

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TRACYE BENARD WASHINGTON,

Plaintiff,

v.

J. SERRATO, et al.,

Defendants.

Case No. 22-cv-05832 BLF (PR)

**ORDER DENYING REQUESTS FOR  
EXPERT WITNESSES, SUBPOENA,  
AND TO DEPOSE BY WRITTEN  
INTERROGATORIES; GRANTING  
EXTENSION OF TIME TO FILE  
OPPOSITON**

(Docket Nos. 25, 27, 26, 28, 29)

Plaintiff, a California inmate, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against prison staff at Salinas Valley State Prison (“SVSP”), where he was formerly housed. On May 3, 2023, the Court found the complaint stated cognizable claims of excessive force and conspiracy to commit an assault, and ordered the matter served on Defendants. Dkt. No. 9. On January 29, 2024, Defendants E. Guijarro, B. Akins, A. Serrato, and C. Diaz filed a motion for summary judgment on the merits as well on the grounds that Plaintiff failed to exhaust administrative remedies and they are entitled to qualified immunity. Dkt. No. 21. Plaintiff’s motion for an extension of time to file opposition was granted, such that his opposition is currently due by April 26, 2024. Dkt. No. 24.

Plaintiff has filed several requests: (1) request for expert medical witness under

1 FRCP No. 706, Dkt. No. 25; (2) request for issuance of subpoenas, Dkt. No. 26; (3)  
2 request to depose Defendants and non-party witness with written interrogatories, Dkt. No.  
3 27; (4) ex parte request for court appointed expert to examine his wheelchair, Dkt. No. 28;  
4 and (5) court appointed expert witness to examine photographic evidence, Dkt. No. 29.

5 In his first request for an expert witness, Plaintiff asserts that he is not qualified to  
6 make medical determinations and that this case will require expert testimony regarding the  
7 injuries he sustained during the altercation at issue. Dkt. No. 25 at 1. This request is  
8 DENIED because expert medical testimony is not necessary to decide Plaintiff's excessive  
9 force claim at summary judgment. Because the facts will be construed in the light most  
10 favorable to Plaintiff, he need only submit evidence that establishes that a genuine issue of  
11 material fact exists to oppose Defendants' summary judgment motion.

12 Plaintiff's request for a subpoena to be issued to the Warden of Salinas Valley State  
13 Prison is DENIED without prejudice. Dkt. No. 26. Plaintiff should first seek to obtain  
14 discovery from Defendants rather than from a third party and abide by the Federal Rules of  
15 Civil Procedure in doing so.

16 Plaintiff's request to depose all Defendants and non-parties in the form of written  
17 interrogatories is DENIED as unnecessary because leave of court is not required under  
18 Rule 31(a)(1). Dkt. No. 27.

19 Plaintiff requests an expert witness to examine his "Driver model wheelchair"  
20 which was exchanged for his "Medline model wheelchair" to dispute the cause of his  
21 injuries during the altercation at issue. Dkt. No. 28. He also requests an expert witness to  
22 examine photographs submitted by Defendants and test whether Defendants' version of  
23 events is plausible. Dkt. No. 29. The motions are DENIED because the cause and extent  
24 of Plaintiff's injuries are not at issue at this stage of the proceedings, and Defendants'  
25 version of events may be disputed by Plaintiff's declaration.

26 Because Plaintiff is still seeking discovery, the Court will *sua sponte* grant him  
27 additional time to file his opposition. Plaintiff's opposition to Defendants' summary  
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judgment motion shall be filed **no later than May 24, 2024**, which is an extension of twenty-eight days from the current deadline.

Defendants shall file a reply brief **no later than fourteen (14) days** after Plaintiff's opposition is filed.

This order terminates Docket Nos. 25, 26, 27, 28, and 29.

**IT IS SO ORDERED.**

**Dated:**   April 2, 2024  



BETH LABSON FREEMAN  
United States District Judge

United States District Court  
Northern District of California