summary
2 judgment.

3 7. Any reply brief in support of the motion must be filed and served no later than
4 **February 4, 2011.**

5 IT IS SO ORDERED.

6 Dated: July 28, 2010


Marilyn Hall Patel
United States District Judge

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