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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD LEE MILLER,

Plaintiff,

No. CIV S-07-1646 LKK EFB P

vs.

JANE WOODFORD, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On June 5, 2009, he filed a motion to compel discovery. He seeks information on the whereabouts of defendant G. Costra,¹ who has yet to be served with process. Plaintiff makes two arguments in support of his request. First, he argues that the defendants have failed to comply with the initial disclosure requirement of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(a)(1).² However, actions brought without counsel by a person in custody are exempt from the rule requiring initial disclosure of certain information. Fed. R. Civ. P.

¹ On July 11, 2008, the court found that plaintiff stated claims against G. Costra.

² In support of his position, he submits a letter he wrote to defense counsel requesting that defendants comply with Rule 26(a). Pl.'s Mot. to Comp., Exh. A. He alleges that despite his letter defendants have not complied with Rule 26(a)(1).

1 26(a)(1)(B)(iv).

2 Plaintiff also argues that, independent of any obligation to comply with Rule 26(a)(1),
3 defendants have unreasonably withheld or delayed plaintiff's access to information regarding the
4 whereabouts of defendant Costra. To date, plaintiff has not been able to obtain an address where
5 this defendant can be located. On December 18, 2008, the court informed plaintiff that he could
6 seek assistance from the court if his access to this information was denied or unreasonably
7 delayed. Plaintiff asserts that he has written to counsel for the defendants who have appeared in
8 this action requesting that those defendants produce information regarding the whereabouts of
9 this defendant. In their opposition to plaintiff's motion, defendants assert that they do not have
10 this information. Plaintiff has failed to produce any evidence that the defendants'
11 representations are false or presented in bad faith or that they are deliberately denying or
12 delaying plaintiff's access to information about the whereabouts of defendant G. Costra.

13 Accordingly, it is ORDERED that plaintiff's June 5, 2009, motion to compel is denied.

14 Dated: August 25, 2009.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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