

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

Salvador Solis

Plaintiff,

vs.

C/O McKesson

Defendant.

No. CV 05-345- JMR

ORDER

The present action before the Court originated in the Eastern District of California, but was reassigned on November 25, 2008, to Chief Judge John M. Roll of the District of Arizona. Plaintiff Salvador Solis is a state prisoner proceeding pro se and *in forma pauperis* in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff’s original complaint, filed March 11, 2005, alleged that Defendant McKesson used excessive force against Plaintiff in violation of the Eighth Amendment.

I. Amended Complaint

On November 27, 2007, Plaintiff was granted leave to file an amended complaint “for the limited purpose of adding a retaliation claim against Defendant McKesson for events occurring before March 11, 2005.” (Order of November 27, 2007 at 8.) Plaintiff was specifically warned in that same Order that “the failure to comply with th[e November 27, 2007 Order] will result in a recommendation that this action be dismissed.” (Order of November 27, 2007 at 8.)

Subsequently, on August 4, 2008, Plaintiff filed an Amended Complaint, which was answered by Defendant McKesson on September 17, 2008. Unfortunately, Plaintiff failed to comply with the November 27, 2007 court order, in that Plaintiff named two new defendants—“Harrtman, the Control Tower Correctional Officer/Building D5,” and “W.S. Wadkins, as Correctional Lieutenant/Facility D”—neither of which have ever been served. The Order of November 27, 2007 directed Plaintiff to file an Amended Complaint for “the limited purpose of adding a retaliation claim against Defendant McKesson.” Plaintiff therefore violated that order and is thus barred from adding any new defendants at this late date. Defendants “Harrtman,” and “W.S. Wadkins” are accordingly dismissed from this case.

II. Discovery Motions

There are three motions currently pending before the Court: Defendant’s Motion to Compel (Doc. No. 67), filed on June 9, 2009, Plaintiff’s “Request for Specific Items of Discovery,” (Doc. No. 60), and Plaintiff’s “Application for Order Appointing Discovery Referee to Supervise any Prison Setting Deposition of this Plaintiff” (Doc. No. 61). Both of Plaintiff’s motions were filed prior to the reassignment of this case from the Eastern District of California to the District of Arizona, and no response was filed by Defendant to either motion. Likewise, no response was filed by Plaintiff to Defendant’s June 9, 2009 motion to compel.

Because the intervening event of the reassignment of this case from California to Arizona may have served as a source of confusion to the parties regarding when they were required to file responses, and because a new scheduling order will be issued today

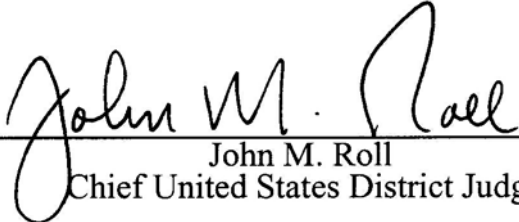
in conjunction with the instant order, these three motions are denied as premature. The parties may re-file any of the three motions (assuming no motion has since become moot), in accordance with the new scheduling order.

Accordingly,

IT IS HEREBY ORDERED that Defendants Harrtman and Wadkins are **DISMISSED** from Plaintiff's Amended Complaint (Doc. No. 51).

IT IS FURTHER ORDERED that Defendant's Motion to Compel (Doc. No. 67), Plaintiff's "Request for Specific Items of Discovery," (Doc. No. 60), and Plaintiff's "Application for Order Appointing Discovery Referee" (Doc. No. 61), are **DENIED as premature**. Provided none of the motions have since become moot, any party may re-file any or all of the three above-referenced motions, in accordance with the new scheduling order issued jointly with today's order.

Dated this 1st day of September, 2009.



John M. Roll
Chief United States District Judge