IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

RAY MEDINA,

Plaintiff,

vs.

L. EMARD, et al.,

Defendants.

_______________________________/

1:06-cv-00697-LJO-SMS-PC

ORDER DENYING MOTION FOR ORDER COMPELLING DEFENDANTS TO FILE RESPONSE TO COMPLAINT
(Doc. 56.)

Ray Medina ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint on June 5, 2006. (Doc. 1.) On March 31, 2009, the court issued an order directing the United States Marshal to serve a summons and copy of the complaint on defendants Brey, Razo, Morales, Beagle, Frazer, Nunley, Emard, and Barajas ("Defendants"). (Doc. 46.) On June 5, 2009, Defendants filed a motion to dismiss the complaint, based on plaintiff's failure to exhaust administrative remedies. (Doc. 52.)

On August 11, 2009, Plaintiff filed a motion for an order compelling Defendants to file a response to the complaint pursuant to Rule 12 (a)(1)(A). (Doc. 56.) Rule 12(a)(1)(A) provides that "[A] defendant must serve an answer within 20 days after being served with the summons and complaint; or if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent." Fed. R. Civ. P 12(a)(1)(A). However, the 20- or 60-day time period is altered if a defendant files a motion to dismiss under Rule 12, so that an answer is not due until ten days after the motion is denied. Fed. R. Civ. P. 12(a)(4)(A). Under this rule, because Defendants filed a motion to dismiss, they are not required to file an answer to the complaint until after the court resolves the motion to dismiss. Therefore, the court shall not compel a response from Defendants at this time.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's motion for a court order compelling Defendants to file a response to the complaint is DENIED.

IT IS SO ORDERED.

Dated: November 17, 2009 **/s/ Sandra M. Snyder**
UNITED STATES MAGISTRATE JUDGE