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

TONY ASBERRY,

Plaintiff,

No. 2:09-cv-01494 MCE KJN P

vs.

MATHEW CATE, et al.,

Defendants.

ORDER

_____ /

On May 9, 2013, this court granted plaintiff's request for an extension of time within which to inform the court whether a settlement conference may be helpful in this action. The May 20, 2013 deadline has passed, and plaintiff has not responded. Nor did defendants respond to the court's order filed April 9, 2013, requesting their input regarding the advisability of a settlement conference. Therefore, this action will not be set for a settlement conference.

Mediation aside, this action proceeds on the motion for summary judgment filed by sole remaining defendant Phelps. (Defendant Hernandez was voluntarily dismissed from this action on December 26, 2012.) The motion is fully briefed and will be addressed by the court in due course. However, plaintiff's request for the court's assistance in locating two inmates, for the purpose of requesting their respective affidavits in support of plaintiff's factual allegations, will be granted, and supplemental briefing authorized.

1 Accordingly, IT IS HEREBY ORDERED that:

2 1. This action shall not be set for a settlement conference, as recommended on
3 April 9, 2013 (see ECF No. 81), but shall proceed on the merits of defendant's pending motion
4 for summary judgment (ECF No. 73).

5 2. Plaintiff's request for the court's assistance in locating two inmates (ECF No.
6 75), is granted in part:

7 a. Within seven (7) days after the filing date of this order, counsel for defendant
8 shall serve plaintiff with a short letter that contains any reasonably available information that
9 identifies the present location of inmates Johnson and Garland; defendant shall file a copy of this
10 letter with the court, omitting any specific information concerning these inmates' locations.

11 b. Within seven (7) days after service of defendant's letter, if sufficient
12 information has been provided, plaintiff may solicit the expedited affidavits from Johnson and
13 Garland (it is recommended that plaintiff request the return of such affidavits within seven (7)
14 days).

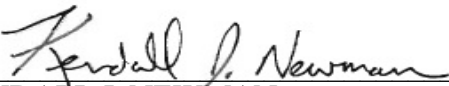
15 c. Within thirty (30) days from the filing date of this order, plaintiff may file and
16 serve a supplemental opposition to the pending motion for summary judgment that incorporates
17 one or both of the subject affidavits.

18 d. Within seven (7) days after service of plaintiff's supplemental opposition,
19 defendant may file and serve a supplemental reply.

20 e. No extensions of time will be granted.

21 SO ORDERED.

22 DATED: May 28, 2013

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25 _____
26 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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