

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

3 KEVIN LAMAR HOPKINS,

No. C 09-4578 CW (PR)

4 Plaintiff,

5 v.

6 SAN FRANCISCO POLICE OFFICER
CHARLES AUGUST, et al.,

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL PLAINTIFF'S
DISCOVERY RESPONSES AND
DEPOSITION; GRANTING THEIR
REQUEST FOR AN EXTENSION OF
TIME TO FILE A DISPOSITIVE
MOTION; AND SETTING BRIEFING
SCHEDULE

7 Defendants.
_____ /

8 Before the Court is Defendants' motion to compel Plaintiff to
9 provide discovery responses and to appear for a deposition.

10 On August 11, 2010, Defendants served Plaintiff with "requests
11 for production and special interrogatories." (Mot. Compel at 2.)
12 Plaintiff only responded to "Special Interrogatories Nos. 8-25."
13 (Id.) On November 25, 2010, Defendants attempted to seek responses
14 to the "Special Interrogatories Nos. 1-7"; however, Plaintiff has
15 not yet responded.

16 Plaintiff has also failed to appear for his deposition twice.
17 Defendants duly noticed Plaintiff's depositions for September 27,
18 2010 and December 2, 2010. (Id. at 3.) Plaintiff served no
19 objection to the notices setting his deposition for those dates.¹
20 (Id.) Instead, on January 11, 2011, Plaintiff has filed a "Motion
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23 ¹ Plaintiff, who is currently incarcerated at San Quentin
24 State Prison, was out of custody when these depositions were
25 scheduled. He did not respond to Defendants' deposition notices,
26 which were served "at the address identified by Hopkins as his
27 address for the purpose of this litigation." (Mot. to Compel at
28 3.) Plaintiff contacted Defendants' counsel after the scheduled
deposition on September 27, 2010, and "stated that the parties
would have to reschedule his deposition." (Id.) In a document
filed on January 28, 2011 entitled "Ex Parte Communication
Regarding Address Issue," Plaintiff argues that he "was never
timely informed of [the] Dec. 2, 2010 deposition." (Jan. 28, 2011
Ex Parte Communication at 1.)

1 for Reconsideration for Appointment of Counsel," stating:
2 "Plaintiff ask[s] for reconsideration in the earlier request for
3 appointment of counsel. The Courts has ordered Defendants to now
4 depose Plaintiff. Plaintiff not fully knowing what his right are
5 gives the defendants complete advantage over Plaintiff." (Req. for
6 Atty. at 1.) Plaintiff's refusal to be deposed is without
7 justification. He seems to be asking the Court to appoint counsel
8 to represent him at his deposition. He also alleges that he
9 suffers from a "mental health issue," for which he takes "anti-
10 psychotic meds." (Id.) However, there is no constitutional right
11 to counsel in a civil case unless an indigent litigant may lose his
12 physical liberty if he loses the litigation. See Lassiter v. Dep't
13 of Soc. Servs., 452 U.S. 18, 25 (1981). The Court is unable to
14 assess at this time whether exceptional circumstances exist which
15 would warrant seeking volunteer counsel to accept a pro bono
16 appointment. The proceedings are at an early stage and it is
17 premature for the Court to determine Plaintiff's likelihood of
18 success on the merits. Furthermore, to the extent that Plaintiff
19 seeks to have counsel represent him at his deposition, such a
20 request is not warranted. Therefore, Plaintiff's "Motion for
21 Reconsideration for Appointment of Counsel" (docket no. 27) is
22 DENIED.

23 The Court directs the parties to schedule another deposition
24 of Plaintiff, as provided below. A plaintiff must prosecute his
25 case with "reasonable diligence" to avoid dismissal. Anderson v.
26 Air West, Inc., 542 F.2d 522, 524 (9th Cir. 1976). Thus, Plaintiff
27 shall attend and testify at his deposition, even if he is not
28 represented by counsel. Plaintiff shall also submit his answers to

1 Defendants' request for responses to the "Special Interrogatories
2 Nos. 1-7." Therefore, the Court GRANTS Defendants' motion to
3 compel Plaintiff's discovery responses and to appear for a
4 deposition (docket no. 28).

5 Defendants move the Court to issue an Order to Show Cause
6 (OSC) as to why this action should not be dismissed for failure to
7 prosecute, and they request sanctions in the amount of \$800 for
8 time spent preparing and prosecuting this motion. Plaintiff has
9 filed an "Opposition to Defendants' Motion Requesting Sanctions and
10 Extension of Time to Depose Plaintiff." (Jan. 28, 2011 Opp'n at
11 1.) Because the Court will give Plaintiff one final chance to sit
12 for a complete deposition, the Court DENIES Defendants' requests
13 for the Court to issue an OSC and to require sanctions in the
14 amount of \$800.

15 Also before the Court is Defendants' request for a ninety-day
16 extension of time, up to and including June 15, 2011, in which to
17 file a dispositive motion.² Defendants' request for extension of
18 time to file dispositive motion is GRANTED. The parties shall
19 abide by the briefing schedule outlined below.

20 CONCLUSION

21 For the reasons outlined above,

22 1. Plaintiff's "Motion for Reconsideration for Appointment
23 of Counsel" (docket no. 27) is DENIED. The Court will consider
24 appointment of counsel later in the proceedings, after Defendants
25 have filed their dispositive motion and the Court has a better
26 understanding of the procedural and substantive matters at issue.

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28 ² Defendants' dispositive motion is presently due on March 15,
2011.

1 Therefore, Plaintiff may file a renewed motion for the appointment
2 of counsel after Defendants' dispositive motion has been filed. If
3 the Court decides that appointment of counsel is warranted at that
4 time, it will seek volunteer counsel to agree to represent
5 Plaintiff pro bono.

6 2. Defendants' motion to compel Plaintiff's discovery
7 responses and to appear for a deposition (docket no. 28) is
8 GRANTED. Plaintiff shall submit his answers to Defendants' request
9 for responses to the "Special Interrogatories Nos. 1-7" no later
10 than thirty (30) days from the date of this Order. Defendants will
11 notice another deposition of Plaintiff. Plaintiff shall testify at
12 the properly noticed deposition even if he is not represented by
13 counsel. If he does not complete this deposition, the Court will
14 dismiss his claim with prejudice for failure to prosecute under
15 Federal Rule of Civil Procedure 41(b), failure to comply with a
16 court order under Rule 37(b), and failure to attend his deposition
17 under Rule 37(d).

18 3. Defendants' request for an extension of time to file a
19 dispositive motion is GRANTED. Defendants shall file their
20 dispositive motion no later than June 15, 2011. Plaintiff's
21 opposition to the dispositive motion shall be filed with the Court
22 and served on Defendants no later than sixty (60) days after the
23 date Defendants' motion is filed. If Defendants wish to file a
24 reply brief, they shall do so no later than thirty (30) days after
25 the date Plaintiff's opposition is filed.

26 No further extensions of time will be granted in this case
27 absent exigent circumstances.

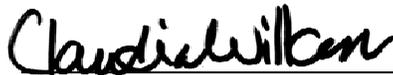
28 4. The hearing noticed in this matter on Defendants' "Motion

1 to Compel Responses to Discovery and to Appear at Deposition" for
2 March 3, 2011 at 2:00 p.m. is hereby VACATED.

3 5. This Order terminates Docket nos. 27 and 28.

4 IT IS SO ORDERED.

5 DATED: 2/4/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 KEVIN LAMAR HOPKINS,
5 Plaintiff,

Case Number: CV09-04578 CW

6 v.

CERTIFICATE OF SERVICE

7 SAN FRANCISCO POLICE et al,
8 Defendant.

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 February 4, 2011, 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 Kevin L. Hopkins V76611
16 San Quentin State Prison
17 San Quentin, CA 94974

18 Dated: February 4, 2011

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

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