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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

CHARLES AUSTIN PARKS,  
CDCR #K-72151,  
  
Plaintiff,  
  
v.  
  
R. TAIT, et al.,  
  
Defendants.

Case No. 08-CV-1031-H (JMA)

**ORDER (1) DENYING PLAINTIFF'S MOTION TO DIRECT UNITED STATES MARSHAL TO SERVE DEFENDANT MORENO [Doc. 43], (2) DENYING PLAINTIFF'S MOTION TO STRIKE PORTION OF DEPOSITION [Doc. 43], AND (3) GRANTING PLAINTIFF'S APPLICATION FOR AN EXTENSION OF TIME TO DISCLOSE CONTRADICTORY OR REBUTTAL EXPERT INFORMATION [Doc. 44]**

On December 14, 2009, Plaintiff filed two documents setting forth three separate requests of the Court. The Court shall discuss each of Plaintiff's requests in turn.

**A. Motion to Direct United States Marshal to Serve Defendant Moreno**

On August 27, 2009, the Court granted Plaintiff's motion to direct the United States Marshal to re-attempt service on Defendant LVN Moreno (hereinafter "Defendant Moreno"). The Court ordered the Deputy Attorney General assigned to the case, who at that time was Samantha Ramsey, Esq., to obtain Defendant Moreno's last known address from the California Department of Corrections and Rehabilitation ("CDCR") and provide the information to the U.S. Marshal in a confidential memorandum. See Doc.

1 27. Ms. Ramsey complied with the Court's order. See Doc. 29. On November 12,  
2 2009, a Process Receipt and Return form filed with the Court indicated that Moreno was  
3 no longer employed at California State Prison, Corcoran, and had no forwarding  
4 address. See Doc. 36. Plaintiff now again asks the Court to direct the U.S. Marshal to  
5 serve Defendant Moreno.

6 Plaintiff's motion is **DENIED**. The U.S. Marshal has already attempted service  
7 upon Defendant Moreno at her last known address, provided by the Deputy Attorney  
8 General via information received from the CDCR, without success. Any further attempt  
9 by the U.S. Marshal to serve Defendant Moreno, without a valid address, would be  
10 futile. Although Plaintiff is entitled to rely on service of the summons and complaint by  
11 the U.S. Marshal, the U.S. Marshal can attempt service only after it has been provided  
12 with the necessary information to effectuate service. See, e.g., Puett v. Blandford, 912  
13 F.2d 270, 275 (9th Cir. 1990). It is generally up to the *plaintiff* to provide such  
14 information. Id.

15 **B. Motion to Strike Portion of Deposition**

16 Plaintiff states that his deposition was taken by Deputy Attorney General Ramsey  
17 on October 30, 2009. He now seeks to strike his testimony regarding the actions of  
18 Defendant Moreno on the basis that Ms. Ramsey was not, and is not, Defendant  
19 Moreno's attorney of record. Plaintiff's motion is **DENIED**. Ms. Ramsey was perfectly  
20 entitled to seek testimony from Plaintiff regarding Defendant Moreno's actions so long  
21 as the information sought was relevant to the claims or defenses in the case, which,  
22 clearly, it was. See Fed. R. Civ. P. 26(b)(1). The fact that Ms. Ramsey does not, and  
23 did not, represent Defendant Moreno has no bearing on the issue.

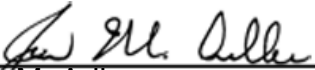
24 **C. Application for an Extension of Time to Disclose Contradictory or Rebuttal**  
25 **Expert Information**

26 On November 24, 2009, the Court issued an order granting Defendants' request  
27 for an extension of time, until May 24, 2010, to provide expert reports. See Doc. 40.  
28 Plaintiff now requests that he be provided with additional time to disclose contradictory

1 or rebuttal expert information. Plaintiff's request is **GRANTED**. Any contradictory or  
2 rebuttal expert information shall be disclosed on or before June 21, 2010.

3 **IT IS SO ORDERED.**

4 DATED: December 16, 2009

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6 Jan M. Adler  
7 U.S. Magistrate Judge

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