

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

EDDIE HAMILTON,
Plaintiff,
v.
J. QUINONEZ, et al.,
Defendants.

Case No. 1:14-cv-01216-LJO-MJS (PC)
ORDER GRANTING IN PART
DEFENDANTS' MOTION TO COMPEL
ORDER GRANTING DEFENDANTS'
REQUEST TO MODIFY SCHEDULING
ORDER
(ECF Nos. 27 & 33)
FOURTEEN-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. He is currently incarcerated at the Correctional Training Facility in Soledad, California. The case proceeds against Defendants J. Quinonez and E. Lozano on Plaintiff's Eighth Amendment failure to protect claim. (ECF Nos. 9 & 10.)

Before the Court is Defendants' September 22, 2015, "Motion to Compel," which Plaintiff opposes. Also before the Court is Defendants' December 1, 2015, "First Motion to Modify Their Deadline for a Dispositive Motion." Plaintiff has not responded to this second motion. These matters are deemed submitted pursuant to Local Rule 230(/).

I. PROCEDURAL HISTORY

The Court signed a scheduling order on January 23, 2015 setting forth the following deadlines:

1
2 Exhaustion Motion Filing Deadline: April 23, 2015
3 Deadline to Amend Pleadings: July 23, 2015
4 Discovery Deadline: September 23, 2015
5 Dispositive Motion Deadline: December 3, 2015 (ECF No. 15.)

6 On August 7, 2015, Defendants propounded their first set of discovery on Plaintiff
7 (“Set 1”), which included 11 Requests for Production of Documents (“RPD”) and 23
8 Interrogatories. (See ECF No. 27.) By September 17, 2015, the date of Plaintiff’s
9 deposition, Defendants still had not received any responses to their discovery requests.
10 When asked at the deposition if he received the requests, Plaintiff acknowledged that
11 he did. On September 22, 2015, Defendants filed the instant motion to compel Plaintiff
12 to respond to their discovery requests. In his one-paragraph opposition to the instant
13 motion, Plaintiff asserts that “[a]ll the interrogatories are overbroad” and that the RPD
14 seeks information already available to Defendants. (ECF No. 34.)

15 On December 1, 2015, Defendants also filed a motion to modify the scheduling
16 order to allow more time to file dispositive motions, arguing that Plaintiff had still not filed
17 his responses to Defendants’ discovery request, preventing Defendants from
18 adequately preparing a dispositive motion. (ECF No. 33.)

19 Plaintiff has made three requests for extensions of time over the course of the
20 case, including two requests to extend the time to respond to Defendants’ discovery so
21 that Plaintiff could consult with his jailhouse lawyer at a different facility. (ECF Nos. 25,
22 28, & 31.) The Court twice denied Plaintiff’s request for an extension on those
23 grounds. The Court did, however, grant Plaintiff until December 7, 2015 to respond to
24 Defendants’ discovery requests. (ECF Nos. 29 & 32.) Plaintiff timely filed his opposition
25 to Defendants’ motion to compel on December 9, 2015.¹ (ECF No. 34.)

26
27 ¹ Plaintiff’s opposition was filed with the Court on December 9, 2015, but the certificate of service shows it
28 was delivered to prison authorities on December 6, 2015. Therefore under the prison mailbox rule,
Plaintiff’s opposition is deemed timely. Houston v. Lack, 487 U.S. 266 (1988)

1 **II. LEGAL STANDARDS**

2 The purpose of discovery is to streamline the trial process by narrowing and
3 clarifying the issues in dispute. Hickman v. Taylor, 329 U.S. 495, 501 (1947). Through
4 the discovery process, parties can dispense with the need to prove basic issues and
5 facts at trial and instead focus on more substantive questions. See United States v.
6 Proctor & Gamble Co., 356 U.S. 677, 682 (1958) (noting that discovery, together with
7 pretrial procedures, “make a trial less a game of blind man’s bluff and more a fair
8 contest with the basic issues and facts disclosed to the fullest practicable extent.”) With
9 these goals in mind, Rule 26(b)(1) permits parties to obtain discovery “regarding any
10 non-privileged matter that is relevant to any party’s claim or defense and proportional to
11 the needs of the case.” Fed. R. Civ. P. 26(b)(1). Since discovery cannot serve its
12 purpose without the cooperation of all parties involved, the discovery process is subject
13 to the overriding limitation of good faith, and callous disregard for discovery
14 responsibilities will not be condoned. Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242,
15 1246 (9th Cir. 1981).

