UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MITCHELL GARRAWAY,	1:17-cv-00533-DAD-GSA-PC
Plaintiff,	**ORDER IN RESPONSE TO PLAINTIFF'S AFFIDAVIT FILED ON FEBRUARY 11, 2020**
vs.	**(ECF No. 91.)**
JACQUILINE CIUFO, et al.,	
Defendants.	

I.   BACKGROUND

Plaintiff is a federal prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971).   This case now proceeds with Plaintiff's original Complaint filed on April 17, 2017, against defendants Jacqueline Ciufo (Unit Manager), K. Miller (Corrections Officer), and Lieutenant J. Zaragoza (collectively, "Defendants"), for failure to protect Plaintiff in violation of the Eighth Amendment. (ECF No. 1.)

 On February 11, 2020, Plaintiff filed an affidavit in support of his motion to compel discovery responses. (ECF No. 91.)

II.   PLAINTIFF'S AFFIDAVIT

Plaintiff asserts that he was not provided a full opportunity to complete discovery and therefore was unable to properly oppose Defendants' motion for judgment on the pleadings and

motion for summary judgment. Plaintiff asserts that for the past twelve months: (1) Defendants have refused to respond to Plaintiff's request for the Federal Bureau of Prisons inmate investigative report, USP-Atwater case No. ATW-16-0161; (2) Defendants have refused to turn over personnel files for Ciprian and the three defendants specifically related to his claims, and (3) the court has refused to rule on Plaintiff's motion to compel filed on January 17, 2019.

Plaintiff requests that Defendants' motion for judgment on the pleadings and motion for summary judgment be denied, and Defendants be required to respond to Plaintiff's motion to compel.

III.   DISCUSSION

Discovery in this case has been stayed in part since April 1, 2019, when the court granted Defendants' motion to stay discovery pending resolution of Defendants' motion for judgment on the pleadings. (ECF No. 65.) As discussed in the court's order, all discovery was stayed with exception to discovery related to the Supreme Court's ruling in Ziglar v. Abassi, 137 S.Ct. 1843 (2017), as Defendants' motion for judgment on the pleadings concerns whether Plaintiff's Bivens claims are barred under Abassi. The parties were precluded from conducting any other discovery until after the motion for judgment on the pleadings is resolved, at which time the court shall issue a new scheduling order re-opening discovery if needed.

Plaintiff argues that the court refuses to rule on his motion to compel filed on January 17, 2019. Plaintiff is reminded that the court's April 1, 2019 order made reference to Plaintiff's motion to compel filed on January 17, 2019, stating:

"On January 17, 2019, Plaintiff filed a motion to compel discovery responses from Defendants. (ECF No. 35.) In the motion, Plaintiff does not seek any discovery relating to the Abassi issue. Therefore, the court shall defer ruling on Plaintiff's motion to compel until after Defendants' motion for judgment on the pleadings is resolved."

(ECF No. 65 at 3, n.1.) Thus, Plaintiff's motion to compel shall not be ruled upon until after Defendants' motion for judgment on the pleadings is resolved. Accordingly, Plaintiff's request for the court to rule on his motion to compel shall be denied at this stage of the proceedings.

Plaintiff's request for the court to deny Defendants' motion for judgment on the pleadings and motion for summary judgment is untimely and shall be denied. Plaintiff has previously filed timely oppositions to Defendants' motions, which shall be considered in due course.

IV.   CONCLUSION

Based on the foregoing, IT IS HEREBY ORDERED that:

1.   Plaintiff's request to deny Defendants' motion for judgment on the pleadings and motion for summary judgment is DENIED as untimely; and

2.   Plaintiff's request for the court to require Defendants to respond to Plaintiff's pending motion to compel, is DENIED at this stage of the proceedings.

IT IS SO ORDERED.

Dated: **February 18, 2020**   **/s/ Gary S. Austin**
UNITED STATES MAGISTRATE JUDGE