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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLES W. WINDHAM,

 Plaintiff,

 v.

M. MARIN, et al.,

 Defendants.

Case No. 1:14-cv-01636-DAD-BAM (PC)

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION FOR SANCTIONS AND CONTEMPT (ECF No. 100)

ORDER DENYING PLAINTIFF’S MOTION FOR EVIDENTIARY HEARING (ECF No. 101)

ORDER DENYING DEFENDANTS’ MOTION FOR TERMINATING SANCTIONS, OR IN THE ALTERNATIVE, EVIDENTIARY SANCTIONS (ECF No. 105)

ORDER DIRECTING DEFENDANTS TO FILE REPLY TO PLAINTIFF’S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, IF ANY, WITHIN **FOURTEEN (14) DAYS**

I. Introduction

Plaintiff Charles W. Windham (“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 proceeds on Plaintiff’s Eighth Amendment claims of excessive force against Defendants Marin, Uribe, Rasley, Contreras, Capano, Rubio, and Doe #1, and for deliberate indifference to serious medical needs against Defendants Navarro, Morales, Marin, and Shiver.

1 Currently pending before the Court are: Defendants' motion for summary judgment based
2 on Plaintiff's failure to exhaust administrative remedies, (ECF No. 49); Plaintiff's motion for
3 sanctions and contempt, (ECF No. 100); Plaintiff's motion for evidentiary hearing, (ECF No.
4 101); and Defendants' motion for terminating sanctions, or in the alternative, motion for
5 evidentiary sanctions, (ECF No. 105).

6 **II. Relevant Procedural Background**

7 On September 2, 2015, Defendants filed a motion for summary judgment based on
8 Plaintiff's failure to exhaust administrative remedies. (ECF No. 49.) After multiple extensions of
9 time, (ECF Nos. 55, 56, 68), Plaintiff filed an opposition on October 13, 2016, (ECF Nos. 72–75).

10 Following the filing of Plaintiff's opposition, Defendants filed a motion to compel
11 responses to discovery and a motion for extension of time to file a reply to Plaintiff's opposition
12 to the pending motion for summary judgment. (ECF Nos. 77, 78.) Defendants argued that
13 Plaintiff's responses to certain Special Interrogatories were insufficient, and they could not
14 adequately respond to Plaintiff's opposition to the motion for summary judgment without
15 Plaintiff's full responses to the interrogatories.

16 On October 24, 2016, the Court partially granted Defendants' request for an extension of
17 time. The Court indicated that it would issue an order setting a deadline for Defendants to serve
18 and file their reply concurrently with its order regarding Defendants' motion to compel
19 interrogatory responses. (ECF No. 81.)

20 Plaintiff opposed the motion to compel, arguing that his responses to the interrogatories
21 were sufficient, and in addition he had been prejudiced in responding because he had not been
22 issued any of his stored property, including case files, evidence, briefs, and notes. (ECF No. 82.)
23 Defendants replied, submitting a declaration of litigation coordinator M. Kimbrell stating that
24 Plaintiff had one box of property in storage, which had been transferred to Plaintiff's housing
25 facility to be issued to him according to policy. In addition, a declaration of Appeals Coordinator
26 M. Oliviera stated that the appeals office had not received any appeal regarding requests for
27 return of Plaintiff's property between October 18, 2016 and November 22, 2016. (ECF Nos. 86,
28 86-1, 86-2.)

1 Plaintiff filed a surreply contending that he had made multiple verbal requests for the
2 property and submitted multiple CDCR-22 and CDCR-602 forms requesting priority issuance of
3 his property, but none were returned to him and he did not receive his property. Plaintiff asserted
4 that he had five boxes of property in storage at Corcoran State Prison's administrative segregation
5 unit, along with two large trash bags from the Department of State Hospitals. (ECF No. 87.)

6 On February 16, 2017, the Court granted in part the motion to compel. The Court further
7 ordered Defendants to provide written confirmation that an additional inquiry was made to
8 determine whether Plaintiff had property in storage or other units where Plaintiff had been
9 housed, and to issue any such property to Plaintiff. (ECF No. 95.)

