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E-FILED - 12/9/08

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

KRISTIN R. HIMMELBERGER,)
)
Plaintiff,)
)
vs.)
)
DANIEL VASQUES, et al.,)
)
Defendants.)

No. C 98-20929 RMW (PR)

ORDER GRANTING PLAINTIFF'S
EX PARTE REQUEST TO EXTEND
TIME TO LOCATE UNSERVED
DEFENDANTS; ORDER DENYING
PLAINTIFF'S MOTION FOR
ORDER COMPELLING
DISCOVERY

(Docket Nos. 63, 69)

Plaintiff, a state prisoner proceeding pro se, filed the instant civil rights action pursuant to 42 U.S.C. § 1983. The court ordered defendants to file a dispositive motion or notice regarding such motion by December 1, 2008. Currently before the court are plaintiff's ex parte request to extend time to locate unserved defendants (docket no. 69), and plaintiff's motion for order compelling discovery (docket no. 63).

Good cause appearing, plaintiff is hereby GRANTED an extension of time in which to provide the court with accurate and current location information for defendants Daniel Vasques, Robert Bravo, Timothy Ryan, Lieutenant Cerrono, Lieutenant Santiago, Lieutenant Dixon, Correctional Officer Gram, Correctional Officer V. Fakee, Correctional Officer Gonzales, Correctional Officer Ramirez, and Dr. Solvalya and Dr. Levine such that the Marshal is able to effect service upon them. If plaintiff fails to provide the court with the accurate and current

Order Granting Plaintiff's Ex Parte Request to Extends Time to Locate Unserved Defendants; Order Denying Plaintiff's Motion for Order Compelling Discovery
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1 locations on or before December 22, 2008, plaintiff's claims against defendants Daniel
2 Vasques, Robert Bravo, Timothy Ryan, Lieutenant Cerrono, Lieutenant Santiago, Lieutenant
3 Dixon, Correctional Officer Gram, Correctional Officer V. Fakee, Correctional Officer
4 Gonzales, Correctional Officer Ramirez, and Dr. Solvalya and Dr. Levine will be dismissed
5 pursuant to Rule 4(m) of the Federal Rules of Civil Procedure; the dismissal will be without
6 prejudice to plaintiff refiling his complaint with such information.

7 Plaintiff must comply with the Federal Rules of Civil Procedure governing discovery,
8 especially as to quantity and scope of discovery, as well as the meet-and-confer requirements of
9 the Federal Rules of Civil Procedure and the court's Local Rules. See, e.g., Fed. R. Civ. P. 37(a)
10 (motion to compel must include a certification that the movant has in good faith conferred or
11 attempted to confer with the party not making the disclosure in an effort to secure the disclosure
12 without court action); N.D. Cal. Civ. R. 37-1 (same). In view of plaintiff's incarceration, the
13 parties may satisfy the meet-and-confer requirements by letter or telephone conversation. Cf.
14 N.D. Cal. Civ. R. 1-5(n). Before attempting to compel discovery, plaintiff must first seek the
15 information through discovery under Federal Rule of Civil Procedure 26. If his discovery
16 requests are denied and he intends to seek a motion to compel he need only send a letter to
17 defendants to that effect, offering them one last opportunity to provide him the sought-after
18 information. Here, plaintiff has not complied with the Federal Rules of Civil Procedure or this
19 court's Local Rules. Accordingly, plaintiff's motion for an order compelling discovery is
20 premature and DENIED.

21 This order terminates docket numbers 63 and 69.

22 IT IS SO ORDERED.

23 DATED: 12/5/08



24 RONALD M. WHYTE
25 United States District Judge