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

SILVESTER GOMEZ,

Plaintiff,

Case No. 1:06-cv-00491 ALA (P)

vs.

CHENIK, M.D., et al.,

ORDER

Defendants.

_____ /

On April 27, 2009, Defendants Thirakomen and Hasadsri (“Defendants”) filed a motion for summary judgment contending “that the undisputed facts show that Defendants were not deliberately indifferent to Plaintiff, that Defendant Hasadsri did not retaliate against Plaintiff, and that Defendants are entitled to qualified immunity” because their conduct was objectively reasonable. (Doc. 63 at 1, 3). Defendants conclude that Plaintiff Silvester Gomez (“Plaintiff”) has not met his evidentiary burden to succeed on his Eighth Amendment deliberate indifference claim and First Amendment retaliation claim, and therefore, summary judgment is appropriate. (*Id.* at 15).

Defendants’ motion for summary judgment, however, does not address Plaintiff’s allegation that Defendant Hasadsri “violated [his] Fourteenth Amendment right to due process when [Defendant Hasadsri] intentionally, willfully, maliciously and deliberately delayed and

1 withheld Plaintiff[']s C.D.C. 602.” (Doc. 1 at 29 ¶ 126). Plaintiff asserts that Defendant
2 Hasadsri’s conduct “interfered with and delayed [his] right to petition” and also “unnecessarily
3 subjected him to prolonged pain and suffering” (*Id.* at 30 ¶¶ 128, 129).

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. Defendants are requested to file a supplemental letter brief on or before May 8,
6 2009, advising the court whether they are not seeking summary judgment
7 regarding Plaintiff’s Fourteenth Amendment due process claim; and
- 8 2. Plaintiff may file a response to Defendants’ supplemental letter brief on or before
9 May 19, 2009.

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11 DATED: May 1, 2009

12 /s/ Arthur L. Alarcón
13 UNITED STATES CIRCUIT JUDGE
14 Sitting by Designation
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