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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FLOYD SCOTT,

Plaintiff,

v.

J. PALMER, et al.,

Defendants.

CASE NO. 1:09-cv-01329-AWI-SKO PC

ORDER (1) DENYING MOTION TO COMPEL AND FOR SANCTIONS; (2) GRANTING MOTION FOR RE-SERVICE OF SUMMARY JUDGMENT MOTION AND DENYING MOTION FOR SANCTIONS; (3) REQUIRING DEFENDANTS TO RE-SERVE MOTION; (4) AND REQUIRING PLAINTIFF TO COMPLY WITH ORDER FILED SEPTEMBER 2, 2011

(Docs. 44, 45, and 46)

Deadline to re-serve motion: 5 days

Deadline to comply with order of September 2, 2011: 45 days

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Plaintiff Floyd Scott, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 29, 2009. This action is proceeding against Defendants Palmer, Rivera, and Lopez for excessive force, in violation of the Eighth Amendment of the United States Constitution.

On August 30, 2011, Defendants filed a motion for summary judgment and on August 31, 2011, Defendants filed a motion seeking either a stay of discovery pending resolution of their motion for summary judgment or a thirty-day extension of time to respond to Plaintiff’s discovery requests if their motion to stay is denied. On September 2, 2011, the Court (1) granted the motion to stay in part, (2) stayed discovery pending Plaintiff’s response to Defendants’ motions to stay and for summary judgment, and (3) ordered Plaintiff to file a response to Defendants’ motion to stay and to

1 file either a response to Defendants' motion for summary judgment on the merits or a Rule 56(d)
2 motion, within forty-five days.

3 On September 9, 2011, Plaintiff filed a motion seeking service of Defendants' motion for
4 summary judgment and for sanctions, and a motion to compel discovery responses and for sanctions.
5 In light of the Court's order of September 2, 2011, Plaintiff's motion to compel discovery responses
6 is denied. Plaintiff contends that he did not receive the motion for summary judgment. Therefore,
7 Plaintiff's motion for re-service of the motion is granted.

8 Plaintiff's motion for sanctions based on the failure to timely serve discovery responses is
9 denied. Fed. R. Civ. P. 37(d). Plaintiff's motion is defective in that it was prematurely filed and
10 furthermore, Defendants have been relieved of their obligation to respond.¹ Plaintiff's motion for
11 sanctions for failing to serve the motion for summary judgment is also denied. Chambers v.
12 NASCO, Inc., 501 U.S. 32, 43-45, 111 S.Ct. 2123 (1991) (courts have inherent power to sanction
13 litigants). Defendants are obligated to serve their filings on Plaintiff and they submitted the requisite
14 proof of service with their motion. There is no support in the record for Plaintiff's accusation that
15 Defendants intentionally failed to serve their motion on him. Chambers, 501 U.S. at 55 (a finding
16 of bad faith required).

17 Accordingly, the Court HEREBY ORDERS as follows:

- 18 1. Plaintiff's motion to compel discovery responses and for sanctions is DENIED;
- 19 2. Plaintiff's motion for re-service of the motion for summary judgment is GRANTED,
20 but his motion for sanctions is DENIED;
- 21 3. Defendants shall re-serve their motion for summary judgment on Plaintiff within **five**
22 **(5) days** from the date of service of this order; and

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28 ¹ As set forth in the order of September 2, 2011, Defendants' responses were not due until September 6,
2011. Plaintiff's motion to compel was served on September 5, 2011.

1 4. Within **forty-five (45) days** from the date of service of this order, Plaintiff must
2 comply with the terms of the order filed on September 2, 2011.

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4 IT IS SO ORDERED.

5 **Dated:** September 18, 2011

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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