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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONALD J. ACKLEY,	CASE NO. 1:06-cv-00771-AWI-SKO PC
Plaintiff,	ORDER DENYING MOTIONS
v.	(Doc. 34)
D. CARROLL, et al.,	
Defendants.	

Plaintiff Donald J. Ackley (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On April 15, 2010, Plaintiff filed a motion requesting an extension of time to conduct discovery and a motion to compel discovery responses from Defendants. (Doc. #34.) Defendants filed an opposition to Plaintiff’s motions urging the Court to deny them as they are untimely. (Doc. #37.) Plaintiff has not filed a reply to Defendants’ opposition.

Plaintiff’s motion to compel concerns interrogatories that Plaintiff sent to Defendants sometime around January 11, 2010. Defendants contend that they did not respond to the interrogatories because they were untimely. Defendants contend that discovery closed for Plaintiff on January 20, 2010, and that the Court’s discovery/scheduling order required discovery requests to be served at least forty five (45) days before the discovery deadline.¹ Plaintiff admits that his

¹Defendants note that on February 24, 2010, they mistakenly requested an extension of time to respond to Plaintiff’s interrogatories, sent on January 11, 2010. (Doc. #30.) Defendants state that at the time they were unaware that the interrogatories were untimely. Defendants later informed Plaintiff that they would not respond to Plaintiff’s interrogatories because they were untimely.

1 interrogatories were untimely. (Pl.'s Mot. for an Extension of Time to Conduct Discovery; Pl.'s Mot.
2 to Compel Discovery Responses from Defs.; Decl. of Pl. 2, ECF No. 34.) Defendant argues that
3 since discovery closed on January 20, 2010 for Plaintiff, Plaintiff's motion for an extension of time
4 and motion to compel are also untimely. Plaintiff has not responded to Defendants' opposition.

5 The original discovery cut-off date set by the Court's discovery/scheduling order was January
6 20, 2010. (Doc. #21.) On January 8, 2010, Defendants filed a motion requesting modification of
7 the scheduling order. (Doc. #26.) Defendants complained that Plaintiff failed to respond to their
8 discovery requests and that discovery would have to be extended to give Defendants time to review
9 Plaintiff's responses and schedule a deposition. The Court granted Defendants' motion. (Doc. #28.)
10 The order granting Defendants' motion stated that "Defendants Blevin, Carroll, Uribe and Wright
11 are granted an extension of time of forty-five days from the date of receipt of Plaintiff's discovery
12 responses to conduct discovery. . . ." (Order Granting Defs.' Mot. to Modify Scheduling Order to
13 Extend Time to Conduct Discovery 1:20-22, ECF No. 28.) The order did not extend Plaintiff's time
14 to conduct discovery. Plaintiff never requested an extension of time to conduct discovery.
15 Therefore, Plaintiff's deadline for conducting discovery remained on January 20, 2010.

16 Plaintiff's motion for extension of time and motion to compel were filed on April 15, 2010--
17 nearly three (3) months after the discovery deadline had passed. Plaintiff provides no explanation
18 for his untimely motions, other than noting that he had "health issues." (Pl.'s Mot. for an Extension
19 of Time to Conduct Discovery; Pl.'s Mot. to Compel Discovery Responses from Defs.; Decl. of Pl.
20 2, ECF No. 34.) However, Plaintiff's "health issues" did not stop him from sending interrogatories
21 to Defendants on January 11, 2010. Plaintiff does not explain why he could not have filed a simple
22 request for extension of time with the Court, given that he was able to prepare and send
23 interrogatories to Defendants.

24 In the Court's discovery/scheduling order, the Court explicitly informed the parties that
25 motions to compel must be filed before the end of discovery and that any motion for an extension
26 of time must be filed on or before the expiration of the deadline in question. (Discovery Order/
27 Scheduling Order 2:15-16, 18-19, ECF No. 21.)

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1 Accordingly, it is HEREBY ORDERED that Plaintiff's motion for an extension of time and
2 Plaintiff's motion to compel are DENIED.

3
4 IT IS SO ORDERED.

5 **Dated: June 28, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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