10 On March 1, 2017, Defendants filed a Notice of Compliance pursuant to the Court's
11 February 16 order. A declaration of M. Kimbrell states that after additional inquiries, two more
12 boxes of property were located at Corcoran State Prison and transferred to Plaintiff at Mule Creek
13 State Prison, bringing Plaintiff's total property to three boxes. (ECF No. 98.) Plaintiff objected,
14 stating that he has a total of five boxes of property and two large trash bags of property. Plaintiff
15 contended that the three boxes identified by Defendants are actually two boxes and two trash
16 bags, but the final three boxes of property were not returned to him. (ECF No. 99.)

17 Thereafter, the parties filed the motions currently pending before the Court: Plaintiff's
18 motion for sanctions and contempt, (ECF No. 100); Plaintiff's motion for evidentiary hearing,
19 (ECF No. 101); and Defendants' motion for terminating sanctions or, in the alternative,
20 evidentiary sanctions, (ECF No. 105). Plaintiff asserts that Defendants continue to withhold his
21 legal property, and without his property, he is unable to provide further responses to Defendants'
22 special interrogatories. Defendants contend that Plaintiff should be sanctioned for failing to
23 respond, without objections, to Defendants' special interrogatories, and that they have located and
24 returned all of Plaintiff's stored property.

25 Defendants filed an opposition to Plaintiff's motion for sanctions and motion for
26 evidentiary hearing on April 11, 2017. (ECF No. 104.) Plaintiff filed a reply on April 27, 2017.
27 (ECF No. 109.) In turn, Plaintiff filed an opposition to Defendants' motion for sanctions on May
28 5, 2017, (ECF No. 113), and Defendants filed a reply on May 12, 2017, (ECF No. 114). Plaintiff

1 has also filed various declarations in support of his motions, (ECF Nos. 107, 111, 120, 122, 126,
2 128–130), and on July 20, 2017, a declaration was filed by third-party Anthony Ivan Bobadilla in
3 support of Plaintiff’s evidentiary hearing motion, (ECF No. 118).¹ These motions are deemed
4 submitted. Local Rule 230(l).

5 In light of the parties’ continued inability to resolve the issue of Plaintiff’s legal property,
6 the Court set a telephonic status conference for July 28, 2017. (ECF No. 117.) Due to medical
7 issues, Plaintiff did not appear, and the status conference was reset for August 24, 2017. (ECF
8 No. 125.)

9 At the telephonic status conference held on August 24, 2017, the Court heard argument
10 regarding the status of Plaintiff’s legal property. (ECF No. 127.) The positions of the parties
11 remain unchanged. Plaintiff continues to assert that he is missing three boxes of property
12 containing law books, handwritten 602 forms, and detailed notes that are necessary to providing
13 further responses to Defendants’ interrogatories. Defendants contend that the litigation
14 coordinators have conducted lengthy searches at Corcoran State Prison and Mule Creek State
15 Prison, but have not located any further property belonging to Plaintiff.

16 **III. Motions for Sanctions**

17 **A. Legal Standard**

18 Rule 37(b)(2) of the Federal Rules of Civil Procedure provides that if a party fails to obey
19 an order to provide or permit discovery, the Court may issue further just orders, which may
20 include prohibiting the disobedient party from supporting or opposing designated claims or
21 defenses, or from introducing designated matters in evidence. Fed. R. Civ. P. 37(b)(2)(A). The
22 Court also may dismiss the action or proceeding in whole or in part. Id.

23 Additionally, Local Rule 110 provides that “[f]ailure . . . of a party to comply . . . with any
24 order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within
25 the inherent power of the Court.” District courts have the inherent power to control their dockets
26 and “[i]n the exercise of that power they may impose sanctions including, where appropriate, . . .

27 ¹ As Mr. Bobadilla is not a party to this action, the declaration is not properly before the Court. Fed. R. Civ. P. 11(a);
28 Local Rule 131(b). Nevertheless, in an abundance of caution, the Court has reviewed the declaration in reference to
Plaintiff’s motions for sanctions and evidentiary hearing, and it does not change the Court’s analysis.

