

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Cesar N. Hernandez v. A. Constable, et al.

Hernandez v. Constable · No. 2:19-cv-02195-DC-SCR · Decided October 16, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 CESAR N. HERNANDEZ, No. 2:19-cv-02195-DC-SCR 12 Plaintiff, 13 v.
ORDER 14 A. CONSTABLE, et al., (Doc. Nos. 152, 155, 159, 161) 15 Defendants. 16 17
Plaintiff Cesar N. Hernandez is a state prisoner appearing pro se and in forma pauperis in 18 this
civil rights action pursuant to 42 U.S.C. § 1983.

The matter will proceed to jury trial on 19 October 20, 2025, on Plaintiff’s claim against
Defendants A. Constable, S. Sharma, and J. 20 Serwanga for deliberate indifference to his serious
medical needs in violation of the Eighth 21 Amendment. 22 Plaintiff has filed several documents
(styled as objections, motions, and requests) 23 concerning the upcoming trial.

(Doc. Nos. 152, 155, 159, 161.) The court addresses Plaintiff’s 24 filings below. 25 A. Plaintiff’s
Objection and Motion (Doc. No. 152) 26 On August 18, 2025, Plaintiff filed an “objection and
motion” requesting the court permit 27 him to introduce as trial exhibits the court’s findings and
recommendations and order issued on 28 April 27, 2022, and August 5, 2022, respectively, in
which the court denied Defendants’ motion 1 for summary judgment.

(Doc. No. 152.) 2 A court may grant summary judgment on a claim if the moving party shows
“[t]here is no 3 genuine dispute as to any material fact and the movant is entitled to judgment as a
matter of law.” 4 Fed. R. Civ. P. 56(a).

The court, not jury, is tasked with ruling on a summary judgment motion. 5 Id. The standard the
court applies in deciding a motion for summary judgment is different from 6 the standard the jury
must apply in deciding the claim here. See *Shoraka v. Bank of Am., N.A.*, 7 No. 23-cv-00309-
DOC, 2024 WL 3468756, at *4 (C.D. Cal. Jan. 18, 2024) (finding the inclusion 8 of the court’s
prior orders on dispositive motions likely to confuse the jury and unduly prejudice 9 the
defendant).

Accordingly, the court will deny Plaintiff’s request to introduce the court 10 documents at issue on
relevancy grounds. Fed. R. Evid. 401. Even if the evidence was relevant, 11 the court documents
would be excluded pursuant to Federal Rule of Evidence 403, as the 12 probative value of those
court documents is substantially outweighed by the potential for 13 confusing the issues and
misleading the jury.

14 B. Plaintiff's Objection and Pretrial Motion (Doc. No. 155) 15 On September 2, 2025, Plaintiff filed an "objection and pretrial motion" requesting the 16 court strike Defendants' affirmative defenses pursuant to Federal Rule of Civil Procedure 12(f). 17 (Doc. No. 155.) Plaintiff also objects to Defendants' substitution of a witness on their witness list.

18 (Id.) Specifically, Plaintiff objects to the substitution of Elizabeth Campos as a trial witness 19 because Ms. Campos was not listed as a witness in the court's final pretrial order. (Id. at 4–5.) 20 Federal Rule of Civil Procedure 12(f) provides: 21 "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

The court 22 may act:... on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after 23 being served with the pleading." 24 Fed. R. Civ. P. 12(f)(2) (emphasis added).

Because a response to an answer is not allowed, a 25 motion to strike affirmative defenses raised in an answer must be filed within 21 days after 26 service of the answer. Here, Defendants properly raised their affirmative defenses in their answer, 27 and Plaintiff did not timely file a motion to strike. (Doc. No. 29 at 4–6.)

Therefore, Plaintiff's 28 motion to strike will be denied as untimely. 1 As to the substitution of Ms. Campos on Defendants' witness list, Ms. Campos is no 2 longer identified as a witness on Defendants' updated trial witness list, filed on October 10, 2025. 3 (Doc. No. 166.)

Accordingly, Plaintiff's objection to Defendants calling Ms. Campos as a witness 4 will be denied as having been rendered moot by Defendants' updated witness list. 5 C. Plaintiff's Request for Subpoena (Doc. No. 159) 6 On September 22, 2025, Plaintiff filed a request for the court to issue a subpoena for 7 inmate Realious Cyprian to appear as a trial witness.

(Doc. No. 159.) On September 26, 2025, 8 Defendants filed an opposition to Plaintiff's request. (Doc. No. 162.) In general, Defendants 9 assert Plaintiff failed to list Mr. Cyprian as a potential trial witness during discovery and in his 10 pretrial filings. (Id.) 11 In the final pretrial order, the court noted that other than the potential witnesses listed in 12 the order, no other witness will be permitted to testify unless: (1) the witness could not reasonably 13 have been discovered prior to pretrial; (2) the court and the opposing party were promptly notified 14 upon discovery of the witnesses; (3) if time permitted, the party proffered the witness for 15 deposition; and (4) if time did not permit, a reasonably summary of the witnesses' testimony was 16 provided to the opposing party.

(Doc. No. 146 at 6.) Mr. Cyprian is not listed in the final pretrial 17 order, and Plaintiff has not made the necessary showing described in the final pretrial order to 18 permit him to testify. 19 Accordingly, Plaintiff's request for a subpoena is denied. 20 D. Plaintiff's Request for Jury

Instructions (Doc. No. 161) 21 On September 22, 2025, Plaintiff filed a request for the court to send him jury instructions 22 for the trial.

(Doc. No. 161.) The court will grant Plaintiff's request as consistent with the court's 23 trial procedures. The court will provide all parties with a copy of the civil jury instructions during 24 the trial. 25 Accordingly, for the reasons explained above: 26 1. Plaintiff's objection and motion to permit him to introduce the court's orders as 27 evidence (Doc.

No. 152) is DENIED; 28 2. Plaintiff's motion to strike Defendants' affirmative defenses (Doc. No. 155) is 1 DENIED; 2 3. Plaintiff's objection to Elizabeth Campos being called by Defendants at trial (Doc. 3 No. 155) is DENIED as having been rendered moot; 4 4. Plaintiffs request for subpoena (Doc. No. 159) is DENIED; and 5 5. Plaintiffs request for jury instructions (Doc.

No. 161) is GRANTED. 6 7 IT IS SO ORDERED.: 9 | Dated: _ October 15, 2025 Cs Dena Coggins 10 United States District Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28