

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCO A. GARCIA,  
Plaintiff,  
v.  
GARCIA, *et al.*,  
Defendants.

Case No. 1:17-cv-01313-BAM (PC)  
ORDER REGARDING DEFENDANTS’  
MOTION TO COMPEL, AND DIRECTING  
THE PARTIES TO MEET AND CONFER  
(ECF No. 31)

Plaintiff Marco A. Garcia (“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 complaint against Defendants Garcia and Bursiaga for excessive force in violation of the Eighth Amendment. All parties have consented to Magistrate Judge jurisdiction. (ECF Nos. 5, 27.)

On July 10, 2019, Defendants filed a motion to compel discovery and request for award of sanctions. (ECF No. 31.)

Under this Court’s discovery and scheduling order, the parties are relieved of the requirement in Federal Rules of Civil Procedure 26 and 37, and Local Rule 251, to attempt to confer in good faith to resolve a discovery dispute prior to filing any motion to compel. Voluntary compliance is encouraged, but not required. The Court’s order further provides that

1 the meet and confer requirement may be reimposed in any case that the Court deems it  
2 appropriate. (ECF No. 26.)

3       Upon review of the motion to compel referenced above, the Court finds it appropriate to  
4 require the parties to engage in a meet and confer conference regarding their discovery dispute.  
5 Defense counsel is directed to contact Plaintiff by telephone, or to set-up an in-person meeting,  
6 regarding the parties' discovery dispute within **twenty-one (21) days** of the date of this order.  
7 Briefing on the motion to compel is stayed during the meet and confer process, and the opposing  
8 party is relieved of their obligation to respond to the motion until further order of the Court.

9       In conducting the meet and confer conference, the parties are reminded that they are  
10 required to act in good faith during the course of discovery. Complete, accurate, and truthful  
11 discovery responses are required. False or incomplete responses violate the Federal Rules of  
12 Civil Procedure and subject an offending party and/or counsel to sanctions. Boilerplate  
13 objections will not be tolerated and will be summarily overruled. Privileges are narrowly  
14 construed and are generally disfavored. Information not properly disclosed may be excluded  
15 from use at a hearing, motion, or trial.

16       Within **seven (7) days** of the parties' conference, defense counsel shall file a Joint  
17 Statement regarding the meet and confer conference. All parties shall participate in the  
18 preparation of the Joint Statement, and must sign the Joint Statement. Electronic signatures are  
19 acceptable; a wet signature is not required.

20       The Joint Statement shall set forth the following:

21       (a) a statement that the parties met and conferred in good faith regarding the dispute, by  
22 phone or in-person, including the date(s) of the conference(s);

23       (b) a statement explaining whether the motion to compel was resolved in full or in part  
24 through the meet and confer process; and

25       (c) if any issues from the motion remain unresolved, a statement referring the court to  
26 each specific discovery request that is still at issue.

27       Upon review of the Joint Statement, the Court shall issue a further order regarding the  
28 motion to compel. No additional filings may be made regarding the motion to compel unless and

1 until ordered by the Court.

2 Accordingly, IT IS HEREBY ORDERED that:

3 1. The parties are ordered to meet and confer regarding Defendants' motion to  
4 compel, (ECF No. 31), as outlined above;

5 2. Plaintiff is relieved of the obligation to respond to the motion to compel until  
6 further order of the Court;

7 3. Within **thirty (30) days** of the date of service of this order, a Joint Statement shall  
8 be filed in this matter as outlined above; and

9 4. **The parties are warned that the failure to meet and confer in good faith as set**  
10 **forth in this order, or to comply with any of its terms, will result in the imposition of**  
11 **sanctions, which may include dismissal of the action.**

12 IT IS SO ORDERED.

13 Dated: July 11, 2019

14 /s/ Barbara A. McAuliffe  
15 UNITED STATES MAGISTRATE JUDGE

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28