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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NAKIA MCCLAIN,

Plaintiff,

v.

L. GONZALES, et al.,

Defendants.

CASE NO. 1:07-cv-00945-OWW-SKO PC

ORDER DENYING MOTION TO COMPEL,
WITHOUT PREJUDICE

(Doc. 41)

Plaintiff Nakia McClain (“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 March 24, 2010, Plaintiff filed a motion to compel. (Doc. #41.)

Plaintiff’s motion to compel requests that the Court compel Defendants to produce certain documents. However, Plaintiff does not attach Defendants’ response to Plaintiff’s document production requests and it is unclear whether Defendants have responded to Plaintiff’s requests. Plaintiff claims that he sent Defendants’ counsel letters on February 10, 2010 and March 2, 2010 in an attempt to resolve the discovery disputes, but Defendants did not respond.

Defendants filed an opposition to Plaintiff’s motion to compel on April 5, 2010. (Doc. #42.) Defendants argue that Plaintiff filed his motion to compel after the discovery deadline set forth in the Court’s discovery and scheduling order. According to the discovery and scheduling order, motions to compel were due by January 4, 2010. However, at the time Plaintiff filed his motion to compel, both parties had submitted motions requesting extension of the discovery deadline that the

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1 Court had not yet ruled on. On April 27, 2010, the Court granted the motions and extended the
2 discovery deadline to June 30, 2010. (Doc. #44.)

3 The Court will deny Plaintiff's motion to compel without prejudice. If Defendants have not
4 yet served Plaintiff with responses to Plaintiff's discovery requests, the Court will order Defendants
5 to serve responses within thirty (30) days of the date of service of this order. Plaintiff is cautioned
6 that filing a motion to compel that is not substantially justified may result in an order requiring
7 Plaintiff to pay Defendants for the reasonable expenses incurred in opposing Plaintiff's motion,
8 including attorney's fees. Federal Rule of Civil Procedure 37(a)(5)(B).

9 If Plaintiff chooses to file a motion to compel, Plaintiff is advised that such motion must
10 individually address each request made by Plaintiff. Plaintiff may not file a motion to compel that
11 generally and vaguely argues that all of Defendants' responses are unjustified. Plaintiff must address
12 each request individually by reciting the original request made by Plaintiff and reciting the response
13 or objections raised by Defendants to that request. For each request and response being challenged,
14 Plaintiff must present persuasive arguments that demonstrate how each objection made by the
15 Defendants is not justified. Plaintiff must also attach a copy of his original discovery requests and
16 a copy of Defendants' responses to his motion to compel.

17 Accordingly, it is HEREBY ORDERED that:

- 18 1. Plaintiff's motion to compel, filed on March 24, 2010, is denied without prejudice;
- 19 and
- 20 2. To the extent that they have not already done so, Defendants are ordered to serve
21 Plaintiff with a response to Plaintiff's document production requests within thirty
22 (30) days of the date of service of this order.

23
24 IT IS SO ORDERED.

25 **Dated: May 24, 2010**

26 **/s/ Sheila K. Oberto**
27 **UNITED STATES MAGISTRATE JUDGE**
28