

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLES HOLMES,

Plaintiff,

v.

DR. ESTOCK, DR. BAL, S. CHAIKEN, C.
REGULES, AND DOES 1-3,

Defendants.

Case No.: 16cv2458-MMA(BLM)

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR EXTENSION OF TIME AND FOR THE APPOINTMENT OF COUNSEL

[ECF No. 18]

On November 15, 2017, Plaintiff filed a "REQ. FOR EXTENSION OF TIME TO FILE EXPERT WITNESS REBUTTAL" that was accepted by the Court on discrepancy on November 27, 2017. See ECF Nos. 17-18. Plaintiff seeks to continue the November 17, 2017 deadline for supplemental disclosures regarding contradictory or rebuttal evidence by sixty days. Id. at 2. In support, Plaintiff states that he is restricted in what he can do due to the fact that he is *pro se* and incarcerated. Id. at 1. Plaintiff notes that this is his first request for an extension of time. Id. In further support, Plaintiff's expert, Dr. Dudley Seth Danoff, submitted a letter to the Court stating that he needs an additional thirty to forty five days to complete his report and that he has not yet received the medical opinion provided to Defendants so that he may provide any necessary rebuttal. See ECF No. 19.

Good cause appearing, Plaintiff's request for a continuance is **GRANTED** as follows:

Event	Current Date	Continued Date
Rule 26 Supplemental Disclosures	November 17, 2017	January 19, 2018
Completion Expert Disc.	December 22, 2017	February 16, 2018

1	Pre-Trial Mtn Filing	January 22, 2018	March 19, 2018
2	Cutoff		
3	Mandatory Settlement	April 9, 2018	June 7, 2018
4	Conference	at 9:30 a.m.	at 1:30 p.m.
5	Confidential Statements	March 30, 2018	May 29, 2018
6	Motions in Limine	April 23, 2018	VACATED ¹
7	Oppositions to Motions	May 7, 2018	VACATED
8	In limine		
9	Memo of Contentions	April 23, 2018	VACATED
10	Of Fact and Law		
11	Compliance with Pre-	April 23, 2018	VACATED
12	Trial Disclosure Reqs.		
13	Rule 16.l(f)(4)	April 30, 2018	VACATED
14	Narrowing Of Triable		
15	Issues Mtg.		
16	Produce Pre-Trial Order	May 7, 2018	VACATED
17	Proposed Final Pretrial	June 8, 2018	VACATED
18	Conference. Order		
19	Served/Lodged		
20	Final Pretrial Conf.	May 21, 2018	VACATED
21		at 3:00 p.m.	
22	Trial	June 19, 2018	VACATED
23	Proposed Jury Instructions	June 14, 2018	VACATED

¹ If appropriate, following the filing of an order ruling on a motion for summary judgment or other dispositive pretrial motion, or in the event no such motion is filed, Judge Anello will issue a pretrial scheduling order setting a pretrial conference, trial date, and all related pretrial deadlines. The parties must review and be familiar with Judge Anello's Civil Chambers Rules, which provide additional information regarding pretrial scheduling.

1 All other requirements and guidelines remain as previously set. See ECF No. 9.

2 In addition to the continuance, Plaintiff requests that the Court appoint counsel to represent
3 him "due to the complexity of the medical complaint at issue." ECF No. 18 at 1-2. The
4 Constitution provides no right to appointment of counsel in a civil case unless an indigent litigant
5 may lose his physical liberty if he loses the litigation. Lassiter v. Dep't of Soc. Servs., 452 U.S.
6 18, 25 (1981). However, under 28 U.S.C. § 1915(e)(1), courts are granted discretion to appoint
7 counsel for indigent persons under "exceptional circumstances." Agyeman v. Corr. Corp. of Am.,
8 390 F.3d 1101, 1103 (9th Cir. 2004). A finding of exceptional circumstances demands at least
9 "an evaluation of the likelihood of the plaintiff's success on the merits and an evaluation of the
10 plaintiff's ability to articulate his claims 'in light of the complexity of the legal issues involved.'"
11 Id. (quoting Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)).

12 Thus far, Plaintiff has drafted and submitted pleadings and motions without the assistance
13 of counsel. See Docket. In addition to the instant motion, he has submitted a complaint (ECF
14 No. 1), a motion to proceed *in forma pauperis* (ECF No. 2), and a motion for preliminary
15 injunction (ECF No. 12). From the Court's review of these documents, it is clear that Plaintiff is
16 able to articulate the claims of his case. The Court previously denied Plaintiff's request for
17 counsel [see ECF No. 16] and Plaintiff's current request does not provide any new facts justifying
18 such an extraordinary remedy. ECF No. 18. Further, Plaintiff does not demonstrate a likelihood
19 of success on the merits such that his case should be classified as an "exceptional
20 circumstance[]." Agyeman, 390 F.3d at 1103; see also Wilborn, 789 F.2d at 1331. Because
21 Plaintiff has not alleged the requisite "exceptional circumstances" at this time, the Court **DENIES**
22 without prejudice Plaintiff's request for appointment of counsel.

23 **IT IS SO ORDERED.**

24
25 Dated: 12/1/2017


26 Hon. Barbara L. Major
27 United States Magistrate Judge
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