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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANGEL AVALOS,
Plaintiff,
v.
CARPENTER, et al.,
Defendants.

1:15-cv-00369-LJO-JLT (PC)

**ORDER WITHDRAWING FINDINGS AND
RECOMMENDATION TO DISMISS and
GRANTING THIRTY DAYS TO RESPOND
TO THE MOTIONS MOTIONS TO
COMPEL**
(Docs. 26-28, 31, 32, 36)

30-DAY DEADLINE

**ORDER DISREGARDING PLAINTIFF'S
MOTION TO COMPEL**
(Doc. 33)

I. Defendant's motions to compel

On July 8, 2016, the only remaining Defendant in this action, Carpenter, filed three motions to compel Plaintiff to respond to his discovery requests. (Docs. 26, 27, 28.) Plaintiff did not respond to any of these motions. Thus, on August 18, 2016, the Court ordered Plaintiff to file an opposition or a statement of non-opposition to the motions within 21 days. (Doc. 31.) The Court warned Plaintiff that the failure to comply with the Court's order and to prosecute the action would result in recommendation that this action be dismissed. (*Id.*) Thereafter, Plaintiff did not file any response. Consequently, on September 13, 2016, this Court issued Findings and Recommendations to dismiss this action based on Plaintiff's failure to obey the Court's order and to prosecute this action. (Doc. 32.)

1 On October 3, 2016, Plaintiff filed objections to the F&R indicating that he did not file a
2 response to Defendants motions to compel because he had not received a ruling on a motion for
3 extension of time that he filed on September 5, 2016. (Doc. 35.) However, the Court did not
4 receive this motion. Along with his objections, however, Plaintiff filed a request for a 30-day
5 extension of time to file responses to Defendants’ motions to compel to which he attached a copy
6 of his earlier motion for an extension of time.¹ (Doc. 36.) He offers no explanation for his failure
7 to respond to the motion in July after it was filed, except to explain that he has limited access to
8 the law library. Exactly how this explains his decision to file nothing is unclear. Moreover, when
9 his earlier motion was returned to him in the mail, it is inexplicable that he chose to take no
10 further action until the Court took the step to dismiss the case. In any event, the Court will
11 withdraw the recommendation to dismiss the action and extend him additional time to respond.

12 **II. Plaintiff’s motion to compel**

13 In addition to the other filings, Plaintiff filed a “motion to compel.” (Doc. 33) In essence,
14 Plaintiff seeks an order from the Court compelling defendant’s attorney to produce the results of
15 an investigation completed by the California Department of Corrections and Rehabilitation. Id.
16 To him motion, Plaintiff attaches a letter from the CDCR issued more than a year ago, telling him
17 the investigation was completed. Id. at 6. He also attaches a letter to Defendant’s attorney, dated
18 September 5, 2016, asking that the investigation results be produced. Id. at 3-4.

19 The Court may compel production of the documents that a party wrongfully refuses to
20 produce in discovery. Fed. R. Civ. P. 37. However, Plaintiff makes no showing he *ever*
21 requested the document to be produced during discovery and, of course, the deadline for doing so
22 has passed. (Doc. 14 at 2). Moreover, the deadline for filing motions to compel expired three
23 months ago. Id. Therefore, the Court will **STRIKE** Plaintiff’s motion to compel (Doc. 33) as
24 untimely and improperly supported.

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27 ¹ Plaintiff’s earlier motion was returned to him by the U.S. Postal Service because he failed to write an address for
28 this court on the envelope. Plaintiff does not explain why he believed the mail *would* be delivered despite that he did
not write an address on the envelope.

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ORDER

Based upon the foregoing, the Court **ORDERS**:

1. The Findings and Recommendation to dismiss the action (Doc. 32) is

WITHDRAWN;

2. Plaintiff **SHALL** file an opposition or statement of non-opposition to the motions to compel within 30-days from the date of service of this order;

3. Plaintiff's motion to compel (Doc. 33) is **STRICKEN** as untimely and not properly supported.

IT IS SO ORDERED.

Dated: October 7, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE