

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

CARLOS PERFINO and JESS ZURANICH,)
)
 Plaintiffs,)
)
 v.)
)
 STEVE HARDY, DIRECTOR; ELIZABETH)
 GAVIA; LORI AJAX, JUAN G. AYALA,)
 and HERIBERTO GARCIA,)
)
 Defendants.)

2:09-cv-00833-GEB-KJM

ORDER SCHEDULING BRIEFING ON
ISSUES RAISED SUA SPONTE BY
THE COURT AND A FURTHER
HEARING ON DEFENDANTS' MOTION
TO DISMISS

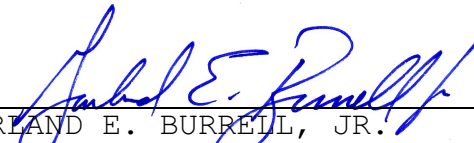
The State defendants shall respond in a filing due no later than 4:00 p.m. on March 4, 2010, to the documents plaintiffs filed on December 23, 2009 and December 30, 2009. Plaintiffs assert in those documents that the State defendants have changed their position on whether 4 CCR Section 62 applies to correctional officers. A further hearing on the pending dismissal motion is scheduled below so that this issue could be discussed.

Moreover, this case was fully scheduled in part because plaintiffs failed to inform the court in their status report, on which the judge relied before determining how to schedule the case, that two of the defendants had not been served. Plaintiffs indicated in response to a Rule 4(m) Notice issued after the judge discovered this failure that they tried to serve Juan G. Ayala, one of these unserved defendants, in April 2009, and then later in the last two weeks of December 2009. Plaintiffs have now had even more time to serve Ayala, but there is no indication in the record that he has been served. Since almost a year has passed since this case was filed, and plaintiffs still have not served Ayala, plaintiffs shall explain at

1 the hearing scheduled below why Ayala should not be dismissed without
2 prejudice. Further, no later than 4:00 p.m. on March 4, 2010,
3 plaintiffs shall file supporting authority showing the legal viability
4 of their sixth claim, in which they allege defendant Juan G. Ayala
5 aided and abetted other defendants in those defendants violation of
6 plaintiffs' federal civil rights.

7 The hearing on these matters shall commence at 9:00 a.m. on
8 March 11, 2010.

9 Dated: February 26, 2010

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13 GARIAND E. BURRELL, JR.
14 United States District Judge
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