

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

3 ISAAH N. WILLIAMS,

No. C 07-04464 CW (PR)

4                                    Plaintiff,

5                                    v.

6                                    D. WILLIAMS,

7                                    Defendant.  
8

ORDER (1) GRANTING IN PART AND DENYING IN PART PLAINTIFF'S DISCOVERY MOTION; (2) REFERRING DISCOVERY MATTER TO MAGISTRATE JUDGE; (3) GRANTING PLAINTIFF'S STAY MOTION; (4) DENYING PLAINTIFF'S MOTION FOR APPOINTMENT OF COUNSEL; AND (5) SETTING NEW BRIEFING SCHEDULE  
9 \_\_\_\_\_/

10                                    BACKGROUND

11                                    Plaintiff Isaiah N. Williams, a state prisoner, has filed a  
12 pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging  
13 constitutional rights violations while incarcerated at Pelican Bay  
14 State Prison (PBSP).

15                                    In a January 21, 2010 Order, the Court found that Plaintiff's  
16 allegations stated cognizable Eighth Amendment, retaliation and due  
17 process claims against Defendant. The Court dismissed Plaintiff's  
18 equal protection cause of action for failure to state a claim. The  
19 Court characterized Plaintiff's Eighth Amendment claim as one of  
20 deliberate indifference to safety. The Court inadvertently failed  
21 to mention Plaintiff's allegations of excessive force as part of  
22 his Eighth Amendment claim.

23                                    On March 24, 2010, Defendant filed her answer to the  
24 complaint, in which she denied, among other things, that she used  
25 excessive force. (Answer at 3.)

26                                    On June 10, 2010, Plaintiff filed a "Motion for Appointment of  
27 Counsel, Motion for Temporary Appointment of Counsel, Motion for  
28 Postponement of Deposition" (docket no. 39).

1           On June 30, 2010, Defendant filed a motion for summary  
2 judgment as to the claims of deliberate indifference to safety,  
3 retaliation and due process on the grounds that: (1) she was not  
4 deliberately indifferent to Plaintiff's safety; (2) she did not  
5 retaliate against Plaintiff for exercising his rights; (3) she did  
6 not prevent his presence at the disciplinary hearing; and (4) she  
7 is entitled to qualified immunity. (Mot. Summ. for J. at 3.)

8           Perhaps because the Court failed to mention excessive force as  
9 part of Plaintiff's cognizable Eighth Amendment claim, Defendant  
10 did not specifically move on that theory. Therefore, Defendant may  
11 file a supplement to the motion for summary judgment if she  
12 believes the excessive force claim can be resolved by summary  
13 judgment.

14           On September 23, 2010, Plaintiff filed a "Motion for an Order  
15 Compelling Discovery" (docket no. 51). Plaintiff also filed a  
16 "Motion for Stay Summary Judgment and/or to Delay/Extend Deadline  
17 for Plaintiff's Response to Defendant's Motion for Summary  
18 Judgment" (docket no. 50). On October 19, 2010, Defendant filed an  
19 opposition to Plaintiff's motions.

20           Having read and considered the papers submitted by the  
21 parties, the Court:

22           1.   DENIES in part and GRANTS in part Plaintiff's discovery  
23 motion (docket no. 50);

24           2.   refers the discovery matter below to Magistrate Judge  
25 Laurel Beeler of the Oakland Division of this Court; and orders  
26 Defendant (a) to submit to Magistrate Judge Beeler for an in camera  
27 review answers to certain interrogatories and document requests and  
28 (b) to provide Plaintiff with answers to other interrogatories and

1 document requests, as directed below;

2 3. GRANTS Plaintiff's stay motion (docket no. 51);

3 4. DENIES Plaintiff's motion for appointment of counsel  
4 (docket no. 39); and

5 5. directs the parties to abide by the briefing schedule  
6 outlined below.

7 DISCUSSION

8 I. Plaintiff's Discovery and Stay Motions

9 A. Evidence Pertaining to the Excessive Force Claim

10 In the following discovery requests, Plaintiff appears to be  
11 seeking Defendant's personnel file:

12 Document Requests

13 (2) Any and all documents in the Defendant's personnel  
14 file pertaining to any reprimands for misbehavior,  
15 suits against her, complaints made against her by  
16 staff or inmates, or anything that could be deemed  
17 relevant to the allegations made by the Plaintiff  
18 in this case.

17 (7) Any and all documents of similar control booth  
18 operator's shooting that the Defendant has been  
involved in during her time as a correctional  
officer.

19 Plaintiff has also requested answers to following  
20 interrogatories:

21 Interrogatories

22 (1) Has the defendant ever threatened or been accused  
23 of threatening an inmate in any way while working  
as a correctional officer?

24 (2) What did the defendant mean and what was her  
25 intent when she told the plaintiff on August 12,  
2006: "we can play this any way you want." And  
26 "Aren't you up for inactive"?

27 (5) To the defendant's knowledge, what relationship  
28 exists between white and black inmates? Does she  
agree that these two groups have a history of

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violence between each other.

- (8) Why did the defendant, after shooting the plaintiff the first time, ignore orders by the ground level officers to open the section door, which would allow them to quell the incident with less harmful force, and instead reload her weapon (3) additional times and shoot the plaintiff?
- (9) How many shooting has the defendant been involved in while acting as the control booth operator? Of these incidents, how many was the defendant the sole control booth operator [sic]? Were any complaints made against the defendant for any of these incidents?
- (10) Has the defendant ever intentionally or been accused of intentionally setting up an altercation of any kind between inmates while working as a correctional officer?
- (11) Has the defendant ever retaliated or been accused of retaliation of any kind while working as a correction officer?
- (12) On September 3, 2006 did the defendant, instead of doing her duty and asking the plaintiff if he would like to attend his 115 hearing, ask the plaintiff "Have you gone to your 115 hearing yet?", and when plaintiff stated: "No", did the defendant ask him: "Do you have anything you want to say to me"?
- (13) On September 3, 2006 did the defendant tell correctional officer M. Potter that the plaintiff refused to attend his 115 hearing and that he refused to sign the refusal form?

Portions of Defendant's personnel file and answers to the interrogatories above may be relevant to Plaintiff's excessive force claim; therefore, the discovery requests listed above are GRANTED in part. The Court directs Defendant to submit for in camera review all excessive force complaints against Defendant within the last five years and the answers to the interrogatories above. The response shall be produced to Magistrate Judge Beeler, to whom this discovery matter is referred. Magistrate Judge Beeler will then weigh the privilege asserted by Defendant against

1 Plaintiff's interest in having access to the personnel file as well  
2 as the answers to the interrogatories above. See Kelly v. City of  
3 San Jose, 114 F.R.D. 653, 660 (N.D. Cal. 1987).

4 In the following discovery requests, Plaintiff appears to be  
5 seeking information and documents relating to PBSP's rules and  
6 procedures:

7 Interrogatories

8 (3) What were the procedures on August 16, 2006  
9 regarding the Control Booth operator's duties  
involving inmate movement?

10 (4) What were the acceptable methods available to  
11 control Booth operators on and up to August 16,  
2006; e.g. cups used to cover the release button/  
12 cell button of inmate cells, which were used by  
correctional officers while doing their duties?  
13 What were the methods used by the defendant on and  
up to August 16, 2006?

14 (6) What were the procedures for use of force by a  
15 correctional officer during an incident  
particularly by a control Booth operator, on and up  
16 to August 16, 2006?

17 Document Request

18 (4) Any and all documents pertaining to the rules and  
19 procedures, as well as acceptable methods used by  
control Booth Operators regarding inmate movement  
and use of force.

20 The Court GRANTS these discovery requests. However,  
21 Defendant's answers to the interrogatories and the document request  
22 above shall be produced for in camera review by Magistrate Judge  
23 Beeler due to Defendant's security concerns.

24 The Court construes the following discovery requests as an  
25 inquiry relating to potential witnesses to the events:

26 Interrogatory

27 (15) State the name and address or otherwise identify  
28 and locate any person, who to the defendant's or  
her attorney's knowledge, claims to know of facts

1 relevant to the conduct or events described in this  
2 case.

3 Document Request

4 (3) Identify and attach a copy of any and all documents  
5 showing who was on duty in D-Facility 1-Block at  
6 the time of the incidents indicated herein, as well  
7 as a list of responding staff to the incident of  
8 August 16, 2006.

9 The Court GRANTS these discovery requests and directs  
10 Defendant to provide Plaintiff with the answer to the interrogatory  
11 and document request above.

12 The Court construes the following discovery request as  
13 inquiring whether Defendant has incident reports that have not been  
14 provided to Plaintiff:

15 Document Request

16 (1) Any and all documents obtained regarding this case  
17 that were not served upon the defendant by  
18 Plaintiff.

19 The Court GRANTS this discovery request and directs the  
20 Defendant to provide Plaintiff with copies of any incident reports  
21 relating to this incident.

22 B. Documents Already Provided to Plaintiff and Discovery  
23 Calling for a Legal Conclusion

24 Defendant's counsel provided Plaintiff with a copy of  
25 Operational Procedure No. 222, Security Housing Unit, Paragraph I,  
26 pertaining to Cell Searches. Defendant's counsel also explained to  
27 Plaintiff that Title 15, Section 3320 describes the California  
28 Department of Corrections and Rehabilitation rules for disciplinary  
hearings. (Id.) Therefore, the following discovery requests are  
DENIED because they have been satisfied:

Interrogatory

(14) Does an inmate have a right to attend a 115 hearing



1           2.     Plaintiff's "Motion for Stay Summary Judgment and/or to  
2 Delay/Extend Deadline for Plaintiff's Response to Defendant's  
3 Motion for Summary Judgment" (docket no. 50) is GRANTED.

4           3.     The discovery matter in this action is referred to  
5 Magistrate Judge Laurel Beeler. No later than fourteen (14) days  
6 from the date of this Order, Defendant is directed to submit for  
7 Magistrate Judge Beeler's in camera review:

8           a.     all excessive force complaints against Defendant  
9 within the last five years (document requests (2) and (7));

10          b.     answers to interrogatories (1), (2), (3), (4), (5),  
11 (6), (8), (9), (10), (11), (12) and (13); and

12          c.     PBSP's rules and procedures regarding control booth  
13 operator duties and use of force policy (document request (4)).

14           4.     No later than fourteen (14) days from the date of this  
15 Order, Defendant is also directed to send Plaintiff:

16          a.     answers to interrogatory (15); and

17          b.     copies of incident reports relating to this  
18 incident, documents showing who was on duty at the time of the  
19 incident, and a list of responding staff (document requests (1) and  
20 (3)).

21           5.     All remaining discovery requests, including  
22 interrogatories (7) and (14) and document requests (5) and (6), are  
23 DENIED.

24           6.     Plaintiff's "Motion for Appointment of Counsel, Motion  
25 for Temporary Appointment of Counsel, Motion for Postponement of  
26 Deposition" (docket no. 39) is DENIED.

27           7.     The parties shall abide by the following briefing  
28 schedule:



1           a. No later than twenty-eight (28) days from the date  
2 of this Order, Defendant may file a supplement to her motion for  
3 summary judgment if she believes the excessive force claim can be  
4 resolved by summary judgment. If Defendant is of the opinion that  
5 it cannot be resolved by summary judgment, Defendant shall so  
6 inform the Court as soon as possible, but no later than the date  
7 the supplement to the motion for summary judgment is due. All  
8 papers filed with the Court shall be promptly served on Plaintiff.

9           b. Plaintiff's opposition to the motion for summary  
10 judgment and any supplemental motion shall be filed with the Court  
11 and served on Defendant no later than twenty-eight (28) days after  
12 the date on which Defendant files her supplemental motion or gives  
13 notice that she does not intend to file a supplemental motion.

14           c. If Defendant wishes to file a reply brief, she shall  
15 do so no later than fourteen (14) days after the date Plaintiff's  
16 opposition is filed.

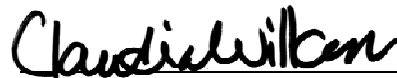
17           d. The motion for summary judgment shall be deemed  
18 submitted as of the date the reply brief is due.

19           8. The Clerk of the Court shall provide a copy of this Order  
20 to Magistrate Judge Beeler.

21           9. This Order terminates Docket nos. 39, 50 and 51.

22           IT IS SO ORDERED.

23 Dated: 12/9/2010



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE

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

4 ISAIAH N WILLIAMS,

5 Plaintiff,

6 v.

7 D WILLIAMS et al,

8 Defendant.

Case Number: CV07-04464 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 December 9, 2010, I SERVED a true and correct copy(ies) of the attached, by placing  
12 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
13 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
14 delivery receptacle located in the Clerk's office.

15 Isaiah Noel Williams K-33769  
16 Pelican Bay State Prison  
17 P.O. Box 7000  
18 5905 Lake Earl Drive  
19 Crescent City, CA 95531

20 Dated: December 9, 2010

Richard W. Wiekling, Clerk  
By: Nikki Riley, Deputy Clerk

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27 cc: LB  
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