

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2008 OCT 22 AM 8:23

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

REPUTY

RAUL MEZA,

PLAINTIFF,

V.

CAUSE NO. A-05-CA-1008-LY

BRAD LIVINGSTON, EXECUTIVE
DIRECTOR OF THE TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE, IN HIS OFFICIAL
CAPACITY; BRIAN COLLIER,
DIRECTOR OF THE TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE PAROLE DIVISION, IN HIS
OFFICIAL CAPACITY; AND RISSIE L.
OWENS, JOSE ALISEDA, CHARLES
AYCOCK, CONRITH DAVIS, JACKIE
DENOYELLES, LINDA GARCIA, AND
JUANITA M. GONZALES, IN THEIR
OFFICIAL CAPACITIES AS MEMBERS
OF THE TEXAS BOARD OF PARDONS
AND PAROLES,

DEFENDANTS.

ORDER

Before the Court is the above-entitled and numbered cause. Pending in this cause are Defendant Livingston and Collier's Motion for Summary Judgment with Brief in Support filed March 14, 2007 (Clerk's Document 109), Defendant Collier's Motion for Summary Judgment with Brief in Support filed March 14, 2007 (Clerk's Document 110), and Plaintiff Meza's Motion for Partial Summary Judgment filed March 14, 2007 (Clerk's Document 112), which this Court referred to United States Magistrate Judge Andrew Austin for report and recommendation on May 1, 2007

(Clerk's Document 157). *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72; Loc. R. W.D. Tex. App. C, 1(d). It is **ORDERED** that the referral of such motions to Magistrate Judge Austin is hereby **WITHDRAWN**.

Collier's above-referenced motion for summary judgment pertains to Meza's claims against him in his individual capacity. On June 15, 2007, Plaintiff Raul Meza and Defendants stipulated to the dismissal of Meza's claims against Defendant Brian Collier in his individual capacity (Clerk's Document 218). The Court therefore **DISMISSES** Collier's Motion for Summary Judgment with Brief in Support (Clerk's Document 110).

Also pending before the Court are Defendants' Opposed Joint Motion to Stay Pretrial Hearing and Trial Setting with Brief in Support filed June 5, 2007 (Clerk's Document 206), Defendants' Opposed Joint Motion to Stay Compliance with Local Rule CV-16(e) with Brief in Support filed June 15, 2007 (Clerk's Document 213), Defendants' Opposed Second Motion to Stay Pretrial Hearing and Trial Setting with Brief in Support filed June 19, 2007 (Clerk's Document 225), and Defendants Owens, Aliseda, Davis, Denoyelles, Aycock, Garcia, and Gonzales' Motion to Cancel the Trial Setting and Motion to Issue New Scheduling Order filed June 25, 2007 (Clerk's Document 240). Such motions pertain to the Court's final-pretrial-conference setting on June 26, 2007, and related requirements, and are therefore moot. The motions are hereby **DISMISSED**.

Also pending before the Court is Plaintiff's *Daubert* Challenge to Defendants' Expert Designation filed June 21, 2007 (Clerk's Document 233). By his motion, Meza asks the Court to exclude the testimony of Vivian Heine or her designee. Livingston and Collier would have been required to file a response to such motion on or before July 2, 2007, but filed their notice of interlocutory appeal on June 22, 2007, before the response time had run. *See* Loc. R. W.D. Tex. CV-

7(d) (requiring party opposed to motion to respond within eleven days of service of motion). However, the motion has been pending on this Court's docket since the Fifth Circuit's mandate on the interlocutory appeal was filed on August 18, 2008 (Clerk's Document 286). To date, Defendants have not filed a response to Meza's motion to exclude Vivian Heine's testimony, and the Court may therefore grant the motion as unopposed. *See id.* (allowing district court to grant motion as unopposed if no timely response is filed). Plaintiff's *Daubert* Challenge to Defendants' Expert Designation (Clerk's Document 233) is therefore **GRANTED** as unopposed.

SIGNED this 21st day of October, 2008.



LEE YEAKEL
UNITED STATES DISTRICT JUDGE