

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Lopez v. Lee

No. 23-cv-03660-HSG (N.D. Cal. July 16, 2025) · No. 23-cv-03660-HSG · Decided July 16, 2025

SUMMARY

The United States District Court for the Northern District of California granted nunc pro tunc extensions concerning briefing on a motion to compel and granted Defendants’ request to extend the dispositive-motion deadline. The court denied Plaintiff’s renewed request for appointment of counsel, granted his request to attend future depositions by videoconference, and reset the discovery and dispositive-motion briefing schedule.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Haywood S. Gilliam, Jr.
JURISDICTION	United States District Court for the Northern District of California
DECIDED	July 16, 2025
DOCKET	23-cv-03660-HSG
DISPOSITION	other
PROCEDURAL POSTURE	Omnibus order resolving requests for extensions of time, appointment of counsel, and attendance at depositions in a pending pro se prisoner civil-rights action under 42 U.S.C. § 1983.
STANDARD OF REVIEW	Requests for extensions and deposition-related relief were evaluated for good cause. Appointment of counsel was evaluated under the exceptional-circumstances standard, considering the likelihood of success on the merits and the plaintiff's ability to articulate his claims in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	Unknown; district court order with no reported citation
PARTIES	Andrew Lopez v. M. Lee, et al.

TOPICS

- discovery dispute
- civil procedure
- civil rights
- section 1983
- prisoners rights

PRACTICE AREAS

Civil rights

Prisoner civil rights

Civil procedure

QUESTIONS PRESENTED

1. Whether good cause supported extensions of time for defendants to oppose plaintiff's second motion to compel, for plaintiff to file a reply, and for defendants to file a dispositive motion.
2. Whether plaintiff had shown exceptional circumstances warranting appointment of counsel under 28 U.S.C. § 1915(e)(1).
3. Whether plaintiff should be permitted to attend depositions taken by defendants and receive related logistical assistance.

HOLDINGS

1. An indigent civil litigant is entitled to appointed counsel only in exceptional circumstances, evaluated by considering both the likelihood of success on the merits and the litigant's ability to articulate claims pro se in light of the complexity of the legal issues. Plaintiff did not establish exceptional circumstances.
2. Upon a showing of good cause, the court may grant nunc pro tunc extensions of time for filing opposition, reply, and dispositive-motion papers.
3. Plaintiff was permitted to attend any depositions taken by defendants, and defendants were ordered to provide timely notice and coordinate with the institution to facilitate his attendance by videoconference.

KEY QUOTATIONS

“The Court DENIES Plaintiff’s renewed request for counsel, Dkt. No. 63, for lack of exceptional circumstances.” (at 1)

“A finding of “exceptional circumstances” requires an evaluation of the likelihood of the plaintiff’s success on the merits and an evaluation of the plaintiff’s ability to articulate his claims pro se in light of the complexity of the legal issues involved.” (at 2)

“The request for appointment of counsel is therefore DENIED for lack of exceptional circumstances without prejudice to the Court sua sponte appointing counsel in the future should the circumstances so require.” (at 2)

FACTUAL BACKGROUND

Andrew Lopez is incarcerated at San Quentin State Prison and filed a pro se § 1983 action based on events at Pelican Bay State Prison. Defendants sought additional time to oppose a second motion to compel and to file a dispositive motion, while Lopez sought additional time to reply and requested appointment of counsel and assistance attending future depositions. Defendants did not oppose Lopez's deposition-attendance request and agreed to coordinate with the institution to facilitate his participation by videoconference.

PROCEDURAL HISTORY

Plaintiff, an inmate proceeding pro se, brought a § 1983 action concerning events at Pelican Bay State Prison. The court addressed defendants' requests for extensions of time to oppose a motion to compel and file a

dispositive motion, plaintiff's related request for additional time to reply, plaintiff's renewed request for appointment of counsel, and plaintiff's request to attend depositions. The court granted the extension and deposition-related requests, denied appointment of counsel without prejudice, deemed the previously filed opposition and reply timely, and reset the discovery and dispositive-motion deadlines.