1 dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss
2 an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court
3 order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53–54 (9th
4 Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258,
5 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of
6 complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for
7 failure to comply with court order).

8 In determining whether to dismiss an action, the Court must consider several factors: (1)
9 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
10 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
11 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779
12 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

13 **B. Analysis**

14 At this juncture, further factual development is unnecessary, and Plaintiff’s motion for
15 evidentiary hearing is denied. Based on the numerous filings and arguments of the parties
16 regarding this issue, the Court finds that Plaintiff’s missing boxes of legal property were at some
17 point in time in the custody of CDCR, and although Defendants conducted a good faith search,
18 the property could not be located. Moreover, the Court finds that the missing boxes of legal
19 property are necessary for Plaintiff to provide further responses to Defendants’ interrogatories.
20 Accordingly, the Court does not find that sanctions against Plaintiff—either evidentiary or
21 terminating—are warranted.

22 Defendants argue that Plaintiff has failed to comply with the Court’s orders and to provide
23 responses, without objections, to their interrogatories. However, Defendants fail to acknowledge
24 that Plaintiff’s noncompliance stems from the loss of the detailed notes, logs, and other legal
25 materials that were in the possession and custody of CDCR. The Court declines to impose
26 sanctions against Plaintiff for the loss of property that was not within his control.

27 With respect to Plaintiff’s motion for sanctions, under these circumstances sanctions
28 against Defendants are appropriate, but should not be severe. See In re Napster, Inc. Copyright

1 Litig., 462 F. Supp. 2d 1060, 1066–67 (9th Cir. 2006) (“[A] party’s motive or degree of fault in
2 destroying evidence is relevant to what sanction, if any, is imposed.”) (citations omitted). The
3 Court finds that Defendants conducted multiple good faith searches in attempting to locate the
4 missing property, and there is no evidence of bad faith. The boxes of legal property were last in
5 the possession and custody of CDCR. Defendants, not Plaintiff, should bear the burden of the
6 loss of the information, as the evidence was lost while in CDCR’s control.

7 For the purposes of the pending summary judgment motion, Defendants will be permitted
8 an opportunity to file a reply to Plaintiff’s opposition, but must do so absent further discovery
9 responses. When the motion is fully briefed, the Court will decide the motion on the basis of the
10 undisputed evidence presented, viewed in the light most favorable to Plaintiff. Albino v. Baca,
11 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc). The Court declines to impose the additional
12 sanctions Plaintiff requests.

13 The Court further notes that the inadvertent loss of Plaintiff’s legal property may not, by
14 itself, be sufficient for him to survive summary judgment. See Med. Lab. Mgmt. Consultants v.
15 ABC, Inc., 306 F.3d 806, 825 (9th Cir. 2002) (citations omitted). Plaintiff must come forward
16 with some evidence supporting his claim. Id. (citing Kronisch v. United States, 150 F.3d 112,
17 128 (2d Cir. 1998) (if a party “has produced no evidence—or utterly inadequate evidence—in
18 support of a given claim,” the destruction of evidence “standing alone” will not allow the party to
19 survive summary judgment on that claim); Byrnie v. Cromwell Bd. of Educ., 243 F.3d 93, 107
20 (2d Cir. 2001) (“In borderline cases, an inference of spoliation, in combination with ‘some (not
21 insubstantial) evidence’ for the plaintiff’s cause of action, can allow the plaintiff to survive
22 summary judgment.”) (citation omitted)).

23 **IV. Conclusion and Order**

24 Accordingly, IT IS HEREBY ORDERED as follows:

- 25 1. Plaintiff’s motion for sanctions and contempt (ECF No. 100) is GRANTED IN PART and
26 DENIED IN PART, as discussed above;
- 27 2. Plaintiff’s motion for evidentiary hearing (ECF No. 101) is DENIED;
- 28 3. Defendants’ motion for terminating sanctions, or in the alternative, motion for evidentiary

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sanctions (ECF No. 105) is DENIED; and

4. Defendants shall file a reply in support of the pending motion for summary judgment, if any, within **fourteen (14) days** from the date of service of this order.

IT IS SO ORDERED.

Dated: September 14, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE