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

TODD ASHKER,

Plaintiff,

v.

ROBERT HOREL, et al.,

Defendants.

No. 05-03759 CW

ORDER RE EX PARTE
APPLICATION AND
APPLICATION FOR
COURT TO SET
DISCOVERY
DEADLINE AND
DISPOSITIVE
MOTION FILING
DEADLINE

On October 31, 2008, Defendants filed an Ex Parte Application and Application for Court to Set Discovery Deadline and Dispositive Motion Filing Date. Civil Local Rule 7-10(a) permits the filing of ex parte motions only where authorized by statute, federal rule, local rule or standing order, unless otherwise ordered by the assigned judge.¹ Defendants cite no authority that would permit Defendants to file their motion on an ex parte basis. Accordingly, the Court sets the following briefing schedule. Plaintiff's response to Defendants' motion to set February 9, 2009, as the discovery cutoff deadline will be due November 21, 2008, and any

¹As explained in Civil Local Rule 1-5(d), "Ex parte means contact with the Court without the advance knowledge or contemporaneous participation of all other parties." While styled as an "ex parte" motion, Defendants did file a certificate of service with their ex parte application.

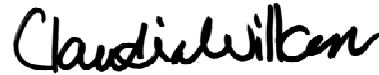
1 reply by Defendants will be due December 1, 2008. The motion will
2 be decided on the papers.

3 Defendants also move to set February 16, 2009, as the
4 dispositive motion deadline. The dispositive motion deadline was
5 previously set in the Court's Order for Service and for Protective
6 Order filed January 26, 2006. "No later than ninety days (90) days
7 from the date their answer is due, Defendants shall file a motion
8 for summary judgment or other dispositive motion." Defendants
9 filed a motion for summary judgment On September 4, 2007, and on
10 August 25, 2008, the Court issued an Order Granting Motion for
11 Summary Judgment in Part and Denying It in Part. On September 29,
12 2008, the Court set this case for trial. If Defendants want to
13 file another motion for summary judgment, Defendants will need to
14 file a motion for leave of Court to do so and to continue the
15 pretrial and trial dates.

16 IT IS SO ORDERED.

17 11/7/08

18 Dated _____



CLAUDIA WILKEN
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 ASHKER,

5 Plaintiff,

6 v.

7 ALAMEIDA ET AL et al,

8 Defendant.

Case Number: CV05-03759 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on November 7, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Brendan Maguire Kenny
16 Office of the Attorney General
17 Correctional Law Section
18 455 Golden Gate Avenue
19 Suite #11000
20 San Francisco, CA 94102

21 J. Randall Andrada
22 Andrada & Associates
23 Professional Corporation
24 180 Grand Avenue
25 Suite 225
26 Oakland, CA 94612

27 Todd A. Ashker
28 #C58191
Pelican Bay State Prison
Box 7500
Crescent City, CA 95532

Dated: November 7, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk