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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LANCE WILLIAMS,
Plaintiff,
v.
WASCO STATE PRISON, et al.,
Defendants.

Case No. 1:14-cv-01714-DAD-MJS (PC)
ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL
(ECF No. 46)

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 case proceeds on Plaintiff's first amended complaint against Defendant Salvatore and as-yet unidentified John Doe 1 on Plaintiff's Eighth Amendment medical indifference claim.

Before the Court is Plaintiff's August 11, 2016 "Request for Information of 2 Inmate Witnesses for Limited Correspondence" and "Request for Production of Documents and Issuance of Subpoenas." (ECF No. 46.) Defendant has not opposed these requests and the time for doing so has passed. These matters are submitted. Local Rule 230(/).

I. Procedural Background

After the Court found Plaintiff's first amended complaint stated cognizable claims

1 against John Does 1 and 2 (ECF No. 12), it opened discovery for the limited purpose of
2 identifying the Doe defendants. In relation to such discovery, on July 14, 2015, the
3 Court directed non-party officials at Wasco State Prison to provide the Court with
4 specified documents for *in camera* review. (ECF No. 18.) The Court also directed
5 “Defendants” to provide Plaintiff with the current contact information of inmate Dozier
6 and parolee Jerry Kelly, as Plaintiff believed they might be able to identify the Doe
7 defendants. Id. at 3. Plaintiff was advised that the Court’s order did not relieve him of his
8 responsibility to comply with the requirements for inmate correspondence outlined under
9 CAL. CODE REGS., tit. 15 § 3139. Id.

10 On August 5, 2015, in response to the July 14, 2015 Order, the prison furnished
11 documents to the Court for *in camera* review.

12 On November 12, 2015, a further Telephonic Status Conference was held with
13 the Attorney General’s office and Plaintiff. The Court advised that the records provided
14 did not contain information which would assist in identifying the Doe Defendants. The
15 Court and the parties were unable to determine other methods of identifying the Doe
16 Defendants or otherwise moving the case forward.

17 On or about December 2, 2015, Plaintiff notified the Court that, independently of
18 the above described proceedings, he had identified John Doe 2 as Correctional Officer
19 Salvatore. (ECF No. 28.) Plaintiff’s first amended complaint substituted Defendant
20 Salvatore for John Doe 2. (ECF No. 29.)

21 On September 8, 2015 Plaintiff had filed a motion (ECF No. 20) to compel
22 discovery, namely disclosure of the information the Court’s July 14, 2015, had directed
23 the prison to produce *in camera*. That motion was denied January 12, 2016 (ECF No.
24 30). The Court stated in its Order: “The Court directed prison officials to submit specified
25 documents directly to the Court. The prison complied with this directive. It was not
26 required to produce any documents directly to Plaintiff. There is no basis for compelling
27 a further response.”

1 The first amended complaint was then served on Defendant Salvatore, and he
2 filed an Answer on April 8, 2016. (ECF No. 34.) A Scheduling Order (ECF No. 36) was
3 issued authorizing the continuation of discovery through December 11, 2016.

4 **II. Discussion**

5 Plaintiff claims that he has yet to receive the last known contact information for
6 inmate Dozier or parolee Kelly notwithstanding the Court's July 14, 2015, directive to
7 the "Defendants" to provide him with that information. Plaintiff also requests "sign-in
8 logs, full names, genders, and photos" of correctional officers working the first watch
9 shift between April 5 and 6, 2014 in order to aid him in identifying Doe 1. The Court
10 construes these requests as a motion to compel discovery.

11 Under Rule 37(a)(1), a party may move for a court order compelling disclosure or
12 discovery. Fed. R. Civ. P. 37(a)(1). The motion must include a certification that a good
13 faith attempt was made to confer with the opposing party about the discovery sought
14 before seeking Court intervention. Id.

15 At this juncture, Plaintiff's motion to compel is premature. There is no indication
16 Plaintiff propounded such discovery requests on Defendant Salvatore or that Defendant
17 Salvatore objected to responding to them. Plaintiff's request for production therefore
18 must be denied, albeit without prejudice.

19 Insofar as Plaintiff's motion is premised on this Court's July 14, 2015, directive to
20 "Defendants" to provide Plaintiff with the last known contact information for inmate
21 Dozier and parolee Kelly, the motion will be denied because at the time of the order,
22 there were no identified "Defendants" and because the attorney representative of the
23 Attorney General's office participating at that point advised the Court that he could not
24 provide that information. The Court could not there and cannot now force non-parties
25 (the prison or the Attorney General's representative) to comply with its July 14, 2015
26 Order.

27 Accordingly, IT IS HEREBY ORDERED:
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1. Plaintiff's motion (ECF No. 46), construed as a motion to compel discovery, is DENIED without prejudice.

IT IS SO ORDERED.

Dated: October 17, 2016

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE