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E-Filed 12/18/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID LITMON, JR.,

No. C 09-02158 RMW (RS)

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL**

v.

COUNTY OF SANTA CLARA; and
STEPHEN MAYBERG, Director,

Defendants.

Plaintiff David Litmon, Jr., who is *pro se*, filed the instant motion seeking to compel discovery from defendant Dr. Stephen Mayberg, Director of the State of California's Department of Mental Health. The Court has determined that this motion is suitable for determination without oral argument pursuant to Civil Local Rule 7-1(b), and the hearing set for January 6, 2010, is vacated.

According to the allegations of the complaint, Litmon was involuntarily committed from 1999 to 2008 pursuant to California's Sexually Violent Predator Act. Litmon alleges that his due process rights were violated during the period of his commitment, in part because Dr. Mayberg failed to "develop a standardized assessment protocol" by which to evaluate committed persons. Litmon has now served a series of requests for production of documents on Dr. Mayberg, most of

1 which ask for disclosure of communications between various state departments relating to the
2 promulgation of a standardized assessment protocol.

3 Federal Rule of Civil Procedure 26(d)(1), which addresses the timing of discovery, provides:
4 “A party may not seek discovery from any source before the parties have conferred as required by
5 Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when
6 authorized by these rules, by stipulation, or by court order.” This case is not a listed exempt
7 proceeding pursuant to Rule 26(a)(1)(B). Nor has there been any stipulation or court order
8 authorizing early discovery. Finally, nothing in the Federal Rules would otherwise permit the
9 extensive discovery Litmon seeks at this juncture. Therefore, the discovery requests he has
10 propounded must wait until after the Rule 26(f) conference has taken place. His motion to compel
11 is therefore denied.

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14 IT IS SO ORDERED.

15 Dated: 12/18/09



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18 RICHARD SEEBORG
UNITED STATES MAGISTRATE JUDGE

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER WAS ELECTRONICALLY**
2 **PROVIDED* TO:**

3 Thomas A. Blake tom.blake@doj.ca.gov

4 Stephen H. Schmid stephen.schmid@cco.co.santa-clara.ca.us

5

6 **AND A HARD COPY OF THIS ORDER WAS MAILED TO:**

7 David Litmon, Jr.

8 32314 Ruth Court

9 Union City, CA 94587

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13 DATED: 12/18/09

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/s/ Chambers Staff

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Chambers of Magistrate Judge Richard Seeborg

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