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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

G. J. GUTIERREZ,
Plaintiff,
v.
A. GUTIERREZ,
Defendant.

Case No. 1:13-cv-00421-DAD-SAB-PC
ORDER DIRECTING DEFENSE COUNSEL
TO FILE STATUS REPORT REGARDING
PLAINTIFF'S MEDICAL CONDITION
WITHIN FOURTEEN (14) DAYS
(ECF No. 97)

Plaintiff G. J. Gutierrez is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

This action proceeds on Plaintiff's claims against Defendant of excessive force and failure to protect in violation of the Eighth Amendment. The allegations stem from a prison disturbance that occurred at Pleasant Valley State Prison. Plaintiff is currently housed at High Desert State Prison.

1 On July 20, 2016, the Court issued an order addressing certain long-overdue discovery
2 responses from Plaintiff. (ECF No. 96.) The Court required that Plaintiff provide those responses
3 to Defendant by August 15, 2016, and warned Plaintiff that the failure to comply with that order
4 may result in sanctions, up to and including dismissal of this action. (Id. at 3-4.) The Court also
5 extended the dispositive motion deadline to September 16, 2016. (Id. at 4.)

6 On August 19, 2016, Plaintiff's father, Bruno Gutierrez, a non-party, filed a letter on
7 Plaintiff's behalf. (ECF No. 97.) The letter states that on June 26, 2016, Plaintiff was taken to
8 Renown Regional Medical Center in Reno, Nevada and was hospitalized for an unspecified
9 illness. The letter further explains that Plaintiff cannot make outside contact while hospitalized.
10 The letter concludes with a request for "the suspension of any responses due from [Plaintiff]
11 until he has the capacity to do so" and indicates it is unknown how long Plaintiff will be
12 hospitalized. (Id. at 1.)

13 On September 16, 2016, Defendants filed a motion to dismiss this action under Rule
14 41(b) for failure to prosecute, with a request for relief from the current discovery and scheduling
15 order if the matter is not dismissed. (ECF No. 98.)

16 As of the date of this order, Plaintiff's current circumstances are unknown; particularly,
17 whether he is hospitalized or is in a position to continue litigating this action. Accordingly, the
18 Court will require defense counsel to file a status report within fourteen (14) days from the date
19 of service of this order. That status report shall indicate (1) whether Plaintiff is currently
20 hospitalized or has been returned to High Desert State Prison; and (2) if Plaintiff is still
21 hospitalized, an estimation of the time when he will be released from his hospitalization, if
22 known.

23 Regarding Defendants' request for relief from the current discovery and scheduling order,
24 in lieu of resetting any dates now, the Court will address that matter after defense counsel has
25 reported on Plaintiff's current medical status.

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Accordingly, IT IS HEREBY ORDERED that defense counsel shall file a status report within fourteen (14) days from the date of service of this order, with the information indicated above.

IT IS SO ORDERED.

Dated: November 16, 2016



UNITED STATES MAGISTRATE JUDGE