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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RANDY LANGLEY,
Plaintiff,
v.
E. GARCIA; G. COOK,
Defendants.

Case No.: 1:16-cv-01299-LJO-JLT (PC)

**ORDER DENYING PLAINTIFF'S
MOTIONS TO COMPEL AND
DIRECTING PLAINTIFF TO SHOW
CAUSE WHY AWARD OF EXPENSES
SHOULD NOT BE IMPOSED**

(Docs. 39, 41)

Before the Court are Plaintiff's motions to compel discovery responses. In his first motion, Plaintiff requests "production of original video/audio tapes/CDs/electronically stored evidence." (Doc. 39.) The court construes this as a motion to compel under Federal Rule of Civil Procedure 37. In his second motion, Plaintiff seeks an order compelling Defendants' responses to requests for production.¹ (Doc. 41.) Although Plaintiff attempts to bring this motion under Rule 26, (*see id.* at 1), the Court construes it as a motion brought under Rule 37. Defendants filed oppositions to the motions on August 5, 2019, and August 26, 2019. (Docs. 40, 42.) Plaintiff has not filed a reply to either opposition, and the time to do so has passed. *See* Local Rule 230(l). For the reasons set forth below, the Court denies Plaintiff's motions.

¹ Plaintiff also seeks an extension of time in his second motion. (*See* Doc. 41 at 1, 3.) Plaintiff does not state what specific deadline he wishes to postpone, (*see id.*); thus, the Court is unsure for what matter Plaintiff seeks additional time. In any event, the Court granted Plaintiff's request for a stay on October 28, 2019, staying all proceedings in this action until February 14, 2020. (Doc. 45.) The Court, therefore, denies Plaintiff's request for an extension of time as moot.

1 **I. LEGAL STANDARDS**

2 Parties may seek “discovery regarding any nonprivileged matter that is relevant to any
3 party’s claim or defense and proportional to the needs of the case....” Fed. R. Civ. P. 26(b)(1).
4 Information “need not be admissible in evidence to be discoverable.” *Id.* Within this general
5 scope, a party may serve on any other party an interrogatory or a request to produce documents,
6 electronically stored information, or tangible things that are in the responding party’s possession,
7 custody, or control. Fed. R. Civ. P. 33(a), 34(a)(1). “Property is deemed within a party’s
8 ‘possession, custody, or control’ if the party has actual possession, custody, or control thereof or
9 the legal right to obtain the property on demand.” *Allen v. Woodford*, No. 1:05-cv-01104-OWW-
10 LJO, 2007 WL 309945, at *2 (E.D. Cal. 2007) (citation omitted). The responding party must
11 reply to the interrogatory or request within 30 days after being served. Fed. R. Civ. P. 33(b),
12 34(b)(2). The responding party must answer each interrogatory or state that he will produce the
13 requested documents, information, or things; or, the party must “state with specificity” the
14 grounds for objecting to the interrogatory or request. *Id.*

15 If a party fails to answer to an interrogatory or to produce documents as requested, the
16 party seeking discovery may file a motion with the Court to compel a response. Fed. R. Civ. P.
17 37(a)(3)(B). The moving party must “state the relief sought” and provide “with particularity the
18 grounds for seeking” the relief. Fed. R. Civ. P. 7(b)(1). Generally, the moving party must certify
19 that she has conferred or attempted to confer in good faith with the responding party to resolve
20 the dispute without court action. Fed. R. Civ. P. 37(a)(1); Local Rule 251(b). However, in
21 prisoner cases involving *pro se* plaintiffs, the meet-and-confer requirements of Rule 37 and Local
22 Rule 251 do not apply, though they are still encouraged. (*See* Doc. 32 at 2.)

23 **II. DISCUSSION**

24 **a. Plaintiff’s Motions to Compel**

25 In February 2019, Plaintiff served on Defendants interrogatories, requests for production,
26 and requests for admission. (Doc. 42 at 2.) Defendants timely responded to Plaintiff’s discovery
27 requests in April 2019. (*Id.*; *see also* Doc. 36 at 1.)

28 In supplemental responses, Defendants provided Plaintiff with a compact disc (CD)

1 containing seven videos of the incident underlying this action. (Myers Decl. No. 1, ¶ 2, Doc. 40-1
2 at 1.) Plaintiff concedes that he received the CD, but “[i]t is [his] belief [c]ounsel ... and/or
3 defendants deliberately distorted images in order to prevent proper viewing.” (Doc. 39 at 2.)
4 Plaintiff further contends that the defense “knowingly withheld” additional security footage. (*Id.*)
5 Plaintiff requests that the Court order Defendants to provide the Court “the original security
6 footage, in its original form,” as well as the footage allegedly withheld, “for veiwing [sic] to
7 determine the validity and authenticity” of the videos. (*Id.* at 2-3.)

