

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

NICOLAS MORAN,

Plaintiff,

v.

JOHN DOVEY, et al.,

Defendants.

CASE NO. 1:08-cv-00016-AWI-SMS PC

ORDER DENYING PLAINTIFF’S MOTION

(Doc. 38)

Plaintiff Nicolas Moran, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 3, 2008, and the United States Marshal was directed to initiate service of process on June 12, 2009. On October 5, 2009, Plaintiff filed a motion seeking a court order requiring Defendants to reply to his second amended complaint.

Defendants are not obligated to respond to the complaint unless they either waive service or are personally served. Until waivers of service or notices that personal service was effected are filed with the Court by the Marshal’s Office, neither Plaintiff nor the Court has any way of knowing when, or even if, Defendants’ response is due.

In this instance, Defendants Aguilar, Chesley, Garza, and Harden have either waived service or been personally served because they filed a request for an extension of time to file their response, which has been granted. Service on Defendants Moreno and Perez is still outstanding, and the Marshal was not able to locate Defendant Hill. The issue of service on Defendant Hill will be addressed when the status of service on Moreno and Perez becomes known to the Court.

///

1 It is the duty of the Marshal's Office and the Court to ensure that service is completed, if  
2 possible. The Court will make determinations and issue orders as deemed appropriate. If further  
3 information is needed from Plaintiff, he will be notified via order. Otherwise, in due course either  
4 service will be completed or the service documents will be returned un-executed.

5 Plaintiff's motion for an order requiring Defendants to file a response to his second amended  
6 complaint is HEREBY DENIED. While service is in progress and being handled at an  
7 administrative level by the Court, any further inappropriate motions regarding service will be  
8 stricken from the record.

9  
10 IT IS SO ORDERED.

11 **Dated:** October 22, 2009

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE