

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Mark A. Fregia v. Chen, et al.

Fregia v. Chen · No. 1:20-cv-01024-KES-EPG (PC) · Decided December 9, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends denying plaintiff Mark A. Fregia’s motion for a default ruling. The court concludes that the defendant was not required to file a motion to secure the attendance of unincarcerated witnesses who agreed to testify voluntarily. The findings and recommendations were issued with a thirty-day period for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 9, 2025
DOCKET	1:20-cv-01024-KES-EPG (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations on plaintiff's motion for a default ruling in a prisoner civil-rights action proceeding toward trial.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- default judgment
- default
- prisoners rights
- section 1983
- civil procedure

PRACTICE AREAS

- civil rights
- civil procedure
- prisoner litigation

QUESTIONS PRESENTED

1. Whether plaintiff was entitled to a default ruling or preclusion of defendant's witnesses because defendant did not file a motion for attendance of unincarcerated witnesses by the scheduling-order deadline.

HOLDINGS

1. Under the court's scheduling order, no motion was required for unincarcerated witnesses who agreed to testify voluntarily; therefore, defendant's failure to file such a motion by the deadline did not warrant a default ruling or witness preclusion.

KEY QUOTATIONS

"It is the responsibility of the party who has secured an unincarcerated witness's voluntary attendance to notify the witness of the time and date of trial. No action need be sought or obtained from the Court." (1)

FACTUAL BACKGROUND

The action concerns plaintiff's Eighth Amendment claim that defendant Gosso denied him medications while he was confined at the Substance Abuse Treatment Facility and State Prison in Corcoran, California. Plaintiff argued that defendant's witnesses should be precluded from testifying because defendant had not filed a motion for attendance of unincarcerated witnesses by the September 29, 2025 deadline. Defendant's pretrial statement identified unincarcerated witnesses who agreed to testify voluntarily.

PROCEDURAL HISTORY

Mark A. Fregia, a state prisoner proceeding pro se and in forma pauperis, brought a 42 U.S.C. § 1983 action alleging deliberate indifference to serious medical needs. The case proceeded to trial on an Eighth Amendment claim against defendant Gosso. Plaintiff moved for a default ruling based on the alleged failure to file a motion concerning attendance of unincarcerated witnesses. The magistrate judge recommended denial, subject to objections and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

Chen

PER CURIAM.

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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

8 9 MARK A. FREGIA, Case No. 1:20-cv-01024-KES-EPG (PC) 10 Plaintiff,

11 FINDINGS AND RECOMMENDATIONS,

v. RECOMMENDING THAT PLAINTIFF'S

12 MOTION FOR DEFAULT RULING BE

CHEN, et al.,

DENIED

13 Defendants. (ECF Nos. 208) 14

OBJECTIONS, IF ANY, DUE WITHIN

15 THIRTY (30) DAYS

16 17 18 Mark A. Fregia is a state prisoner proceeding pro se and in forma pauperis in this civil 19
rights action filed pursuant to 42 U.S.C. § 1983. The case proceeds to trial on plaintiff's Eighth
Amendment claim against defendant Gosso for deliberate indifference to serious medical needs 20
for allegedly denying Plaintiff medications while he was confined at the Substance Abuse 21
Treatment Facility and State Prison (SATF) in Corcoran, California. 22 On October 24, 2025,
Plaintiff filed a motion for default ruling regarding Defendant's 23 failure to submit a list of un-
incarcerated witnesses by September 29, 2025. (ECF No. 208). 24 For the reasons set forth below,
the Court recommends denying Plaintiff's motion for a 25 default ruling. 26 \\\ 27 \\\ 28

1 I. BACKGROUND

2 On October 24, 2025, Plaintiff filed a motion for default ruling (ECF No. 208). Plaintiff 3 argues
that he should be entitled to a default judgment in this action because Defendant failed to 4 file
any motion for un-incarcerated witnesses and as a result, should be precluded from calling 5 any
of Defendant's witnesses at trial. (Id., p. 3). Specifically, Plaintiff's alleges that Defendant has
"attempted to submit (10) expert witness [sic], no limited to (9) CDCR staff who don't 6 qualify as
expert issues or merit expert witness jury instructions, credentials, or to be respected to 7 testify as
such." (Id., p.2) Plaintiff argues these witnesses should be precluded because they were 8 not
mentioned in a motion for attendance of un-incarcerated witnesses. (Id.). 9

II. ANALYSIS

10 The Court recommends that Plaintiff's motion for default ruling be denied because it 11
misconstrues the requirements for a party to bring an un-incarcerated witness who agrees to 12
voluntarily testify. 13 In support of his motion Plaintiff points to the Court's order (ECF No. 194),
which 14 granted Plaintiff an extension of time to file a motion for attendance of witnesses. (ECF
No. 193) 15 until September 29, 205. However, the extension applied to the portion of the Court's
second 16 issued scheduling order, which set out "Procedures for Obtaining Attendance of Un-
incarcerated 17 witness who refuse to testify voluntarily. (ECF No. 182, p. 4) (emphasis added).
As the Court's 18 second scheduling order also explained, no motion was required for a party to
bring un- 19 incarcerated witnesses who agree to testify voluntarily. (Id., p.5). 20 Specifically, the
order states:

1. Procedures for Obtaining Attendance of Unincarcerated Witnesses Who Agree to

21 Testify Voluntarily: It is the responsibility of the party who has secured an unincarcerated
witness's 22 voluntary attendance to notify the witness of the time and date of trial. No action need
23 be sought or obtained from the Court. (Id.). 24 Defendant's pre-trial statement identifies

witnesses who are un-incarcerated and agree to 25 testify voluntarily. Thus, Defendant was not required to submit a motion to secure the attendance 26 of these witnessed by the September 29, 2025 deadline. 27 \\\ 28 1 Accordingly, the Court recommends denying Plaintiff's motion for a default ruling. (ECF 2 | No. 208). 3

I. CONCLUSION AND RECOMMENDATIONS

‘ Accordingly, IT IS RECOMMENDED as follows: ° 1. Plaintiff's motion for default ruling be DENIED. (ECF No. 208). 6 These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b) (1). Within thirty (30) 8 days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s 10 Findings and Recommendations.” Any objections shall be limited to no more than fifteen (15) pages, including exhibits. Plaintiff is advised that failure to file objections within the specified 12 time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 14 15 | IT IS SO ORDERED. pated: _ December 8, 2025 hey —

17 UNITED STATES MAGISTRATE JUDGE

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