DISPOSITION

other

CASES CITED

- *Lassiter v. Dep't of Social Services*
- *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)
- *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
ANDREW LOPEZ, Case No. 23-cv-03660-HSG 8 Plaintiff, OMNIBUS ORDER GRANTING
NUNC PRO TUNC REQUEST FOR 9 v. EXTENSION OF TIME TO FILE OPPOSITION AND
REPLY TO DKT. 10 M. LEE, et al., NO. 57; GRANTING REQUEST FOR EXTENSION OF
TIME TO FILE 11 Defendants. DISPOSITIVE MOTION; DENYING REQUEST FOR
APPOINTMENT OF 12 COUNSEL; RESETTING BRIEFING SCHEDULE 13 Re: Dkt.

Nos. 58, 60, 61, 63, 64 14 15 16 Plaintiff, an inmate currently housed at San Quentin State Prison
has filed a pro se civil 17 rights action pursuant to 42 U.S.C. § 1983 regarding events that occurred
at Pelican Bay State 18 Prison ("PBSP") while he was housed there. This order addresses: (1)
Defendants' request for an 19 extension of time to file their opposition to Plaintiff's second motion
to compel (Dkt.

No. 57), 20 Dkt. No. 58; (2) Plaintiff's request for an extension to file his reply in support of his
second 21 motion to compel (Dkt. No. 57), Dkt. No. 60; (3) Defendants' second request for an
extension of 22 time to file their dispositive motion, Dkt. No. 61; (4) Plaintiff's renewed request
for appointment 23 of counsel, Dkt. No. 63; and (5) Plaintiff's request to attend depositions and
for orders facilitating 24 presence, Dkt.

No. 64. 25 I. Dkt. Nos. 58, 60 26 Good cause being shown, the Court GRANTS nunc pro tunc
Defendants' request for an 27 extension of time to file their opposition to Plaintiff's second motion
to compel (Dkt. No. 57), 1 motion to compel (Dkt. No. 57), Dkt. No. 60. Defendants' opposition
(Dkt. No. 59) and 2 Plaintiff's reply (Dkt. No. 62) are deemed timely filed.

3 II. Dkt. Nos. 63, 64 4 Plaintiff has filed a renewed request for appointment of counsel. Plaintiff
has filed a 5 request to attend depositions and for the following orders: (1) an order requiring

Defendants to 6 provide him with timely notice of any deposition that they intend to take, and (2) any and all 7 orders enabling his presence via video-conference during these depositions.

Dkt. No. 64. 8 Defendants do not oppose this request and have agreed to make arrangements with the institution 9 where Plaintiff is incarcerated to facilitate his presence at future depositions. Dkt. No. 65. As 10 discussed further below, the Court DENIES Plaintiff's renewed request for appointment of 11 counsel, Dkt. No. 63, and GRANTS Plaintiff's request to attend depositions and for orders 12 facilitating attendance, Dkt.

No. 64. 13 Renewed Request for Appointment of Counsel. Plaintiff has requested that the Court 14 appoint him counsel for the following reasons: Plaintiff is unable to afford counsel; Defendants 15 and their agents are lying to defense counsel and in turn defense counsel is making false claims to 16 the court, including falsely stating that Plaintiff does not have legal property in storage at SQRC; 17 defense counsel has sought an extension of time to depose approximately 15 witnesses and 18 Plaintiff requires counsel to protect these interests because he is unable to attend these depositions 19 due to his incarceration; Defendants are delaying and obstructing Plaintiff's access to discovery, in 20 particular by producing inaccurate and unreliable records and by obstructing access to phone 21 records stored by a non-party; and Plaintiff has made efforts to obtain counsel but has been 22 unsuccessful.

Plaintiff also argues that counsel is necessary because Defendants have admitted 23 that this case is complex; and Plaintiff is entitled to judgment against defendant Cross; and this 24 case will require further discovery. See generally Dkt. No. 63. 25 The Court DENIES Plaintiff's renewed request for counsel, Dkt. No. 63, for lack of 26 exceptional circumstances.

There is no constitutional right to counsel in a civil case unless an 27 indigent litigant may lose his physical liberty if he loses the litigation. See *Lassiter v. Dep't of* 1 unable to afford counsel." 28 U.S.C. § 1915(e)(1). Appointing counsel is within the court's 2 discretion and is granted only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 3 1328, 1331 (9th Cir.

