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

CARLOS CASTRO,

Plaintiff,

No. C 98-04877 WHA

v.

CAL TERHUNE, Director, CALIFORNIA
DEPARTMENT OF CORRECTIONS, G. BONNIE
GARIBAY, J. BATCHELOR, S. C. WOLHWEND,
A. SCRIBNER, J. STOKES, M. YARBOROUGH,
L. HOOD, C. CAMPBELL, A. M. GONZALEZ,
M. AYALA, E. DERUSHA, c/o ROBERT L. L.
AYERS, Warden, and J. MARTINEZ,

Defendants.

**ORDER REGARDING
PLAINTIFF'S
APPLICATION FOR AN
ORDER TO SHOW CAUSE**

Plaintiff has filed an “application for order to show cause for failure to comply with subpoena and for violation of court order,” requesting that the Court order defense counsel, Attorneys Kenneth Roost and Brendan Kenny, to show cause why they should not be found in contempt of court. This application concerns the objections of Attorneys Roost and Kenny to plaintiff’s counsel taking their depositions.


As background, the order denying defendants’ motion for summary judgment as to the 2009 validation allowed further discovery, including “probing under oath the bona fides of defense counsel’s excuse that it did not occur to them to place a litigation hold on the evidence” (Dkt. No. 368). However, that order also stated, “there will be no need for the discovery,” if defendants choose to forgo trial and agree to carry out another validation procedure — fashioned by the Court — of plaintiff in lieu of the 2009 validation. In response, defendants agreed to forgo

1 trial and revalidate plaintiff if briefing was allowed on the procedure for revalidation, discovery
2 was stayed, and plaintiff agreed to forgo attorney's fees (Dkt. No. 370). Responsive briefing was
3 ordered and the parties are set to appear for a further case management conference on October 28,
4 2010.

5 Given that defendants have agreed to forgo trial, assuming certain conditions, we are not
6 yet at the point of there being "no need for the discovery," as forecasted in the order denying
7 summary judgment, but whether we will get there is currently being addressed by the parties'
8 briefing. If the Court can fashion a new validation procedure and defendants continue to agree to
9 forgo trial on that basis, there will be, as stated, "no need for the discovery." Thus, in the
10 meantime, **DISCOVERY IS STAYED.**

11 **IT IS SO ORDERED.**

13 Dated: October 8, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE