

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

FATEEM L. JACKSON,	CASE NO. 1:07-cv-01414-LJO-SMS PC
Plaintiff,	ORDER DENYING MOTION AS
v.	PREMATURE
	(Doc. 37)
CDCR EMPLOYEES, et al.,	
Defendants.	

Plaintiff Fateem L. Jackson, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 27, 2007. This action is proceeding on Plaintiff’s amended complaint, filed June 24, 2008, against Defendants Selbach, Rubin, Ortiz, Payan, Pantoja, Wood, Yoder, Fernandez, Carrasco, and Zanchi for violating Plaintiff’s rights under the Fourth and Fourteenth Amendments of the United States Constitution.

Defendants Selbach, Rubin, Payan, Pantoja, Wood, Yoder, Carrasco, and Zanchi waived service and filed a motion to dismiss on November 23, 2009, but the United States Marshal was unable to identify and serve Defendants Ortiz and Fernandez. On February 1, 2010, Plaintiff filed a motion seeking leave to conduct discovery to gather further information so that Defendants Ortiz and Fernandez may be served with process.

Plaintiff’s claims against Defendants Ortiz and Fernandez arise from the same events as his claims against Defendants Selbach, Rubin, Payan, Pantoja, Wood, Yoder, Carrasco, and Zanchi. Therefore, resolution of Defendants Selbach, Rubin, Payan, Pantoja, Wood, Yoder, Carrasco, and Zanchi’s motion to dismiss for failure to exhaust and on qualified immunity grounds will affect

1 whether or not Plaintiff's claims against Ortiz and Fernandez remain viable.<sup>1</sup> If the motion to  
2 dismiss is granted based on Plaintiff's failure to exhaust or because Defendants are entitled to  
3 qualified immunity, Plaintiff's claims against all of the named defendants will be dismissed. If the  
4 motion is denied, Defendants Selbach, Rubin, Payan, Pantoja, Wood, Yoder, Carrasco, and Zanchi  
5 will be directed to file an answer, at which point a scheduling order will be issued, allowing Plaintiff  
6 to initiate discovery and submit further information regarding Defendants Ortiz and Fernandez.

7 Because the continued viability of Plaintiff's claims against Defendants Ortiz and Fernandez  
8 is dependent upon resolution of Defendants Selbach, Rubin, Payan, Pantoja, Wood, Yoder, Carrasco,  
9 and Zanchi's pending motion to dismiss, Plaintiff's motion to open discovery at this juncture to  
10 obtain further information on Defendants Ortiz and Fernandez is premature and is HEREBY  
11 ORDERED DENIED on that ground.

12  
13 IT IS SO ORDERED.

14 **Dated: February 4, 2010**

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 

---

<sup>1</sup> Plaintiff's opposition to the motion to dismiss was filed on February 1, 2010. Defendants were apparently previously served with the opposition, as they filed their reply on January 14, 2010. The motion to dismiss is deemed submitted, and will be resolved in due course. Local Rule 230(l).