

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

1 31, 2009, plaintiff filed the second amended complaint. (Doc. 42.) On June 21, 2010, the court
2 screened the second amended complaint and found only one cognizable claim, for retaliation against
3 defendant Officer Barron. (Doc. 55.) Plaintiff has been granted leave to file a third amended
4 complaint or to proceed on the claim found cognizable by the court. Id.

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

11 **II. DISCOVERY**

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

17 **III. SERVICE OF PROCESS**

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

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26 _____
27 ¹At this juncture, plaintiff has been instructed, by separate order, to either file a Third Amended Complaint
28 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.

IV. APPOINTMENT OF COUNSEL

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

V. CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that:

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

IT IS SO ORDERED.

Dated: June 22, 2010

/s/ **Gary S. Austin**
UNITED STATES MAGISTRATE JUDGE