

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

WHITTIER BUCHANAN,

Plaintiff,

v.

A. SANTOS,

Defendant.

NO. 1:08-cv-01174 -AWI-GSA-PC

ORDER STRIKING MOTION

(Doc. 29)

ORDER GRANTING PLAINTIFF
THIRTY DAYS IN WHICH TO FILE
MOTION TO COMPEL

Plaintiff is a state prisoner proceeding pro se in this civil rights action. The matter was referred to a United States Magistrate Judge pursuant to [28 U.S.C. § 636\(b\)\(1\)\(B\)](#) and Local Rule 302. Pending before the court is Plaintiff’s motion to compel the production of peace officer personnel records.

This action proceeds on the original complaint against defendant A Santos on Plaintiff’s claim of excessive force. Plaintiff names the following defendants: Collins; Yates; Garrison; Mendoza; Duty; Reyes; McBryde; Santos. On June 8, 2009, an order was entered, dismissing defendants Collins, Yates, Garrison, Duty, Reyes and McBryde. On June 8, 2010, an order was entered, granting in part and denying in part Defendants’ motion to dismiss. Plaintiff’s claims against Defendant Mendoza were dismissed. This action proceeds only against Defendant A. Santos on Plaintiff’s claim of excessive force.

1 Plaintiff seeks discovery “of all information in Defendants’ personnel files that relate to
2 prior use of excessive force, ethnic or racial bias, falsifying information, or planting evidence.”
3 (Notice of Motion 1:17-22.) Plaintiff specifically titles his motion as “Notice of Motion and
4 Motion to Discover Files Via Pitchess Motion.” A Pitchess motion relates to criminal
5 proceedings and is misplaced in this federal civil action. See People v. Mooc, 26 Cal.4th 1216,
6 1219-20 (2001) (a Pitchess motion allows a criminal defendant to compel discovery of evidence
7 from arresting officer’s personnel file). Plaintiff must seek discovery in compliance with the
8 Federal Rule of Civil Procedure 34, which requires Plaintiff to serve Defendants with a request
9 for the production of documents. If Defendants object to the request and Plaintiff believes the
10 documents are discoverable, Plaintiff’s recourse is to file a motion to compel. Plaintiff may not
11 file a request for documents from Defendants’ personnel files directly with the Court, and his
12 inappropriate Pitchess motion shall be stricken from the record.

13 The court notes that discovery cut-off date of May 17, 2010, has passed. The court will
14 re-open discovery for the limited purpose of filing a motion to compel the production of peace
15 officer records. Plaintiff is advised that should the court grant the motion, any records will be
16 forwarded to the court under seal for in camera review.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff’s Pitchess motion is stricken from the record.
- 19 2. Discovery is re-opened for the limited purpose of filing a motion to compel the
20 production of documents. Such motion shall be filed within thirty days of the date of
21 service of this order.

22
23 IT IS SO ORDERED.

24 **Dated: September 30, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE