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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAM DRAKE,)	Case No.: 1:17-cv-01500-AWI-SAB (PC)
Plaintiff,)	
v.)	ORDER DIRECTING PLAINTIFF TO FILE
SCOTT KERNAN, et al.,)	RESPONSE TO OUTSTANDING DISCOVERY
Defendants.)	REQUESTS ON OR BEFORE NOVEMBER 15,
)	2019
)	[ECF Nos. 66, 74]
)	

Plaintiff Sam Drake is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This action is proceeding on the following claims: (1) retaliatory food poisoning under the First and Eighth Amendment against Defendants Navarro and Gonzalez; (2) due process violation relating to an RVR hearing under the Fourteenth Amendment against Defendant Gonzalez; (3) conspiracy to set him up for attack by other inmates against Defendants Gonzalez, McCabe, Navarro, and Sexton; (4) for setting him up for attack under the Eighth Amendment against Defendants Allison, Gonzalez, Moak, McCabe, Navarro, and Sexton; and (5) lack of medical treatment provided in response to his complaints of food poisoning against Defendant Dr. McCabe.

On December 19, 2018, Defendants filed an answer to the second amended complaint.

On December 27, 2018, the Court issued the discovery and scheduling order.

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1 On January 7, 2019, Defendants propounded exhaustion-related discovery, including requests
2 for production and two sets of interrogatories. Plaintiff has not yet responded to the discovery because
3 during the course of this litigation he was transferred to the Fresno County Jail and has been without
4 his property.

5 On August 12, 2019, the Court granted, in part, Defendants' motion to compel responses to
6 their outstanding discovery requests, directed Plaintiff to file responses once he regained access to his
7 property, and directed a status report be filed by October 10, 2019. (ECF No. 66.)

8 On September 11, 2019, Defendants filed an update on the status of Plaintiff's legal property
9 and submit that Plaintiff's property was "transported" and/or "shipped" to Plaintiff at the Fresno
10 County Jail on September 9, 2019.

11 Because it was not clear whether Plaintiff received his legal property, the Court directed
12 Plaintiff to file a response on or before September 27, 2019. (ECF No. 69.) Plaintiff filed a response
13 on September 25, 2019, and also filed a separate request for appointment of a private investigator
14 and/or runner. (ECF Nos. 70, 71.) In his response Plaintiff indicated that as of September 18, 2019,
15 he has not been notified of the transfer or receipt of his property. Thus, it was not clear whether
16 Plaintiff actually received his legal property in order to respond to the outstanding discovery requests.
17 Therefore, on October 8, 2019, the Court directed Defendants to file a further response. (ECF No.
18 73.)

19 Defendants filed a response on October 15, 2019. (ECF No. 74.) In the response, defense
20 counsel submits that she contacted both Mule Creek State Prison and the Fresno County Jail to inquire
21 about the status of Plaintiff's property. Mule Creek State Prison officials advised counsel that five
22 boxes of property were located and provided for transport, and that the Fresno County Sheriff Officers
23 assumed custody of the property on September 9, 2019. On September 11, 2019, prison staff called
24 the Fresno County Jail and confirmed receipt of 5 boxes of Plaintiff's property which includes some
25 legal property. In addition, Plaintiff accessed the property on September 29, 2019. Because Plaintiff
26 has now received his property, Plaintiff must respond to the exhaustion-related discovery propounded
27 by Defendants on January 7, 2019.

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Accordingly, it is HEREBY ORDERED that:

1. Plaintiff shall file a response the requests for production and two sets of interrogatories propounded by Defendants on January 7, 2019, on or before **November 15, 2019**; and
2. Plaintiff is advised that he must comply with all discovery deadlines and rules which includes supplementing any prior responses to requests for production. See Fed. R. Civ. P. 26 & 37.

IT IS SO ORDERED.

Dated: October 16, 2019



UNITED STATES MAGISTRATE JUDGE