

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONNELL HILL.

Plaintiff.

v.

F. GONZALEZ, et al.,

Defendants.

CASE NO. 1:11-cv-01071-LJO-MJS (PC)

ORDER (1) DISCHARGING ORDER TO SHOW CAUSE (ECF No. 43); (2) DENYING REQUEST FOR SANCTIONS (ECF No. 45); AND (3) REQUIRING DEFENSE COUNSEL TO NOTIFY COURT OF COMPLIANCE WITH ECF No. 41

FOURTEEN (14) DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds against Defendant Peterson on Plaintiff's First Amendment access to courts claim.

On December 31, 2014, Plaintiff filed a motion to compel a further response to his request for production of documents. (ECF No. 36.) Defendant opposed the request. (ECF No. 39.) On April 14, 2015, the Court granted in part and denied in part the request, and ordered Defendant to provide a further response within thirty days. (ECF No. 41.)

On April 6, 2015, Plaintiff filed a motion to compel discovery, stating that defense counsel failed to respond to interrogatories within the allotted time. (ECF No. 40.) Defendant filed no response. On April 30, 2015, the Court granted the motion to compel,

1 ordered Defendant to respond, and ordered Defendant to show cause why she should
2 not be sanctioned for failing to respond in the first instance. (ECF No. 43.)

3 On May 14, 2015, defense counsel responded to the order to show cause. (ECF
4 No. 44.) Counsel explained that Plaintiff's interrogatories were forwarded to counsel's
5 legal staff for processing, but inadvertently not calendared or entered into counsel's
6 database. The interrogatories themselves were misplaced. Defense counsel
7 subsequently suffered from a serious medical condition requiring admission to the
8 Emergency Room and substantial time off work. He states that he responded to
9 Plaintiff's interrogatories on May 14, 2015, in compliance with the Court's order granting
10 the motion to compel.

11 On May 18, 2015, Plaintiff filed a document styled, "Defendants Failure to Comply
12 with Court Order." (ECF No. 45.) Plaintiff stated that, as of April 29, 2015, defense
13 counsel had not complied with the Court's April 14, 2015 order granting in part and
14 denying in part Plaintiff's motion to compel. He requested that Defendant be sanctioned
15 \$50.00.

16 Although the clerical errors that led to counsel's failure to respond to Plaintiff's
17 interrogatories are not excusable, the Court nevertheless will discharge the order to
18 show cause based on delays caused by defense counsel's unanticipated medical
19 condition.

20 Plaintiff's request for sanctions in relation to the Court's April 14, 2015 order will
21 be denied. In that order, the Court afforded Defendant thirty days in which to respond.
22 Thus, Defendant's failure to respond by April 29, 2015 is not in violation of the order and
23 does not warrant the imposition of sanctions. Nevertheless, in light of Defendant's prior
24 difficulties responding to discovery, the Court will order Defendant to file a notice of
25 compliance with the April 14, 2015 order within fourteen days.

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

27 1. The order to show cause (ECF No. 43), filed April 30, 2015, is HEREBY
28 DISCHARGED;

2. Plaintiff's request for sanctions (ECF No. 45) is DENIED; and
3. Defendant is ordered to file a notice of compliance with ECF No. 41 within fourteen days.

IT IS SO ORDERED.

Dated: June 5, 2015

/s/ *Michael J. Seng*
UNITED STATES MAGISTRATE JUDGE