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

ISIAH LUCAS, JR.,	)	No. 07-1673 CW (PR)
)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION TO AMEND COMPLAINT TO
v.	)	ADD DEFENDANTS; REQUIRING
	)	SERVICE ON CERTAIN DEFENDANTS;
LT. SILVA, et al.,	)	GRANTING SERVED DEFENDANTS'
	)	REQUEST FOR AN EXTENSION OF
Defendants.	)	TIME TO FILE DISPOSITIVE
	)	MOTION; AND SETTING BRIEFING
	)	SCHEDULES

INTRODUCTION

Plaintiff Isiah Lucas, Jr., a state prisoner incarcerated at California State Prison - Solano, filed the present pro se civil rights action under 42 U.S.C. § 1983, alleging that prison officials at the Correctional Training Facility (CTF) were deliberately indifferent to his serious medical needs while he was incarcerated there in 2006.

In an Order dated October 28, 2009, the Court reviewed the complaint and found a cognizable Eighth Amendment claim against Defendants Curry, Jarvis, Silva and Miranda for deliberate indifference to Plaintiff's serious medical needs. The Court ordered service of the complaint on these Defendants. Otherwise, the claims against "all employees" at CTF were dismissed with prejudice. Plaintiff's claim against Defendant CTF Captain I. Guerra was dismissed with leave to amend.

On November 25, 2009, Plaintiff filed an amendment to the complaint.

United States District Court
For the Northern District of California

1 In an Order dated May 6, 2010, the Court reviewed the
2 amendment to the complaint and found a cognizable Eighth Amendment
3 deliberate indifference claim against Defendant Guerra. (May 6,
4 2010 Order at 2.) In his amendment, Plaintiff clarified that when
5 he named "all employees" at CTF in his original complaint, he was
6 referring to "all who was involved herein Plaintiff's matter, such
7 as 'Tier Officers.'" (Id. at 2-3.) However, the Court dismissed
8 his claims against these unidentified defendants. (Id. at 3.)

9 On October 6, 2010, the Court denied Defendants Curry's,
10 Jarvis's, Silva's, Miranda's and Guerra's motion to dismiss for
11 failure to exhaust administrative remedies, and it directed these
12 Defendants to file a motion for summary judgment within thirty
13 days.

14 Before the Court is Plaintiff's motion, entitled "Requesting
15 Permission to Amend by Adding Additional Defendants to Plaintiff's
16 Claim." For the reasons discussed below, Plaintiff's motion for
17 leave to amend to add these additional Defendants is GRANTED.

18 Also before the Court is Defendants Curry's, Jarvis's,
19 Silva's, Miranda's and Guerra's motion for extension of time to
20 file a motion for summary judgment. The Court GRANTS their motion
21 and directs them to abide by the briefing schedule relating to
22 their motion for summary judgment below.

23 DISCUSSION

24 In its May 6, 2010 Order reviewing the amendment to the
25 complaint, the Court stated that "Plaintiff [was] referring to
26 several unidentified defendants involved in alleged Eighth
27 Amendment violation." Because suing unidentified defendants is not
28 favored in the Ninth Circuit, see Gillespie v. Civiletti, 629 F.2d

1 637, 642 (9th Cir. 1980), Plaintiff was directed to correct this
2 pleading deficiency.

3 In his October 21, 2010 motion, Plaintiff names the prison
4 officials initially identified as the "Tier Officers," who violated
5 his Eighth Amendment rights, including: Defendants CTF Correctional
6 Officers McGriff, Knedler, Childers and Lopez. (Oct. 21, 2010 Mot.
7 at 2-3.) Plaintiff claims these Defendants were deliberately
8 indifferent to his serious medical needs. (Id. at 3.) Read
9 liberally, Plaintiff's allegations state a cognizable deliberate
10 indifference claim against Defendants McGriff, Knedler, Childers
11 and Lopez. Therefore, this claim may proceed against these
12 Defendants, who shall abide by the briefing schedule outlined
13 below. Accordingly, Plaintiff's motion for leave to amend his
14 complaint to add these Defendants is GRANTED.

15 CONCLUSION

16 For the foregoing reasons,

17 1. Plaintiff's motion for leave to amend his complaint to
18 add Defendants McGriff, Knedler, Childers and Lopez (docket no. 53)
19 is GRANTED. Plaintiff has stated a COGNIZABLE Eighth Amendment
20 deliberate indifference claim against Defendants McGriff, Knedler,
21 Childers and Lopez.

22 2. The Clerk of the Court shall mail: a Notice of Lawsuit
23 and Request for Waiver of Service of Summons; two copies of the
24 Waiver of Service of Summons; a copy of the complaint and the
25 amendment to the complaint and all attachments thereto (docket nos.
26 1, 20); Plaintiff's motion, entitled "Requesting Permission to
27 Amend by Adding Additional Defendants to Plaintiff's Claim," and
28 all attachments thereto (docket no. 53); a copy of the Court's

1 Orders dated October 28, 2009, May 6, 2010 and October 6, 2010; as
2 well as a copy of this Order to: CTF Correctional Officers McGriff,
3 Knedler, Childers and Lopez. The Clerk shall also mail a copy of
4 Plaintiff's aforementioned motion and all attachments thereto
5 (docket no. 53) and a copy of this Order to the served Defendants'
6 attorney, Matthew M. Grigg at the Law Offices of Nancy E. Hudgins,
7 565 Commercial Street, Fourth Floor, San Francisco, California
8 94111, and to the Attorney General for the State of California.
9 Additionally, the Clerk shall mail a copy of this Order to
10 Plaintiff.

