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6 Attorneys for Defendants

7
8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION

11 TODD L. ASHKER,

12 Plaintiff,

13 v.

14 ROBERT HOREL, et al.

15 Defendants.
16

Case No.: C 05-3759-CW

ORDER DISMISSING CLAIMS AND DEFENDANTS

RULE 41(a)(1)

17
18 Pursuant to the stipulation and voluntary dismissal, it is ORDERED that:

- 19 1. plaintiff's fifth cause of action for California state law claims of intentional tort,
20 conspiracy, negligence and medical malpractice against defendants Joe McGrath,
21 Richard Kirkland, Patrick Smith, Mark Castellaw, J.R. Cox, and Matthew Nimrod are
22 dismissed without prejudice;
- 23 2. plaintiff may only reinstate his fifth cause of action for California state law claims of
24 intentional tort, conspiracy, negligence and medical malpractice against defendants Joe
25 McGrath, Richard Kirkland, Patrick Smith, Mark Castellaw, J.R. Cox, and Matthew
26 Nimrod if this court's previous order on the defendants' motion for summary judgment
27 dated September 27, 2007 dismissing plaintiff's first cause of action for retaliation and
28 equal protection and Eighth Amendment claims is reversed on appeal and reinstated

- 1 against those defendants;
- 2 3. defendants retain all rights to oppose any such appeal;
- 3 4. plaintiff may only reinstate his state law claims against an individual defendant if the
- 4 equal protection, Eighth Amendment or retaliation claims are reversed as to that
- 5 individual defendant;
- 6 5. all other claims against defendants Joe McGrath, Richard Kirkland, Patrick Smith, Mark
- 7 Castellaw, J.R. Cox, and Matthew Nimrod not specifically excepted by this order are
- 8 dismissed with prejudice;
- 9 6. plaintiff Todd Ashker's fifth cause of action for California state law claims for
- 10 intentional tort, conspiracy, negligence and medical malpractice is dismissed with
- 11 prejudice as to all other defendants; and
- 12 7. all claims against defendants Jeanne Woodford, David Langlois, Linda Rowe, Clarene.
- 13 David, Sue Risenhoover, and Robert Horel are dismissed with prejudice.¹ [Subject to
- 14 reservation of right to appeal prior dismissal orders per stipulation.]
- 15

16 IT IS SO ORDERED

17

18 Dated: 2/27/09



19

20 By _____

21 HON. CLAUDIA WILKEN

22 UNITED STATES DISTRICT COURT

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¹ Clarene David is identified as "Ms. David" and David Langlois is identified as "D. Langlois" in the court's records.

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ASHKER,
Plaintiff,

v.

ALAMEIDA ET AL et al,
Defendant.

_____ /

Case Number: CV05-03759 CW

CERTIFICATE OF SERVICE

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

That on February 27, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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

Dated: February 27, 2009

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