

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

ROBERTO A. SOTELO,

CASE NO. 1:08-cv-01342-LJO-SKO

Plaintiff,

ORDER GRANTING MOTION TO AMEND,
VACATING HEARING DATE, DIRECTING
CLERK'S OFFICE TO FILE SECOND
AMENDED COMPLAINT, AND REQUIRING
DEFENDANTS TO FILE A RESPONSE
WITHIN THIRTY DAYS

v.

T. BIRRING, et al.,

Defendants.

(Docs. 81 and 82)

ORDER REQUIRING PLAINTIFF TO NOTIFY
COURT WITHIN TEN DAYS WHETHER HE
INTENDS TO EFFECT SERVICE ON
DEFENDANT GREEN

Plaintiff Roberto A. Sotelo, a state prisoner proceeding in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 10, 2008. This action is currently proceeding on Plaintiff's amended complaint, filed February 24, 2009, against Defendants Birring, Das, Diep, and Coleman for acting with deliberate indifference to Plaintiff's medical needs, in violation of the Eighth Amendment.

On February 29, 2012, Plaintiff filed a motion seeking leave to file a second amended complaint. Fed. R. Civ. P. 15(a). The motion is currently set for hearing on April 4, 2012, at 9:30 a.m. before the undersigned. Defendants filed a statement of non-opposition to the motion on March 14, 2012. Local Rule 230(c).

Accordingly, it is HEREBY ORDERED that:

1. Plaintiff's motion to amend is GRANTED;
2. The hearing set for April 4, 2012, at 9:30 a.m. is VACATED;

- 1 3. The Clerk’s Office shall file the second amended complaint (Exhibit A, Doc. 81-1);
2 4. Defendants Birring, Das, Diep, and Coleman shall file their response to the second
3 amended complaint within **thirty (30) days** from the date of service of this order; and
4 5. Plaintiff’s counsel shall notify the Court within **ten (10) days** whether he intends to
5 have service of the second amended complaint effected on Defendant Green or
6 whether he wants the Court to order the United States Marshal to effect service.¹

7
8
9
10 IT IS SO ORDERED.

11 **Dated:** March 22, 2012

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

12
13
14
15
16
17
18
19
20
21
22
23
24
25 ¹ In light of the scheduling order in place, the Court suggests that it may be best serve the resources of all
26 involved if Plaintiff’s counsel and Defendants’ counsel are able to reach an agreement regarding the appearance of
27 defense counsel on behalf of Defendant Green. However, Defendant Green is not required to waive formal service
28 as outlined in Federal Rule of Civil Procedure 4 and should he decline to do so, Plaintiff is entitled to service by the
Marshal in light of his in forma pauperis status. 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3).

If Defendants’ counsel cannot or will not agree to appear on behalf of Defendant Green and Plaintiff seeks
service by the USM, Plaintiff’s counsel shall confirm for the Court Defendant’s medical licence number to ensure
accuracy of service. California Medical Board records list only one Barry Green, who resides out of state.