

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.

OPINION

Lopez v. Lee

PER CURIAM.

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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

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