

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HOWARD YOUNG,

1:07-cv-01121-GSA-PC

Plaintiff,

v.

ORDER DENYING MOTIONS FOR
SERVICE, DISCOVERY, AND
APPOINTMENT OF COUNSEL

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
et al.,

(Docs. 44, 48, 50.)

Defendants.

I. BACKGROUND

Plaintiff, Howard Young ("plaintiff"), is a prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on August 2, 2007. (Doc. 1.) On August 15, 2007, plaintiff consented to Magistrate Judge jurisdiction, and no other parties have appeared in this action. (Doc. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the Magistrate Judge shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

On August 31, 2009, plaintiff filed the first amended complaint. (Doc. 9.) On March 5, 2009, the court dismissed the first amended complaint, with leave to amend. (Doc. 19.) On August

31, 2009, plaintiff filed the second amended complaint. (Doc. 42.) On June 21, 2010, the court screened the second amended complaint and found only one cognizable claim, for retaliation against defendant Officer Barron. (Doc. 55.) Plaintiff has been granted leave to file a third amended complaint or to proceed on the claim found cognizable by the court. Id.

On November 20, 2009, plaintiff filed a motion for leave to conduct discovery, in order to request production of his medical records. (Doc. 44.) On January 27, 2010, plaintiff filed a motion for the court to direct the United States Marshal to effectuate service of process upon defendants. (Doc. 48.) On April 19, 2010, plaintiff filed a motion for service of process by the Marshal, for leave to conduct discovery, and for appointment of counsel. (Doc. 50.) These motions are now before the court.

II. DISCOVERY

Plaintiff is advised that the time for discovery in this action has not commenced. The court shall establish a discovery schedule at a later date by issuing a scheduling order which shall be served upon all parties to this action.¹ Until then, plaintiff may not pursue discovery in this action, and defendants may disregard any pending discovery requests which have been served upon them by plaintiff. Therefore, plaintiff's motions for leave to conduct discovery shall be denied.

III. SERVICE OF PROCESS

With respect to service, the court will, *sua sponte*, direct the United States Marshal to serve the complaint only after plaintiff's cognizable claims against defendants have been determined. At this stage of the proceedings, plaintiff must either file a Third Amended Complaint or choose to proceed only against Officer Barron, pursuant to the court's order of June 21, 2010. If plaintiff files a Third Amended Complaint, service shall not be initiated until sometime after the court screens the Third Amended Complaint. Accordingly, plaintiff's motion for the court to immediately initiate service upon defendants shall be denied.

¹At this juncture, plaintiff has been instructed, by separate order, to either file a Third Amended Complaint or notify the court that he is willing to proceed on the claim in the Second Amended Complaint found cognizable by the court. (Doc. 55.) No party except plaintiff has appeared in this action. The court will issue a scheduling order at a later stage of the proceedings establishing dates for discovery, after defendants have been served and an answer has been filed by one or more defendants.

1 **IV. APPOINTMENT OF COUNSEL**

2 The court issued an order on June 14, 2010, denying the motion for appointment of counsel
3 filed by plaintiff on June 7, 2010. (Doc. 54.) The June 14, 2010 order also resolved plaintiff's
4 motion for appointment of counsel filed on April 19, 2010.

5 **V. CONCLUSION**

6 Based on the foregoing, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's motions for leave to conduct discovery, filed on November 20, 2009 and
8 April 19, 2010, are DENIED;
- 9 2. Plaintiff's motion for the court to immediately initiate service of process, filed on
10 April 19, 2010, is DENIED; and
- 11 3. Plaintiff's motion for appointment of counsel, filed on April 19, 2010, is
12 RESOLVED.

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14 IT IS SO ORDERED.

15 **Dated: June 22, 2010**

16 /s/ Gary S. Austin
17 UNITED STATES MAGISTRATE JUDGE
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