16 If a party objects to any interrogatory, the grounds for that objection must be
17 stated with specificity. Fed. R. Civ. P. 33(b)(4). Likewise, any objection to a RPD must
18 state with specificity the grounds for objecting to the request. Fed. R. Civ. P.
19 34(b)(2)(B). If a party does not object to an Interrogatory within the time designated by
20 the Court, his objection may be deemed waived absent good cause. Fed. R. Civ. P.
21 33(b)(4). While Rule 34 does not specifically provide for a waiver where an objection is
22 untimely, “courts have held that such a failure may be deemed a waiver.” Cal.
23 Sportfishing Prot. All. v. Callaway, Civ. No. 10-cv-1801-TLN-GGH, 2011 WL 4479531,
24 at *1 (E.D. Cal. Sept. 27, 2011).

25 Under Rule 37(a)(1), a party may move for a court order compelling disclosure or
26 discovery. Fed. R. Civ. P. 37(a)(1). The motion must include a certification that a good
27 faith attempt was made to confer with the opposing party about the discovery dispute
28

1 before seeking Court intervention. Id. The Court has the discretion impose sanctions
2 against a non-cooperating party. Fed. R. Civ. P. 37(b).

3 **III. DISCUSSION**

4 **A. Defendants' Motion To Compel Plaintiff to Respond**

5 It appears, and Plaintiff does not dispute, that Plaintiff has failed to provide any
6 responses to Defendants' discovery requests. In his opposition, Plaintiff states only
7 that:

8 All the interrogatories are overbroad as to scope. Plaintiff further
9 objects that Defendants request seeks information that located (sic)
10 in Plaintiff appeals/602, complaint and accessible via CDCR files.
11 Pl.'s Opp'n at 2 (ECF No. 34).

12 Defendants argue that, in light of Plaintiff's failure to respond to their requests,
13 Plaintiff has waived any objections to them. Davis v. Fendler, 650 F.2d 1154, 1160 (9th
14 Cir. 1981) ("Generally, in the absence of an extension of time or good cause, the failure
15 to object to interrogatories within the time fixed by Rule 33 . . . constitutes a waiver of
16 any objection.") Defendants claim in this regard is compelling. However, given
17 Plaintiff's pro se status, the Court will give him one last opportunity to respond or object
18 properly. Plaintiff is reminded that although he is a prisoner proceeding pro se, he must
19 follow the rules of discovery. Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995) ("[P]ro se
20 litigants are bound by the rules of procedure.") Further disregard of them will not be
21 tolerated.

22 At this point, Plaintiff's objections to Defendants' discovery requests are not
23 properly before the Court. Plaintiff is therefore ORDERED to respond directly to
24 *Defendants* on each of Defendants' requests, even if he believes some may warrant
25 objection. Fed. R. Civ. P. 33(b), 34(b)(2). It will then be up to Defendants to file a
26 motion to compel if they believe the objection is not justified. Fed. R. Civ. P.
27 37(a)(3)(B).

28 Defendants' motion to compel responses will therefore be granted. Plaintiff must
serve his responses on Defendants within **fourteen (14) days** of the date of service of

1 this order.

2 **B. Defendants' Motion For Attorney's Fees**

3 Defendants request that Plaintiff be sanctioned in the amount of the attorney's
4 fees they have incurred in bringing this motion (\$425). The Court will deny the request ,
5 at this time, but do so without prejudice to Defendant's resubmission of it for
6 considerations after the Court evaluates Plaintiff responses in light of the foregoing
7 order.

8 **C. Defendants' Motion To Modify Scheduling Order**

9 This Court may modify a scheduling order upon a showing of good cause. Fed.
10 R. Civ. P. 16(b)(4); Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.
11 1992).

12 Good cause being shown, Defendants' motion to modify the scheduling order will
13 be granted. Plaintiff's responses to Defendants' discovery requests must be served
14 **fourteen (14) days** from the date of service of this Order. Any further delay will result in
15 sanctions against Plaintiff.

16 The deadline for filing a motion to compel shall be **twenty-eight days** from the
17 date of this Order. Absent good cause, discovery motions will not be considered if filed
18 after the discovery deadline.

19 The deadline for filing all dispositive motions shall be **July 15, 2016**.

20 **IV. CONCLUSION**

21 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 22 1. Defendants' motion to compel Plaintiff's responses to their Request for
23 Production of Documents and Interrogatories is GRANTED.
- 24 2. Defendants' motion for attorney's fees is DENIED.
- 25 3. Defendants' motion to modify the scheduling order is GRANTED.

- 26 a. Plaintiff must respond to Defendants' discovery requests within
27 **fourteen (14) days** of the date of service of this order.

- b. The deadline for Defendants to file a motion to compel is 28 days from the date of this Order
- c. The deadline for filing of dispositive motions will be **July 15, 2016**.

IT IS SO ORDERED.

Dated: April 20, 2016

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE