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

MILTON SYKES,

Plaintiff,

No. 2:12-cv-2570 KJM KJN P

vs.

ATHANNASIOUS, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner, currently incarcerated at the California Medical Facility, in Vacaville, California, who proceeds with appointed counsel, Mr. Isaac Fischer, for several limited purposes.<sup>1</sup> (See ECF No. 28.) Counsel was appointed in this case due to

<sup>1</sup> Mr. Fischer was appointed for the following purposes (ECF No. 28 at ):

- a. Meet and confer with plaintiff regarding the allegations and claims set forth in his complaint;
- b. Provide the U.S. Marshal with any additional information necessary to perfect service of process on all defendants;
- c. Assess whether appointment of a medical expert is appropriate and, if so, select and obtain the consulting and reporting services of such expert, subject to the court’s authorization of such expenses; and

1 plaintiff's age (78 years) and limited education, together with the apparent seriousness of  
2 plaintiff's medical issues and deliberate indifference claims.

3           Nevertheless, this action has been delayed due to the fact that one of the primary  
4 defendants, Dr. Bick, has been living outside the country for a year, to return by the end of this  
5 month, August 2013. (See ECF Nos. 42-3.) The Attorney General's office recently stated that it  
6 will accept service on behalf of Dr. Bick, but only "pending his authorization upon his return."  
7 (ECF No. 43 at 1).

8           Within the last two weeks, plaintiff, in pro se, has filed three separate motions to  
9 file an amended complaint. (See ECF Nos. 44-6.) Most significantly, plaintiff seeks to add  
10 additional defendants whom he believes are essential to his claims. Plaintiff alleges that Mr.  
11 Fischer has not been in contact with plaintiff since an initial visit, and has since refused to answer  
12 plaintiff's telephone calls or respond to plaintiff's correspondence.

13           A plaintiff who is represented by counsel is precluded from filing and serving  
14 matters in pro se. However, when it appears that a prisoner litigant and his appointed counsel  
15 are experiencing communication difficulties, the court will seek to ascertain whether the  
16 appointment should continue. Importantly, in the instant case, it is reasonable to assume that Mr.  
17 Fischer has been awaiting the return of Dr. Bick, and service of process upon him, before actively  
18 proceeding in this action. Mr. Fischer has missed no deadlines or failed to adhere to any orders  
19 of this court. Nevertheless, the court will require Mr. Fischer to respond to plaintiff's concerns,  
20 and to identify any progress he has made toward achieving the other goals of his appointment.

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24           d. Participate in an early settlement conference, if all parties request such a  
conference, after all defendants have been served.

25           The court noted that, "[i]f this action proceeds after the conclusion of an early settlement  
26 conference, Mr. Fischer's appointment will be reevaluated, including consideration whether  
counsel wishes to continue representing plaintiff through discovery, motions, a further settlement  
conference, and/or trial." (Id.)

1           Accordingly, for good cause shown, within fourteen (14) days after the filing date  
2 of this order, Mr. Fischer shall submit to the court, a confidential statement<sup>2</sup> that is responsive to  
3 plaintiff's several concerns, as set forth in his recent pleadings, supporting declarations and  
4 exhibits (ECF Nos. 44-6). Counsel shall generally inform the court of the services he has  
5 provided to date; whether counsel finds good cause for amendment of the operative complaint; or  
6 whether counsel recommends the commencement of discovery on the operative complaint, even  
7 while awaiting service of process on defendant Bick; whether counsel has assessed the  
8 appropriateness of a medical expert and, if so, whether counsel has selected one; the reasons  
9 underlying each of these assessments; and whether counsel has any reservations about continuing  
10 to represent plaintiff in this action. Counsel shall serve a copy of his statement on plaintiff, who  
11 may, within seven (7) days after service, send<sup>3</sup> a confidential responsive statement to the court's  
12 mailing address, and serve a copy on Mr. Fischer.


13           In summary, IT IS HEREBY ORDERED that:

14           1. Mr. Fischer shall, within fourteen (14) days after the filing date of this order,  
15 submit to the court, and serve on plaintiff, a confidential statement that is responsive to plaintiff's  
16 concerns (ECF Nos. 44-6).

17           2. Plaintiff may, within seven (7) days after service of counsel's statement,  
18 submit to the court, and serve on Mr. Fischer, a confidential responsive statement.

19           SO ORDERED.

20 DATED: August 8, 2013

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE

23           <sup>2</sup> Mr. Fischer shall submit his confidential statement to the undersigned at  
24 [kjnorders@caed.uscourts.gov](mailto:kjnorders@caed.uscourts.gov)

25           <sup>3</sup> Plaintiff may submit his statement by email (see n.2, supra), if available. Alternatively,  
26 plaintiff shall send his statement to the attention of the undersigned magistrate judge, at the  
United States District Court, Eastern District of California, 501 "I" Street, Sacramento CA  
95814. Upon review of the submissions the undersigned will determine whether it is appropriate  
to file the submissions, either under seal or not.