11 3. Defendants McGriff, Knedler, Childers and Lopez are
12 cautioned that Rule 4 of the Federal Rules of Civil Procedure
13 requires them to cooperate in saving unnecessary costs of service
14 of the summons and complaint. Pursuant to Rule 4, if Defendants
15 McGriff, Knedler, Childers and Lopez, after being notified of this
16 action and asked by the Court, on behalf of Plaintiff, to waive
17 service of the summons, fail to do so, they will be required to
18 bear the cost of such service unless good cause be shown for their
19 failure to sign and return the waiver form. If service is waived,
20 this action will proceed as if Defendants McGriff, Knedler,
21 Childers and Lopez had been served on the date that the waiver is
22 filed, except that pursuant to Rule 12(a)(1)(B), these Defendants
23 will not be required to serve and file an answer before sixty (60)
24 days from the date on which the request for waiver was sent. (This
25 allows a longer time to respond than would be required if formal
26 service of summons is necessary.) Defendants McGriff, Knedler,
27 Childers and Lopez are asked to read the statement set forth at the
28 foot of the waiver form that more completely describes the duties

1 of the parties with regard to waiver of service of the summons. If
2 service is waived after the date provided in the Notice but before
3 Defendants McGriff, Knedler, Childers and Lopez have been
4 personally served, the Answer shall be due sixty (60) days from the
5 date on which the request for waiver was sent or twenty (20) days
6 from the date the waiver form is filed, whichever is later.

7 4. Defendants McGriff, Knedler, Childers and Lopez shall
8 answer Plaintiff's allegations in accordance with the Federal Rules
9 of Civil Procedure.

10 5. The following briefing schedule shall govern dispositive
11 motions filed by Defendants McGriff, Knedler, Childers and Lopez in
12 this action:

13 a. No later than thirty (30) days from the date their
14 answer is due, these Defendants shall file a motion for summary
15 judgment or other dispositive motion, jointly with the original
16 Defendants. The motion shall be supported by adequate factual
17 documentation and shall conform in all respects to Federal Rule of
18 Civil Procedure 56. If these Defendants are of the opinion that
19 this case cannot be resolved by summary judgment, they shall so
20 inform the Court prior to the date the summary judgment motion is
21 due. All papers filed with the Court shall be promptly served on
22 Plaintiff.

23 b. Plaintiff's opposition to the dispositive motion
24 shall be filed with the Court and served on these Defendants no
25 later than thirty (30) days after the date on which these
26 Defendants' motion is filed.

27 c. If these Defendants wish to file a reply brief, they
28 shall do so no later than fifteen (15) days after the date

1 Plaintiff's opposition is filed.

2 d. The motion shall be deemed submitted as of the date
3 the reply brief is due. No hearing will be held on the motion
4 unless the Court so orders at a later date.

5 e. Defendants Curry, Jarvis, Silva, Miranda and Guerra,
6 who have previously been served, have been told that discovery may
7 be taken in this action in accordance with the Federal Rules of
8 Civil Procedure. Leave of the Court pursuant to Rule 30(a)(2) is
9 also hereby granted to the other Defendants to depose Plaintiff and
10 any other necessary witnesses confined in prison.

11 f. As Plaintiff has been instructed to do with
12 Defendants Curry, Jarvis, Silva, Miranda and Guerra, all
13 communications by Plaintiff with the Court must be served on the
14 other Defendants, or these Defendants' counsel once counsel has
15 been designated, by mailing a true copy of the document to their
16 counsel.

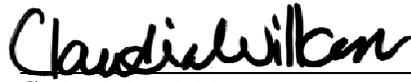
17 6. Defendants Curry's, Jarvis's, Silva's, Miranda's and
18 Guerra's motion for an extension of time to file their motion for
19 summary judgment (docket no. 54) is GRANTED. The time in which
20 these Defendants may file their motion for summary judgment will be
21 extended up to and including January 27, 2011. The motion must be
22 filed jointly by all Defendants. Plaintiff's opposition to the
23 dispositive motion shall be filed with the Court and served on
24 these Defendants no later than thirty (30) days after the date
25 these Defendants' motion is filed. If these Defendants wish to
26 file a reply brief, they shall do so no later than fifteen (15)
27 days after the date Plaintiff's opposition is filed. No further
28 extensions will be granted absent exigent circumstances.

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7. This Order terminates Docket nos. 53 and 54.

IT IS SO ORDERED.

DATED: 11/12/2010



CLAUDIA WILKEN
United States District Judge

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

4 ISIAH LUCAS JR.,

5 Plaintiff,

6 v.

7 M. MIRANDA et al,

8 Defendant.

Case Number: CV07-01673 CW

CERTIFICATE OF SERVICE

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

11 That on November 12, 2010, 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
14 located in the Clerk's office.

15 Isiah Lucas E-91878
16 California State Prison-Solano
17 2100 Peabody Road
18 Vacaville, CA 95696

19 Nancy Hudgins
20 Law Offices of Nancy E. Hudgins
21 565 Commercial Street, 4th Floor
22 San Francisco, CA 94111

23 Dated: November 12, 2010

24 Richard W. Wieking, Clerk
25 By: Nikki Riley, Deputy Clerk
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