

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 MICHAEL E. CLARK,)
4)
5 Plaintiff,)
6 vs.)
7 JOHN THOMAS,)
8 Defendant.)
9

Case No.: 2:09-cv-02272-GMN-GWF

ORDER

10 This is a civil rights action filed by pro se Plaintiff Michael Clark, a former inmate with
11 the Nevada Department of Corrections (“NDOC”). Pending before the Court is Defendant John
12 Thomas’s Motion to Vacate Trial Deadlines (ECF No. 78).

13 **I. BACKGROUND**

14 Plaintiff alleges that on November 9, 2008, Defendant Thomas, a former corrections
15 officer at Southern Desert Correctional Center (“SDCC”) allowed another inmate, Dalvon Terry,
16 access to the yard in Plaintiff’s lock down segregation unit in order for Terry to assault Plaintiff.

17 This action was originally filed in state court and removed to this Court in November
18 2009. (ECF No. 1.) In July 2010, the Complaint was screened pursuant to 28 U.S.C. § 1915A,
19 and dismissed without prejudice for failure to state a claim, and Plaintiff was given leave to
20 amend. (ECF No. 20.) Plaintiff filed his First Amended Complaint on August 19, 2010. (ECF
21 No. 21.) The First Amended Complaint was screened, and Plaintiff’s claim for injunctive relief
22 and his claim against Defendant in his official capacity were dismissed without prejudice,
23 leaving Plaintiff’s claim for monetary damages against Defendant in his individual capacity.
24 (ECF No. 25.)

25 Defendant then filed his Answer on August 22, 2011 (ECF No. 36), and subsequently

1 filed a Notice (ECF No. 43) informing the Court of the parties' failed efforts to comply with the
2 Court's order directing them to submit a proposed discovery plan. In the Notice, Defendant
3 stated that Plaintiff refused to sign the proposed discovery plan/scheduling order and had
4 indicated his intent to file a motion to compel instead. (ECF No. 43.)

5 Plaintiff's Motion to Compel (ECF No. 41) was filed on October 24, 2011, requesting
6 production of the investigative report prepared by the NDOC Inspector General's Office, which
7 Defendant submitted to the Court under seal (see ECF Nos. 45-47) and served upon Plaintiff
8 (see ECF No. 51).

9 A Scheduling Order was issued by the Court on October 27, 2011 (ECF No. 44). The
10 Scheduling Order set the discovery deadline as February 17, 2012, and set March 29, 2012 as
11 the deadline to file dispositive motions. (ECF No. 44.) The Court set a deadline of January 30,
12 2012, for any motions or stipulations to extend discovery. (ECF No. 44.)

13 Plaintiff filed a Motion for Summary Judgment (ECF No. 55) on February 13, 2012,
14 which is now fully briefed. Plaintiff also filed an improper discovery request that was stricken
15 by the Court. (See ECF Nos. 56, 60.)

16 On March 29, 2012, Defendant filed a motion requesting an extension of time to file
17 dispositive motions (ECF No. 65), which was granted by the Court (ECF No. 66). Defendant
18 filed his Motion for Summary Judgment (ECF No. 69) on April 27, 2012.

19 On December 21, 2011, the Court set trial deadlines requiring submission of trial
20 documents by May 24, 2012, setting calendar call for May 29, 2012, and jury trial for June 5,
21 2012. (ECF No. 53.) Defendant's counsel contacted Plaintiff on May 9, 2012, to request a
22 stipulation to extend those deadlines, and Plaintiff refused. (See ECF No. 78.) Defendant then
23 filed the instant motion to vacate trial deadlines. (ECF No. 78.)

24 **II. LEGAL STANDARD**

25 The decision to grant or deny a continuance lies within the discretion of the Court. Rios-

1 Berrios v. I.N.S., 776 F.2d 859, 862 (9th Cir. 1985). Four factors are considered: (1) the likeli-
2 hood a continuance would satisfy the need for which it was requested; (2) the inconvenience to
3 the court, parties, and witnesses; (3) the extent of harm to the movant resulting from the denial
4 of a continuance; and (4) the movant's diligence in readying his case for trial. United States v.
5 2.61 Acres of Land, 791 F.2d 666, 671 (9th Cir. 1985) (citing United States v. Flynt, 756 F.2d
6 1352, 1359 (9th Cir. 1985), amended, 764 F.2d 675 (9th Cir. 1985)).

7 **III. DISCUSSION**

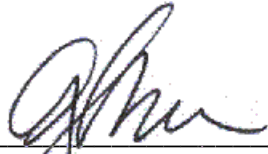
8 Defendant moves to vacate the trial deadlines because the parties' motions for summary
9 judgment are still pending and/or unripe. Currently, Plaintiff's Response to Defendant's Motion
10 for Summary Judgment is due May 21, 2012. Furthermore, a joint pretrial order has not yet been
11 filed, because the deadline to file a joint pretrial order is thirty (30) days after the Court's ruling
12 on the dispositive motions. See D. Nev. R. 26-1(e)(5). Finally, Plaintiff is still attempting to
13 conduct discovery (see ECF No. 73), which indicates that Plaintiff is also not prepared for trial.

14 For these reasons alone, the Court agrees with Defendant that the trial deadlines set forth
15 in the Court's December 21, 2011, Minute Order should be vacated. Also, there is no indication
16 that Defendant's diligence in readying his case for trial is lacking so as to justify denial of the
17 motion. For the reasons discussed, the Court also finds that denying the motion would result in
18 inconvenience to the Court, the parties and witnesses, and harm to Defendant. After receipt of
19 the parties' joint pretrial order, the Court will reset the trial deadlines, if necessary.

20 **IV. CONCLUSION**

21 **IT IS HEREBY ORDERED** that Defendant's Motion to Vacate Trial Deadlines (ECF
22 No. 78) is **GRANTED**.

23 DATED this 16th day of May, 2012.

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Gloria M. Navarro
United States District Judge