1986) (referring to 28 U.S.C. § 1915(d), which was subsequently renumbered 4 to 28 U.S.C. § 1915(e)(1)). A finding of "exceptional circumstances" requires an evaluation of the 5 likelihood of the plaintiff's success on the merits and an evaluation of the plaintiff's ability to 6 articulate his claims pro se in light of the complexity of the legal issues involved.

See *Agyeman v. 7 Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). Both of these factors must be 8 viewed together before reaching a decision on a request for counsel under § 1915. See *id.* At this 9 stage of the action, it is unclear whether Plaintiff will succeed on the merits and Plaintiff has ably 10 litigated the case thus far.

The Court has reviewed the record and finds that Plaintiff's belief that 11 Defendants are deliberately obstructing justice, making false representations, providing misleading 12 evidence in

response to discovery requests, and preventing Plaintiff from obtaining relevant 13 documents is unfounded.

In addition, Defendants have agreed to facilitate Plaintiff's presence at 14 depositions of third-party witnesses, Dkt. No. 65, and the Court has instructed the Clerk to send 15 Plaintiff copies of subpoenas. The request for appointment of counsel is therefore DENIED for 16 lack of exceptional circumstances without prejudice to the Court sua sponte appointing counsel in 17 the future should the circumstances so require.

Dkt. No. 63. 18 Request to Attend Depositions. Good cause being shown, the Court GRANTS Plaintiff's 19 request to attend any depositions taken by Defendants. The Court ORDERS Defendants to 20 provide Plaintiff with timely notice of the depositions and make arrangements with the institution 21 where Plaintiff is incarcerated to facilitate his presence at future depositions.

The Court requests 22 that the CDCR ensure Plaintiff's presence via video-conference at these depositions. The Court 23 ORDERS the Clerk to send a courtesy copy of this order to the litigation coordinator at San 24 Quentin Rehabilitation Center. 25 III. Dkt. No. 61 26 Good cause being shown, Defendants' request for an extension of time to file their 27 dispositive motion is GRANTED.

Dkt. No. 61. The Court resets the briefing schedule as follows.] dispositive motion by October 31, 2025. Plaintiff shall file his opposition to the dispositive 2 |} motion by December 1, 2025. Defendants shall file their reply by December 19, 2025. 3 CONCLUSION 4 As detailed above, the Court ORDERS as follows. 5 1.

The Court GRANTS nunc pro tunc Defendants' request for an extension of time to 6 || file their opposition to Plaintiff's second motion to compel (Dkt. No. 57), Dkt. No. 58; and 7 || Plaintiffs request for an extension to file his reply in support of his second motion to compel 8 (Dkt. No. 57), Dkt. No. 60.

The Court deems Defendants' opposition (Dkt. No. 59) and □□□□□□□□□□ 9 || reply (Dkt. No. 62) are timely filed. 10 2. The Court GRANTS Plaintiffs request to attend any depositions taken by 11 Defendants. The Court ORDERS Defendants to provide Plaintiff with timely notice of the 12 || depositions and make arrangements with the institution where Plaintiff is incarcerated to facilitate E 13 his presence at future depositions.

The Court requests that the CDCR ensure Plaintiffs presence 14 || via video-conference at these depositions. The Court ORDERS the Clerk to send a courtesy copy 3 15 of this order to the litigation coordinator at San Quentin Rehabilitation Center. 16 3.

The Court GRANTS Defendants' request for an extension of time to file their i 17 || dispositive motion. Dkt. No. 61. The Court resets the briefing schedule as follows. The parties Z 18 shall conclude discovery by September 30, 2025. Defendants shall file their dispositive motion by 19 || October 31, 2025. Plaintiff shall file his opposition to the dispositive motion by December 1, 20 || 2025.

Defendants shall file their reply by December 19, 2025. 21 4. The Court ORDERS the Clerk to send Plaintiff ten (10) copies of the Court's 22 || subpoena form. 23 This order terminates Dkt. Nos. 58, 60, 61, 63, 64. 24 IT IS SO ORDERED. 25 || Dated: July 16, 2025 26 ¢ Maepureed 43 Mdl_). HAYWOOD S. GILLIAM, JR. 27 United States District Judge 28