

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)

SCHEDULING ORDER

Plaintiff,

v.

CITY OF SANTA CLARA; et al.,

Defendants.

This action was stayed on May 19, 2012 due to criminal cases pending against plaintiff. Those cases eventually were resolved against plaintiff and, at plaintiff's request, the court lifted the stay. The parties have filed case management statements at the court's request. Having reviewed those statements, the court now issues this scheduling order to move this case toward resolution.

Discovery: Discovery should be in progress; the order lifting the stay authorized the parties to resume their discovery efforts immediately.

Defendants are granted leave to conduct the deposition of plaintiff in prison. *See* Fed. R. Civ. P. 30(a)(2)(B).

Defendants have proposed in their case management statement a discovery cut-off of June 1, 2015, and dispositive motions to be filed at or about that time. This seems to be far more time than is necessary in light of the facts, claims and defenses in this action. Also, the parties had a few months to conduct discovery before the first round of dispositive motions. *See* Docket # 8 at 5 (order of service permitted discovery to commence). The court will require that

1 dispositive motions be filed in late 2014, and the discovery can be completed before then with
2 diligence by all parties.

3 Plaintiff has stated in his case management statement that he anticipates using written
4 depositions. He is free to do so in compliance with Rule 31 of the Federal Rules of Civil
5 Procedure, but the court provides this cautionary information. The deposition upon written
6 questions procedure may sound like an inexpensive way for a prisoner to do discovery but
7 usually is not. A deposition upon written questions is covered by Rule 31 of the Federal Rules
8 of Civil Procedure. The deposition upon written questions basically would work as follows. The
9 prisoner would send out a notice of deposition that identifies (a) the deponent (i.e., the witness),
10 (b) the officer taking the deposition, (c) a list of the exact questions to be asked of the witness,
11 and (d) the date and time for the deposition to occur. The defendants would have time to send
12 to the prisoner written cross-examination questions for the witness, the prisoner would then have
13 time to send to defendants written re-direct questions for the witness, and the defendants would
14 have time to send to the prisoner written re-cross-examination questions for the witness. When
15 all the questions --without any answers-- are ready, the prisoner would send them to the
16 deposition officer and the officer would take the deposition of the witness. The questions are
17 read by the deposition officer, the responses are reported by a court reporter and the transcript
18 is prepared as it would be for an oral deposition. The deposition officer does not stray from the
19 written script of questions and asks only those questions that are on the list from the prisoner and
20 defendants. To depose a non-party on written questions, that witness must be subpoenaed. To
21 obtain a deposition upon written questions, the prisoner thus has to pay the witness fee,
22 deposition officer fee, court reporter fee, and the cost of a transcript of the proceedings. The
23 procedure is not much cheaper than an oral deposition unless there are substantial travel
24 expenses that would be incurred to bring the witness to the prisoner or the prisoner to the
25 witness. In addition to the cost, the evidence-gathering ability in such a deposition is quite
26 limited. The requirement that the questions all be written and shared in advance means that there
27 is no opportunity for follow-up questions when a witness makes a statement that is unexpected.
28 Finally, poorly worded questions will often result in useless answers.

1 Dispositive motions: In order to expedite the resolution of this case, the following
2 briefing schedule for dispositive motions is set:


3 a. No later than **December 12, 2014**, defendants must file and serve a motion
4 for summary judgment or other dispositive motion. If defendants are of the opinion that this case
5 cannot be resolved by summary judgment, defendants must so inform the Court prior to the date
6 the motion is due. If defendants file a motion for summary judgment, defendants must provide
7 to plaintiff a new *Rand* notice regarding summary judgment procedures at the time he files such
8 a motion. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012). (The court provided such a
9 notice in the order of service, but it must be provided again at the time the dispositive motion
10 is filed.) If the motion is based on non-exhaustion of administrative remedies, defendants must
11 comply with the notice and procedural requirements in *Albino v. Baca*, 747 F.3d 1162 (9th Cir.
12 2014).

13 b. Plaintiff's opposition to the summary judgment or other dispositive motion
14 must be filed with the court and served upon defendant no later than **January 23, 2015**. Plaintiff
15 must bear in mind the notice and warning regarding summary judgment provided in the order
16 of service as he prepares his opposition to any motion for summary judgment.

17 c. If defendants wish to file a reply brief, the reply brief must be filed and
18 served no later than **February 6, 2015**.

19 IT IS SO ORDERED.

20 Dated: July 21, 2014



SUSAN ILLSTON
United States District Judge

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