

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

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THORNELL BROWN,

Plaintiff,

v.

JAWAYNE FAMBROUGH, et al.,

Defendants.

CASE NO. 1:09-CV-00573-DLB PC

ORDER GRANTING PLAINTIFF’S MOTION FOR DEFENDANTS TO LODGE DISCOVERY EVIDENCE (DOC. 41)

LODGED EVIDENCE DUE WITHIN FOURTEEN (14) DAYS

ORDER DENYING PLAINTIFF’S MOTION FOR STAY OF SUMMARY JUDGMENT AS MOOT (DOC. 42)

Plaintiff Thornell Brown (“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 Defendants Jawayne Fambrough, Jackson Copeland, V. Yates, Stephaine Amoako, Jerome Peacock, and John Whitehead for violation of the Eighth Amendment. Pending before the Court are: 1) Plaintiff’s motion for Defendants to lodge discovery evidence with the Court, filed January 31, 2011, and 2) Plaintiff’s motion for stay of any summary judgment motion pending resolution of Plaintiff’s discovery requests. Docs. 41, 42. Defendants filed a statement of non-opposition on February 2, 2011. Doc. 43. The matter is submitted pursuant to Local Rule 230(1).

I. Motion To Lodge Discovery

Plaintiff moves to lodge discovery with the Court, namely a DVD videotape of Plaintiff’s injuries and statements concerning this case. Plaintiff appears to refer to a use-of-force interview which occurred after the alleged excessive force incident at issue in this action. Plaintiff cites to this interview in his pleadings. See Compl. ¶¶ 59-61, Doc. 1. Defendants do not oppose lodging a copy of the use-of-force videotaped interview with the Court. Defs.’ Non-Opp’n 1:20-25.

1 Defendants request that they be permitted to submit a DVD copy of the interview.

2 Defendants have filed a motion for summary judgment on April 4, 2011. Plaintiff filed
3 his opposition on May 16, 2011. In Plaintiff's opposition, Plaintiff cites to his complaint, which
4 includes a cite to this interview. In the interest of justice, the Court will grant Plaintiff's motion
5 and require Defendants to lodge a DVD copy of this interview with the Court for adjudication of
6 Defendants' motion for summary judgment.

7 **II. Motion To Stay Summary Judgment Pending Discovery**

8 Plaintiff moves to stay any motion for summary judgment until Plaintiff's discovery
9 disputes were resolved. Plaintiff had filed motions to compel on December 28, 2010. Docs. 38,
10 39. Plaintiff in effect filed a motion pursuant to Rule 56(d) of the Federal Rules of Civil
11 Procedure, which allows the Court to defer adjudication of a summary judgment motion until
12 discovery is taken. Plaintiff's motion is moot on two grounds. First, no summary judgment
13 motion had been filed with the Court at the time Plaintiff filed the instant motion. Second, the
14 Court adjudicated Plaintiff's motions to compel on April 18, 2011, denying Plaintiff's motions.
15 Order, Doc. 53. Thus, Plaintiff's Rule 56(d) motion is moot.

16 **III. Conclusion And Order**

17 Based on the foregoing, it is HEREBY ORDERED that:

- 18 1. Plaintiff's motion to lodge discovery with the Court, filed January 31, 2011, is
19 GRANTED;
- 20 2. Defendants are to lodge a DVD copy of the use-of-force videotaped interview
21 pertaining to this action with the Court within fourteen (14) days from the date of
22 service of this order; and
- 23 3. Plaintiff's motion to stay summary judgment pending discovery, filed January 31,
24 2011, is DENIED as moot.

25 IT IS SO ORDERED.

26 **Dated: September 8, 2011**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE