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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NICK WOODALL,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

CASE NO. 1:08-CV-01948-LJO-DLB PC

ORDER GRANTING PLAINTIFF’S MOTION
TO COMPEL AND REQUIRING NON-
PARTY ACTING WARDEN OF
CORCORAN STATE PRISON TO SERVE
FURTHER RESPONSE (DOC. 96)

RESPONSE DUE WITHIN TWENTY-ONE
DAYS

_____ /

Plaintiff Nick Woodall (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendant A. Raygoza for deliberate indifference in violation of the Eighth Amendment.¹ On March 30, 2011, the Court directed service of Plaintiff’s subpoena duces tecum by the United States Marshal on then warden Raul Lopez of California State Prison at Corcoran (“CSP-Cor”).²

On April 25, 2011, the subpoena was returned executed. Pending before the Court is Plaintiff’s motion to compel, filed July 29, 2011. Doc. 96. Plaintiff contends that he did not receive any of the documents requested in his subpoena duces tecum. Plaintiff requests that the

¹ Defendants Olive, Sexton, Gonzalez, and Lawson were dismissed from the action on September 9, 2011. Docs. 97, 99.

² Raul Lopez was acting warden at the time the order was issued.

1 Court hold Mr. Lopez in contempt and impose sanctions pursuant to Rule 45 of the Federal Rules
2 of Civil Procedure.

3 A review of the Court's records indicates that the acting warden submitted documents
4 requested in the subpoena duces tecum to the Court. The Court, however, did not request these
5 documents. On September 9, 2011, the Court ordered the acting warden to file a response to
6 Plaintiff's motion to compel. Doc. 98.

7 On September 23, 2011, the acting warden responded, stating that the documents were
8 sent to the Court, and not to the Plaintiff, inadvertently. Doc. 100. The acting warden attached a
9 copy of the produced documents to his response. *Id.* On October 3, 2011, Plaintiff filed his reply
10 to the acting warden's response. Doc. 101. Plaintiff contends that the acting warden still has not
11 fully complied with the Court's subpoena duces tecum as seventeen of the twenty-six requested
12 documents were not produced. Pl.'s Reply 2-5. Plaintiff requests sanctions be imposed on
13 acting warden Lopez for contempt of court. *Id.* at 5-6.

14 A review of the attached documents indicates that the acting warden did not fully comply
15 with the subpoena duces tecum.³ "The issuing court may hold in contempt a person who, having
16 been served, fails without adequate excuse to obey the subpoena." Fed. R. Civ. P. 45(e). The
17 Court declines to issue a sanction for non-compliance with the subpoena duces tecum until after
18 the issuance of an order commanding compliance. *See Pennwalt Corp. v. Durand-Wayland, Inc.*,
19 708 F.2d 492, 494 (9th Cir. 1983) (finding corporation subject to subpoena could not be
20 sanctioned in absence of enforcement order). The Court will thus by this order require the acting
21 warden to comply with the subpoena duces tecum or provide an objection or adequate excuse as
22

23 ³ Documents that do not appear to have been produced include a complete crime/incident
24 report (CDC form 837) from Investigative Services Unit when investigating and searching
25 Plaintiff's cell, or the in-service training signature sheet regarding Operational Procedure 241. It
26 is unclear to what extent the acting warden did not produce documents. Based on the submitted
27 documents, the acting warden produced: the emergency room register for September 12 and 13 of
28 2007; the incident logs for September 12 and 13 from the first and second watch; post orders for
the Facility III A Facility Sergeant; some daily logs for September 12 and 13 by unknown
authors; and custody sign-in/out sheets for September 13 watch 1 and 2. Contrary to Plaintiff's
contention that the sign-in/out sheets did not include ISU staff, the sign-in/out sheets appears to
include the entire Facility 3A, IGI, and ISU staff for September 13.

1 to why he cannot. If the acting warden fails to comply, he may be subject to a subsequent finding
2 of contempt.

3 Accordingly, it is HEREBY ORDERED that

- 4 1. Plaintiff's motion to compel, filed July 29, 2011, is GRANTED;
- 5 2. Acting warden R. Lopez is to serve on Plaintiff additional responses to Plaintiff's
6 subpoena duces tecum within **twenty-one (21)** days from the date of service of
7 this order, as stated herein;
- 8 3. Failure to comply with the subpoena or to provide adequate excuse for failing to
9 obey may result in the acting warden being held in contempt.

10 IT IS SO ORDERED.

11 **Dated: November 2, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE