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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

CHARLES W. WINDHAM,	)	1:14-cv-01636-DAD-BAM (PC)
	)	
Plaintiff,	)	ORDER DISREGARDING PLAINTIFF’S
	)	DECLARATION IN OPPOSITION TO
v.	)	MOTION TO COMPEL
	)	
M. MARIN, et al.,	)	(ECF No. 96)
	)	
	)	
Defendants.	)	
	)	
	)	

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 M. Marin, D. Uribe, W. Rasley, J. Contreras, A. Capano, R. Rubio, and Doe #1, and for deliberate indifference to serious medical needs against Defendants C. Navarro, V. Morales, M. Marin, and S. Shiver.

On February 16, 2017, the Court issued an order granting in part and denying in part Defendants’ pending motion to compel Plaintiff’s responses to special interrogatories. As part of that order, the Court directed Defendants to serve and file written confirmation, within fourteen (14) days, that an additional inquiry had been made to determine whether Plaintiff had stored property in the units or facilities where he had been housed while at Corcoran State Prison. The order also directed Plaintiff, within thirty days, to serve supplemental responses, without

1 objections, to certain of Defendants' Special Interrogatories, Set One. (ECF No. 95).

2 On February 27, 2017, Plaintiff filed a declaration in support of his responses/opposition  
3 to Defendants' motion to compel special interrogatory responses. According to his declaration,  
4 Plaintiff submitted several CDCR-22 forms regarding his property and other matters. Plaintiff  
5 contends that the lack of responses evidences, amongst other things, deliberate obstruction and  
6 refusal to issue his property. Plaintiff requests that the Court order Defendants' agents and  
7 friends to produce missing documents and exhibits. (ECF No. 96). In support, Plaintiff attaches  
8 the following exhibits to his declaration:

9 Exhibit A-1: A CDCR 22 form submitted to Corcoran State Prison's litigation  
10 coordinator, M. Kimbrell. According to the CDCR 22 form, Plaintiff was transferred to Mule  
11 Creek State Prison on February 1, 2017, and the week prior he gave Correctional Officer Ramos  
12 his original declaration and exhibits for copying, but Correctional Officer Ramos failed to return  
13 the original declaration and exhibits. Plaintiff requests that M. Kimbrell send him the originals  
14 at Mule Creek State Prison. Plaintiff reports that the exhibits consisted of multiple CDCR 22  
15 forms and some 602s seeking his personal and legal property. Plaintiff now argues that because  
16 M. Kimbrell failed to respond to this CDCR 22 form in writing, the administrative appeals  
17 process is unavailable, futile, inadequate, defaulted and waived in full. Plaintiff further argues  
18 that "[t]hey wilfully trashed that evidence." (ECF No. 96 at ¶ 5).

19 Exhibit A-2: A CDCR 22 form dated January 4, 2017, requesting Plaintiff's property.  
20 The exhibit includes a response.

21 Exhibit A-3: A CDCR 22 form dated May 21, 2015, requesting Plaintiff's personal law  
22 books, legal files, court orders, formats, evidence, legal pads, court pleading paper, pens, stamps  
23 envelopes, correspondence, address books, etc. last in the custody of Correctional Officer C.  
24 Rodriguez in Facility 3B.

25 Exhibit A-4: A CDCR 22 form dated June 1, 2015, indicating that Plaintiff was still  
26 waiting for (1) 3B01 in-cell property; (2) 3B gym stuff; (3) 3A04 property/TV; and (4) 3A03  
27 stuff.

28 Exhibit A-5: A CDCR 22 form dated January 4, 2017, requesting that (1) Plaintiff be

1 placed on the "NDS" list/status so that he could get NDS calls and property and (2) he receive an  
2 explanation as to why he was not automatically NDS upon ASU placement.

3 Exhibit A-6: A CDCR 22 form dated January 9, 2017, indicating that Plaintiff was owed  
4 indigent envelopes.

5 Exhibit A-7: A CDCR 22 form dated August 5, 2014, regarding Plaintiff's submission of  
6 appeals regarding property, a broken fan and UCC action. Plaintiff complained that he had not  
7 received a response to those appeals.

8 Exhibit A-8: A CDCR 22 form dated September 21, 2014, requesting not only  
9 preservation of 3B yard and unit video surveillance for the week of September 11, 2014, but also  
10 an interview and an IAB investigation.

11 The Court has reviewed Plaintiff's declaration and supporting exhibits. To the extent  
12 Plaintiff has filed these items as a further opposition to Defendants' motion to compel, the  
13 declaration and exhibits are unnecessary. The Court has issued an order resolving Defendants'  
14 pending motion to compel and a supplemental response is neither warranted nor authorized. See,  
15 e.g., Local Rule 231(1) (permitting a motion, opposition and reply). To the extent Plaintiff has  
16 filed these items as a further attempt to secure his property, the declaration and exhibits also are  
17 unnecessary. The Court has ordered Defendants to serve and file written confirmation that an  
18 additional inquiry has been made to determine whether Plaintiff has stored property in the units  
19 or facilities where he had been housed while at Corcoran State Prison. Additionally, the Court  
20 has ordered that if any property is located in storage, then Defendants must confirm if or when  
21 that property was transferred to CSP-Corcoran 3B Facility (or Plaintiff's current housing  
22 assignment) to be issued to Plaintiff according to policy. (ECF No. 95 at 13).

23 For these reasons, Plaintiff's declaration and supporting exhibits are deemed unnecessary  
24 and are HEREBY DISREGARDED.

25 IT IS SO ORDERED.

26 Dated: March 1, 2017

27 /s/ Barbara A. McAuliffe  
28 UNITED STATES MAGISTRATE JUDGE