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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 JAQUES FEARENCE,

10 Plaintiff,

11 vs.

12 L. L. SCHULTEIS, et al.,

13 Defendants.  
14  
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1:08-cv-00615-LJO-GSA-PC

ORDER DENYING PLAINTIFF'S  
MOTION FOR DISCOVERY  
SANCTIONS UNDER RULE 37(b)  
(Doc. 55.)

16 **I. BACKGROUND**

17 Jaques Fearence ("Plaintiff") is a prisoner proceeding pro se in this civil rights action  
18 pursuant to 42 U.S.C. § 1983. This case now proceeds on the Third Amended Complaint filed  
19 by Plaintiff on November 22, 2013, against defendants Hopkins, Davis, Duffy, and Beckett for  
20 failure to protect Plaintiff, and against defendants Hopkins, Busby, Davis, Duffy, and Beckett  
21 for conspiracy to use excessive force. (Doc. 64.)

22 On September 16, 2013, Plaintiff filed a motion for discovery sanctions under Rule  
23 37(b). (Doc. 55.) On September 30, 2013, Defendants filed an opposition. (Doc. 56.)  
24 Plaintiff did not file a reply to the opposition. (Court Record.)

25 **II. MOTION FOR SANCTIONS -- RULE 37(b)**

26 Under Rule 37(b) of the Federal Rules of Civil Procedure, if a party fails to obey an  
27 order to provide or permit discovery, the court may issue further just orders which may include  
28 compelling compliance with the order or imposing sanctions. Fed. R. Civ. P. 37(b).

1           **A. Plaintiff's Motion**

2           Plaintiff requests the imposition of sanctions upon Defendants based on Defendants'  
3 failure to comply with the forty-five day deadline to provide discovery responses, established in  
4 the Court's discovery/scheduling order of July 15, 2013. Plaintiff argues that as of September  
5 12, 2013,<sup>1</sup> the date of Plaintiff's motion, the Court's deadline had expired, and Defendants had  
6 not responded to Plaintiff's discovery requests. Plaintiff declares that on July 25, 2013, he  
7 served Defendants with a Request for Production of Documents and Interrogatories, ensuring  
8 that Defendants had forty-five days in which to respond. (Declaration of Jaques Fearence, Doc.  
9 55 at 2 ¶6.) On September 4, 2013, Plaintiff received a phone call from defense counsel Elliott  
10 T. Seals, informing Plaintiff that the forty-five day deadline for responses would not be met,  
11 and requesting an extension of time. (Id. ¶¶2,3.) Plaintiff informed defense counsel that  
12 Plaintiff did not have the authority to extend the deadline, and that defense counsel would have  
13 to file a motion for extension of time with the court. (Id. ¶¶5,6.)

14           **B. Defendants' Opposition**

15           Defendants argue that they complied with the court's deadline to respond to discovery  
16 requests and timely served Plaintiff with their responses. Defendants assert that Plaintiff served  
17 each Defendant with a set of Interrogatories and a set of Requests for Production of Documents  
18 on July 25, 2013, causing Defendants' responses to be due forty-five days later on September 9,  
19 2013. (Declaration of Jaques Fearence, Doc. 55 at 2 ¶6; Doc. 51.) Defense counsel asserts that  
20 on September 4, 2013, he spoke with Plaintiff on the phone and informed him that he would  
21 need additional time to respond to the discovery requests. Because of Plaintiff's unwillingness  
22 to agree to an extension of time, Defendants filed a motion for extension of time with the court  
23 on September 6, 2013. (Doc. 53.) On September 12, 2013, the court granted Defendants a  
24 fourteen-day extension of time, and Defendants assert that they served their responses on  
25 Plaintiff on September 24, 2013, within the time provided by the Court's September 12, 2013  
26 order. (Doc. 54.)

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27           <sup>1</sup>Plaintiff's motion for sanctions was signed on September 12, 2013 and filed on September 16, 2013.  
28 (Doc. 55 at 3.)

