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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

_____ /

Defendants are directed to file and serve, within ten days after the filing date of this order, a response to plaintiff’s statement filed June 27, 2007. (ECF No. 90.) Plaintiff continues to attempt to locate a Mr. Ty Edward (or Edwards) Garland, who is plaintiff’s cousin and was allegedly plaintiff’s cellmate at California State Prison-Sacramento in April 2008. Plaintiff seeks to ascertain whether Mr. Garland remains incarcerated within the California Department of Corrections and Rehabilitation (“CDCR”), so that plaintiff can request that Garland provide a declaration in support of plaintiff’s opposition to the pending motion for summary judgment.

Pursuant to plaintiff’s initial request for this information, the court facilitated plaintiff’s inter-prison correspondence with another inmate (Johnson), but found that it would be futile to authorize the same for Garland. As the court previously explained (ECF No. 87 at 1-2):

1 By order filed May 29, 2013, this court granted plaintiff's request
2 for assistance in locating two inmates, to permit plaintiff the
3 opportunity to obtain their respective affidavits in support of
4 plaintiff's factual allegations and, therefore, in opposition to
5 defendant's pending motion for summary judgment. (See ECF No.
6 84.) Plaintiff informed the court that both inmates, whose last
7 names are Johnson and Garland, had been cellmates of plaintiff.
8 (ECF No. 75.) The court directed defendant's counsel to serve
9 plaintiff with a letter setting forth the identifying information for
10 these inmates. Defendant's counsel timely responded with the
11 requisite information for Johnson, but not for Garland; counsel
12 explained that there are currently seven inmates with the last name
13 Garland, and none were cellmates of plaintiff when he was
14 incarcerated at California State Prison-Sacramento, the site of the
15 challenged conduct. Based on this information, the court finds that
16 it would be futile to require further efforts to locate inmate
17 Garland.


18 In light of plaintiff's newly alleged familial relationship with Garland, and
19 plaintiff's assertion that defendants recently informed him they have only "a small portion of
20 [plaintiff's] cell history at CSP/SAC" (ECF No. 90 at 3), the court will pursue this matter one
21 final time. The court notes, however, that current review of CDCR's online "Inmate Locator"
22 fails to identify any inmate, with the last name Garland, whose first and middle names reflect any
23 variation of "Ty" or "Edward(s)." Nevertheless, the court will again require the Attorney
24 General's Office, acting as counsel for defendants, to inform the court whether plaintiff's new
25 information is helpful in identifying the subject Mr. Garland and, if so, whether he remains
26 incarcerated within CDCR. The Attorney General's Office is directed to provide plaintiff with
the full name and CDCR Number of any former or present inmate, with the last name "Garland,"
who shared a cell with plaintiff during the entire year 2008. If such individual is identified and
remains in the custody of CDCR, defendants shall also, within the currently-imposed ten-day
period, facilitate expedited correspondence between plaintiff and Garland (and demonstrate the
initiation of that process to the court), as previously provided by CDCR for plaintiff and Johnson
(see ECF No. 88). If, on the other hand, defendants are again unable to identify a Mr. Garland
who shared a cell with plaintiff in 2008, they shall so state. (The court notes that plaintiff's
familial relationship with Garland may prove to be a more direct method for plaintiff to contact

1 him.)

2 For the foregoing reasons, IT IS HEREBY ORDERED that defendants shall,
3 within ten (10) days after the filing date of this order, file and serve a response to plaintiff's
4 statement filed June 27, 2013 (ECF No. 90), addressing the matters set forth in this order.

5 SO ORDERED.

6 DATED: July 16, 2013

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8 
9 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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