

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL C. GARCIA  
(CDCR # AM5700),

No. C 10-2424 SI (pr)

**DISCOVERY ORDER**

Plaintiff,

v.

CITY OF SANTA CLARA; et al.,

Defendants.

This is a *pro se* prisoner's civil rights action arising from plaintiff's arrest in Santa Clara, California, on May 23, 2008. Now before the court is plaintiff's request for issuance of four subpoenas and defendants' motion for a protective order allowing them to avoid traveling to a prison in Tehachapi for their depositions.

A. Plaintiff's Request For Subpoenas

Plaintiff has filed an administrative motion for the issuance of four subpoena duces tecum. The motion is DENIED. Docket # 102. The listed attorney on the subpoena forms is "Charles Garcia, Attorney-In-Fact." See Docket # 102-1 at 1. As the court explained in the September 15, 2011 order for service of process, Docket # 36 at 2, a non-attorney cannot represent plaintiff. Plaintiff's request for a subpoena directed at Christopher Pavan and THBC is denied for the additional reasons stated in the July 21, 2013 order denying plaintiff's discovery application. See Docket # 69 at 1 ("plaintiff's attempt to subpoena materials from his own expert appears to be either an unnecessarily officious act, or an effort to avoid paying for services rendered, or an effort to get this court to interfere with the murder case pending against plaintiff

1 in the Riverside County Superior Court. Those are not legitimate reasons for the issuance of a  
2 subpoena. . . . *See* Fed. R. Civ. P. 26(b)(2)(C)(authorizing court to limit scope of discovery  
3 otherwise allowable under the rules.)") Plaintiff has requested documents from the Pleasanton  
4 Police Department, but fails to explain how the Pleasanton Police Department would have any  
5 records potentially relevant to this action that concerns plaintiff's arrest in Santa Clara. If he  
6 wants to renew his application for this subpoena, he needs to explain when he was in the custody  
7 of the Pleasanton Police Department, and why and when he made a complaint to the Pleasanton  
8 Police Department about an arrest in Santa Clara.

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10 B. Defendants' Depositions

11 Plaintiff noticed the depositions of four defendants and scheduled the depositions to take  
12 place on the day before and the day after Thanksgiving at the California Correctional Institution  
13 in Tehachapi, where plaintiff then was incarcerated. *See* Docket # 84-1. Defense counsel sent  
14 a letter to plaintiff objecting to the proposed location for the depositions because it was more  
15 than 300 miles from defendants' homes or place of business, and the inconvenience of the travel  
16 was exacerbated by scheduling the depositions adjacent to Thanksgiving. Docket # 84-2 at 1.  
17 In the same letter, defense counsel asked plaintiff to stipulate to one of several proposed  
18 alternative methods for the depositions, i.e., deposition by written questions, depositions by  
19 telephone, or a remote deposition by other acceptable electronic means. *Id.* at 1, 5. The  
20 following week, plaintiff sent to defense counsel his objections to defendants' request for  
21 production of documents and interrogatories, stating that he "will not be providing responses  
22 until the matter of the Defendants making themselves available for their depositions is resolved."  
23 Docket # 84-3 at 1. Defendants then moved for a protective order for the depositions of  
24 defendants to occur via written questions, telephone, or other acceptable means, *see* Fed. R. Civ.  
25 P. 30(b)(4), at a later date and location more convenient to the deponents. On January 2, 2015,  
26 plaintiff filed an opposition to the motion for a protective order and requested sanctions against  
27 defendants and defense counsel for not appearing for the scheduled depositions.

1 Earlier this week, plaintiff notified the court that has been transferred to Salinas Valley  
2 State Prison in Soledad, California. That prison is approximately 90 miles from defendants'  
3 place of employment. Defendants and plaintiff all are apparently within the Northern District  
4 of California. In light of plaintiff's transfer to Salinas Valley, it is unnecessary for the court to  
5 decide whether defendants should be required to travel 300 miles to plaintiff's place of  
6 incarceration. The dates plaintiff selected for the depositions – i.e., the day before and the day  
7 after Thanksgiving – have passed, so it also is unnecessary for the court to decide whether  
8 defendants are entitled to a protective order against appearing for depositions on those particular  
9 dates.<sup>1</sup> Defendants asked the court to order that the depositions be taken by telephone or other  
10 remote means, but that request was premised on a desire to avoid the inconvenience of travel to  
11 Tehachapi that is no longer an issue. Defendants' motion for a protective order is DENIED as  
12 moot. Defendant's motion for a protective order, and their choice not to show up for the  
13 deposition while the motion was pending, does not come close to warranting sanctions.

