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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEREMY ROBERT CHRISTENSEN,	CASE NO. 1:09-cv-01440-OWW-GBC (PC)
Plaintiff,	
v.	ORDER DENYING MOTION TO FILE EXHIBITS AND TO COMPEL AS PREMATURE
MICHAEL VERDUCCI,	(Docs. 22, 23, 25)
Defendant.	

Plaintiff Jeremy Robert Christensen (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s complaint, filed August 17, 2009, against Defendant Michael Verducci for violation of the Eighth Amendment. Discovery was opened on March 22, 2010. On May 12, 2010, Plaintiff filed a motion requesting to file exhibits and requesting the Court’s assistance with obtaining discovery. Defendant filed an opposition on May 20, 2010 and Plaintiff filed a reply on June 25, 2010.

In Plaintiff’s “Motion for Exhibits to be Filed,” Plaintiff requests for two exhibits to be filed and for “the help of the courts” in obtaining various discovery material from Defendant and from third parties. The Court will construe Plaintiff’s motion as a motion to file exhibits and a motion compel discovery. Plaintiff has made no request for discovery pursuant to Rule 34 of the Federal Rules of Civil Procedure. In its discovery order, the Court informed Plaintiff that “[d]iscovery requests *shall* be served by the parties pursuant to Federal Rule of Civil Procedure 5 and Local Rule 135, and shall only be filed when required by Local Rules 250.1, 250.2, and 250.3.” Implicit in the

1 requirement regarding how to serve the parties, is the requirement that Plaintiff must serve discovery
2 requests to the Defendant in the first instance. Before Plaintiff can seek the Court's intervention for
3 obtaining discovery, Plaintiff should first request the information from the Defendant. *See* Fed. R.
4 Civ. P. 37(a)(3)(B). If for example, the Defendant fails to answer a deposition question under Rules
5 30 and 31 or if Defendant fails to answer an interrogatory submitted under Rule 33, Plaintiff can seek
6 the Court's intervention. Fed. R. Civ. P. 37(a)(3)(B).

7 Plaintiff is also requesting assistance in contacting other inmate witnesses. Inmates may only
8 correspond with one another if they obtain written authorization from the appropriate prison officials.
9 Cal. Code Regs., tit. 15 § 3139 (2010). Further, the Court does not have jurisdiction in this action
10 over anyone other than Plaintiff and Defendant, and cannot order that Plaintiff be allowed to
11 correspond with his witnesses. *E.g., City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660,
12 1665 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*,
13 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982); *Jones v. City of Los Angeles*, 444 F.3d 1118, 1126
14 (9th Cir. 2006). However, the Court will request that inmate witnesses be authorized to correspond
15 if the Court is satisfied that Plaintiff has first unsuccessfully tried to initiate contact with inmate
16 witnesses through properly following prison regulations and if Plaintiff demonstrates that the
17 witnesses possess actual knowledge of relevant facts. Plaintiff is required to make that showing with
18 respect to each witness, and may not rely on conclusory assertions that the witnesses possess relevant
19 knowledge. At this juncture, Plaintiff has not demonstrated his effort to contact inmate witnesses
20 through following the prison regulations and has not demonstrated the requisite showing of relevant
21 knowledge with respect to his witnesses.

22 Plaintiff requests this court to assist in deposing non-party witnesses. There is no authority
23 for the proposition that the Court can issue an order requiring a non-party witness to provide a
24 declaration to Plaintiff. Plaintiff may contact the non-party witnesses and request declarations if he
25 wishes. Plaintiff is reminded that there are costs associated with depositions, which would include
26 arranging for and compensating a court reporter, and paying for a transcript of the deposition. Fed.
27 R. Civ. P. 30. To the extent that Plaintiff is willing and able to bear the full cost of a deposition,
28 Plaintiff is not precluded from deposing non-party witnesses. Moreover, if Plaintiff wishes to

1 conduct a deposition by written questions, it must be conducted in compliance with Rule 31 of the
2 Federal Rule of Civil Procedure. Plaintiff is cautioned that depositions by written questions entail
3 more than mailing questions to the deponents and awaiting their written responses. Fed. R. Civ. P.
4 31.

5 Plaintiff also requests the Court to enter exhibits in the record. As the Court stated in its first
6 informational order to Plaintiff, the Court cannot serve as a repository for the parties' evidence.
7 Originals or copies of evidence (i.e., prison or medical records, witness affidavits, etc.) should not
8 be submitted until the course of litigation brings the evidence into question (for example, on a
9 motion for summary judgment, at trial, or when requested by the court). At this point, the
10 submission of evidence is premature.

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

- 12 1. Plaintiff's motion to compel is DENIED.
- 13 2. Plaintiff's request for exhibits to be entered is DENIED.

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15 IT IS SO ORDERED.

16 Dated: January 19, 2011

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18 UNITED STATES MAGISTRATE JUDGE
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