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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MERRICK JOSE MOORE,
Plaintiff,
v.
GIPSON, et al,
Defendants.

Case No. 1:13-cv-01820-DAD-BAM (PC)
**ORDER REINSTATING BRIEFING ON
DEFENDANTS’ MOTION TO COMPEL
TWENTY-ONE (21) DAY DEADLINE**

Plaintiff Merrick Jose Moore (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 8, 2017, Defendants filed a motion to compel pursuant to Federal Rule of Civil Procedure 37(a)(3)(B). (ECF No. 43.) On October 5, 2017, the Court issued an order directing the parties to meet and confer regarding their discovery dispute, and to file a joint statement following the parties’ conference. The Court stayed further briefing on Defendants’ motion to compel. (ECF No. 48.)

The parties’ Joint Statement Regarding Meet-and-Confer Conference, filed on October 11, 2017, indicated that Plaintiff’s legal property was currently misplaced due to Plaintiff’s multiple prison transfers. (ECF No. 49.) Further status reports filed by the parties indicated that due to Plaintiff’s recent transfer to the R. J. Donovan Correctional Facility (“RJD”), Plaintiff’s property was to be sent via overnight mail on November 9, 2017. (ECF Nos. 51, 53.) The Court ordered

1 the parties to file a joint status report addressing what efforts had been made to locate and return
2 Plaintiff's legal property, and what items, if any, were missing and necessary for Plaintiff to
3 respond to Defendants' discovery requests. (ECF No. 54.)

4 Currently before the Court is Defendants' status report, filed December 18, 2017. (ECF
5 No. 56.) Defendants indicate that the litigation coordinator at RJD informed defense counsel that
6 on November 30, 2017, Plaintiff refused to accept his property and became belligerent towards
7 officers. Further, on December 11, 2017, defense counsel was informed by Plaintiff's
8 correctional counselor that Plaintiff refused to accept counsel's telephone call and would submit
9 his own status report to the Court regarding his legal property. Defendants seek reinstatement of
10 the briefing schedule on their motion to compel and require Plaintiff to respond. (Id.)

11 On December 20, 2017, Plaintiff filed his own status report. (ECF No. 57.) Plaintiff
12 states that following a meet and confer with defense counsel, Plaintiff's property was transferred
13 to RJD on November 9, 2017. Plaintiff alleges that when his property was issued on November
14 30, 2017, an entire box of property was missing, including his legal files, citation book, federal
15 procedure and practice book, and Black's law dictionary. (Id.)

16 Having considered the representations of the parties, the Court finds it appropriate to
17 reinstate briefing on Defendants' motion to compel, filed on August 8, 2017.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Within **twenty-one (21) days** from the date of service of this order, Plaintiff shall file
20 an opposition or statement of non-opposition to Defendants' motion to compel
21 responses to discovery requests, (ECF No. 43). In his response, Plaintiff shall address
22 whether any of his legal property remains missing, and what items, if any, are missing
23 and necessary for Plaintiff to respond to Defendants' discovery requests;
- 24 2. Within **seven (7) days** from the date of filing in CM/ECF of Plaintiff's response or
25 opposition to the motion to compel, Defendants shall file a reply confirming that an
26 additional inquiry has been made to determine whether Plaintiff has stored property in
27 the units or facilities where he has been housed while at California Men's Colony. If
28 any property is located in storage, then Defendants also should confirm if or when that

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property was transferred to R. J. Donovan Correctional Facility (or Plaintiff's current housing assignment) to be issued to Plaintiff according to policy.

IT IS SO ORDERED.

Dated: January 3, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE