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

DERRICK J. THOMAS,

Plaintiff,

v.

STANISLAUS COUNTY, et al.,

Defendants.

CASE NO. 1:09-cv-02015-AWI-SKO PC

ORDER DISCHARGING ORDER TO SHOW  
CAUSE AND PROVIDING PLAINTIFF  
THIRTY DAYS WITHIN WHICH TO NOTIFY  
COURT IF FURTHER DISCOVERY IS  
NEEDED, LIMITED TO DEFENDANT  
LEGURIA

(Docs. 34 and 35)

Plaintiff Derrick J. Thomas, a prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 17, 2009. This action is proceeding against Defendants Stanislaus County Board of Supervisors, Stanislaus County Sheriff’s Department, Sheriff Adam Christianson, Policy Manager Gina Leguria, Captain William Duncan, Lieutenants Ronald Lloyd and Gregg Clifton, and Sergeant M. White arising out of the failure to provide Plaintiff with adequate outdoor exercise. This matter is currently set for jury trial on July 9, 2013.

On October 4, 2012, the Court ordered Defendant Leguria and Defendants’ counsel to show cause why sanctions should not be imposed based on Defendant’s failure to file a response to Plaintiff’s complaint, as represented by Defendant and her counsel on May 3, 2012. (Docs. 29, 30.) Defendant Leguria subsequently filed an answer on October 4, 2012, and in as much as this appears to have been an isolated oversight, the Court elects to discharge the order to show cause at this time. Chambers v. NASCO, Inc., 501 U.S. 32, 43-4, 111 S.Ct. 2123 (1991).

In her response filed on May 3, 2012, Defendant Leguria stated that the scheduling order in effect did not need to be amended. If Plaintiff believes that further discovery is needed as to

1 Defendant Leguria, he may notify the Court within thirty days from the date of service of this order.  
2 However, if Plaintiff takes the position that further discovery is needed, he is required to show due  
3 diligence in his previous pursuit of discovery and he is required to show what discovery is sought  
4 that is unique to Defendant Leguria such that it could not be obtained until she made a formal  
5 appearance in the action. Fed. R. Civ. P. 16(b)(4); Zivkovic v. Southern California Edison Co., 302  
6 F.3d 1080, 1087 (9th Cir. 2002). Plaintiff's claim against Defendants arises from the same set of  
7 facts and the issuance of this order is not an invitation to initiate discovery which could have been  
8 but was not previously sought.

9 Based on the foregoing, it is HEREBY ORDERED that:

- 10 1. The order to show cause filed on October 4, 2012, is DISCHARGED;
- 11 2. Plaintiff has **thirty (30) days** from the date of service of this order within which to  
12 notify the Court if further discovery is needed as to Defendant Leguria; and
- 13 3. If Plaintiff takes the position that further discovery is needed, he is required to  
14 support his position with a showing of good cause.

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18 IT IS SO ORDERED.

19 **Dated: October 9, 2012**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE