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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ROBERT GLEN MISTRIEL,

CASE NO. 1:03-cv-06922-AWI-SKO

Plaintiff,

**ORDER REGARDING CITY OF  
BAKERSFIELD'S MOTION TO  
COMPEL**

v.

(Docket No. 72)

KERN COUNTY, et al.,

Defendants.

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**I. INTRODUCTION**

On January 23, 2012, Defendant City of Bakersfield (the "City") filed a motion to compel responses to its special interrogatories, set one, and its request for production of documents, set one (collectively, "discovery requests"), served on Plaintiff on September 9, 2011. (Doc. 72.) According to the City, Plaintiff failed to timely respond to the discovery requests.

For the reasons set forth below, the Court ORDERS that (1) the City re-serve its discovery requests, (2) Plaintiff file an opposition or a statement of non-opposition within 21 days of service of the requests for production, and (3) if Plaintiff elects to file a statement of non-opposition to the City's motion, Plaintiff is ordered to respond to the discovery requests within 45 days of re-service of the requests.

1 **II. DISCUSSION**

2 On August 2, 2011, Plaintiff filed a notice of change of address to Kern Valley State Prison,  
3 Delano, California, 93216. (Doc. 55.) On September 9, 2011, the City served its discovery requests  
4 by mail on Plaintiff at High Desert State Prison, (3030), P.O. Box. 3030, Susanville, California,  
5 96127-3030. (See Doc. 72-3, p. 10, 22.) Plaintiff's responses were due on October 27, 2011, 45 days  
6 after service of the requests plus an additional 3 days for service by mail. Counsel for the City  
7 granted Plaintiff until November 7, 2011, to respond to the discovery requests, but no responses were  
8 provided.<sup>1</sup> (Doc. 72-1, 2:18-20; Doc. 72-2, ¶ 4.) On January 23, 2012, the City filed a motion to  
9 compel Plaintiff's responses to these discovery requests. The motion to compel was served on  
10 Plaintiff at Kern Valley State Prison, Delano, California 93216-5103, his current address of record.  
11 To date, Plaintiff has not filed any statement in opposition to the City's motion to compel.

12 As indicated above, at the time of service of the discovery requests, Plaintiff's current address  
13 was Kern Valley State Prison, and not High Desert State Prison where the discovery requests were  
14 served. (See Doc. 72-3, p. 10, 22.) To cure this service issue, re-service of the discovery requests  
15 is necessary. From the date of re-service of the discovery requests, Plaintiff shall have 21 days to  
16 file any opposition to the City's motion to compel. Alternatively, Plaintiff may file a statement of  
17 non-opposition within 21 days of re-service of the discovery requests. If Plaintiff elects to file a  
18 statement of non-opposition to the City's motion to compel, Plaintiff must serve responses to the  
19 City's discovery requests within 45 days of being re-served. If Plaintiff fails to either oppose the  
20 motion to compel or provide discovery responses within the time frame provided, the Court will  
21 grant the City's motion to compel.

22 **III. CONCLUSION AND ORDER**

23 For the reasons stated above, IT IS HEREBY ORDERED that:

- 24 1. The City of Bakersfield shall re-serve its discovery requests to Plaintiff at his current  
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26 <sup>1</sup> It is unclear whether Plaintiff requested an extension of time to respond to the discovery requests from the City  
27 or whether the City provided Plaintiff an extension of time to respond to the discovery requests as an unsolicited  
28 courtesy. In other words, despite the proofs of service indicating that the discovery requests were served on Plaintiff  
at High Desert State Prison, it also appears that Plaintiff may have received these requests and requested an extension  
of time to respond.

1 address of record;

2 2. The City of Bakersfield shall file a certificate of service establishing re-service of the  
3 discovery requests;

4 3. **Within 21 days of re-service of the requests**, Plaintiff shall either:

5 a. File a statement in opposition to the City's motion to compel; **OR**

6 b. File a statement of non-opposition to the motion and then serve responses to  
7 the discovery requests within 45 days of re-service of the discovery requests;

8 and

9 4. Should Plaintiff fail to either file an opposition to the City's motion to compel or file  
10 a statement of non-opposition and serve discovery responses within 45 days from the  
11 date of re-service of the requests, the Court will grant the City's motion to compel  
12 such responses.

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14 IT IS SO ORDERED.

15 **Dated: February 29, 2012**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**

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