14 Plaintiff may conduct the depositions of the defendants within the Northern District of  
15 California. Plaintiff may conduct the depositions in-person at Salinas Valley State Prison, by  
16 telephone or by other remote means – the choice of method(s) is his.<sup>2</sup> To avoid the possibility  
17 of a deponent appearing for a deposition that plaintiff is unable to conduct, plaintiff must  
18 confirm the following in writing to defense counsel before the date set for each deposition: (1)  
19 that plaintiff has hired a court reporter/stenographer who is ready, willing and able to report the  
20 deposition; (2) that he has made arrangements with appropriate prison officials to have access  
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23 <sup>1</sup>The court notes that setting a deposition at a time and place that ordinarily requires  
24 approximately ten hours of driving the day before Thanksgiving and the day after Thanksgiving  
25 is the sort of gamesmanship that is no more acceptable from a *pro se* litigant than it is from a  
26 licensed attorney. Not only would it be unduly inconvenient for defendants and their counsel  
to travel on those particular days, Thanksgiving is likely one of the busiest visiting times of the  
year at a prison, and is difficult to see the need to hold a deposition in a prison visiting area when  
that area is at its most crowded state.

27 <sup>2</sup>Plaintiff also may instead conduct depositions by written questions, *see* Fed. R. Civ. P.  
28 31, but should bear in mind the limitations on this procedure discussed in the July 17, 2014  
scheduling order (Docket # 81 at 2). Whether to use the deposition upon written questions  
procedure is plaintiff's choice; the court will not force him to forego oral depositions in favor  
of depositions upon written questions.

1 to a telephone, computer or videoconferencing equipment needed for the deposition, if he  
2 intends to take the deposition remotely; and (3) that he has obtained permission from prison  
3 officials to conduct the deposition on the date and time he has selected.

4 C. Resolution And Scheduling

5 For the foregoing reasons:

6 1. Defendants' motion for a protective order is DENIED as moot. Docket # 82.  
7 Plaintiff's request for sanctions in opposition to that motion is DENIED. Docket # 101.

8 2. Plaintiff may conduct an oral deposition of each defendant within the Northern  
9 District of California. For each deposition, plaintiff may choose whether to conduct the  
10 deposition in person, by telephone or by other remote means.

11 3. No later than **January 27, 2015**, defense counsel shall send to plaintiff a list of  
12 dates during the following five weeks when each defendant would be available for a deposition.  
13 Defense counsel must provide at least 2-3 available dates for each defendant to be deposed.

14 4. No later than **February 9, 2015**, plaintiff must send to defense counsel a letter in  
15 which he (a) identifies the date, time and location for each defendant's depositions, (b) identifies  
16 his proposed method of taking each deposition, (c) provides the name, telephone number and  
17 address of the deposition officer and stenographer who will record the deposition, and (d)  
18 provides the name and telephone number of any person who will prepare an audiovisual  
19 recording of the deposition. In that letter, plaintiff also shall explain whether he has requested  
20 and received authorization from prison officials for access to any telephone, computer, or  
21 videoconferencing equipment to conduct the depositions. Finally, the letter must give a  
22 defendant at least seven days' notice of the date and time of the deposition. It is plaintiff's  
23 obligation to arrange for and pay for each deposition.

24 5. No later than **January 27, 2015**, plaintiff must mail to defense counsel each of the  
25 following documents, if he has not done so yet: (a) his written response to the defendants'  
26 interrogatories, (2) his written response to defendants' request for production of documents, and  
27 (3) and documents he is producing in response to the request for production of documents.  
28 Failure to send these materials to defense counsel by the deadline may result in sanctions

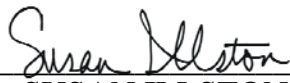
1 including, but not limited to, monetary sanctions, an order barring any testimony from plaintiff,  
2 and an order barring the presentation of any documentary evidence on behalf of plaintiff.

3         6.         The court now resets the briefing schedule on defendants' pending motion for  
4 summary judgment: No later than **March 16, 2015**, plaintiff must file and serve his opposition  
5 to the motion for summary judgment. No later than **March 30, 2015**, defendants must file and  
6 serve their reply in support of their motion for summary judgment.

7         7.         Plaintiff's request for a copy of the Local Rules is GRANTED. Docket # 103. A  
8 copy of the Northern District of California's Civil Local Rules has been sent to him in a separate  
9 envelope.

10                 IT IS SO ORDERED.

11 Dated: January 13, 2015

  
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SUSAN ILLSTON  
United States District Judge