8 In his sworn declaration, Tulare County Assistant Sheriff Keith Douglass states that he
9 provided Tulare County Counsel with all videos of the incident that he found while conducting a
10 diligent search. (Douglass Decl., ¶¶ 3-4, 7-8, Doc. 40-2 at 2.) He states that he produced the
11 videos in their original format, and none were manipulated or distorted. (*Id.*, ¶¶ 5-6.) In her sworn
12 declaration, Defendants’ counsel, Amy Myers, states that she placed the videos on a CD, per the
13 instructions of Valley State Prison, and her office produced the videos in their original format.
14 (Myers Decl. No. 1, ¶¶ 3-5, Doc. 40-1 at 2.) She states that neither she nor anyone in her office
15 manipulated or distorted the videos. (*Id.*, ¶ 5.) Plaintiff did not file a reply to Defendants’
16 opposition and supporting declarations.

17 In his second motion, Plaintiff requests the following “information withheld”: “security
18 footage in [its] original state unedited,” two additional “camera positions,” and internal affairs
19 (IA) investigation reports regarding the incident underlying this action. (Doc. 41 at 1.) In their
20 opposition, Defendants state that they “fully responded to each of Plaintiff’s demands and
21 produced all records in their possession, custody and control.” (Doc. 42 at 2.) Plaintiff again did
22 not file a reply to Defendants’ opposition and supporting declaration.

23 Defendants argue that Plaintiff does not provide “the basis of his allegations that
24 Defendants have purposefully altered and/or withheld evidence, nor how Defendants have been
25 evasive or noncompliant.” (Doc. 42 at 6.) The Court agrees. In his first motion, Plaintiff provides
26 no facts to support his allegations that Defendants distorted the videos they produced and
27 withheld additional footage of the incident, and he provides no evidence to counter the
28 declarations of Ms. Myers and Mr. Douglass. Plaintiff simply states that it “is [his] belief” that

1 videos were altered or withheld to “discredit [his] case.” (*See* Doc. 39 at 2.) Such self-serving
2 belief is inadequate for a motion to compel.

3 In his second motion, Plaintiff again provides no facts or evidence to support his
4 allegations that Defendants altered videos and withheld footage and IA reports. Moreover,
5 Plaintiff does not include with his motion Defendants’ responses to the discovery requests at
6 issue, nor does he contend that such responses were evasive. Rather, Plaintiff simply asserts that
7 Defendants withheld videos and reports, without stating the grounds for such assertions. (*See*
8 Doc. 41 at 1.) Such bare assertions, without more, are inadequate for a motion to compel. *See*
9 *Daniel F. v. Blue Shield of California*, 305 F.R.D. 115, 122–23 (N.D. Cal. 2014) (“The court does
10 not consider any arguments based on factual assertions that are unsupported by evidence.”)

11 **b. Defendants’ Requests for Attorney’s Fees**

12 Defendants request that Plaintiff pay the reasonable expenses incurred in opposing
13 Plaintiff’s motions, pursuant to Federal Rule of Civil Procedure 37(a)(5). (Doc. 40 at 4-5; Doc. 42
14 at 10-11.) Defendants’ counsel states that her hourly rate is \$110, and that she expended 4 hours
15 preparing Defendants’ opposition to Plaintiff’s first motion and 8 hours preparing their opposition
16 to Plaintiff’s second motion. (Myers Decl. No. 1, ¶ 8, Doc. 40-1 at 2; Myers Decl. No. 2, ¶ 9,
17 Doc. 42-1 at 2-3.) Defendants thus request \$1,320 in reasonable expenses. (*See* Doc. 40 at 5; Doc.
18 42 at 11; Defs.’ Mem. of Costs., Doc. 42-2.)

19 Rule 37 provides that, if the Court denies a motion to compel, it “*must*, after giving an
20 opportunity to be heard, require the movant ... to pay the party ... who opposed the motion its
21 reasonable expenses incurred in opposing the motion, including attorney’s fees.” Fed. R. Civ. P.
22 37(a)(5)(B) (emphasis added). Thus, because the Court denies Plaintiff’s motions to compel, an
23 award of costs is mandatory, unless the Court finds that Plaintiff’s motions were “substantially
24 justified or other circumstances make an award of expenses unjust.” *Id.* Accordingly, the Court
25 will provide Plaintiff an opportunity to be heard before deciding whether an award of costs is
26 mandated.

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III. CONCLUSION AND ORDER

For the reasons set forth above, the Court **ORDERS**:

- 1. Plaintiff’s motions to compel discovery responses, (Docs. 39, 41), are **DENIED**;
- 2. Plaintiff shall show cause by **February 14, 2020**,² why an award of expenses should not be imposed.

IT IS SO ORDERED.

Dated: **January 7, 2020**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

² The present stay of this action will be lifted on February 14, 2020. (See Doc. 45.)