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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANNY JAMES COHEA,

Plaintiff,

No. CIV S-00-2799 FCD EFB P

vs.

CHERYL K. PLILER, et al.,

Defendants.

ORDER

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Plaintiff is a prisoner without counsel suing for alleged civil rights violations. *See* 42 U.S.C. § 1983. Defendants move to compel plaintiff’s document production on the ground that plaintiff failed to respond to defendants’ requests for documents, set one. Defendants also request monetary sanctions and a warning from the court that further non-compliance by plaintiff will result in dismissal of this case as a terminating sanction.

Pursuant to the April 27, 2009 discovery and scheduling order, requests for production of documents were to be served no later than 60 days before the discovery deadline of August 7, 2009. Dckt. No. 180. On June 8, 2009, defendants timely served their document requests, but plaintiff has failed to respond. Dckt. No. 185 at 3, Ex. A. In his opposition, plaintiff admits he received defendants’ document requests on June 15, 2009. Dckt. No. 187 at 2. Plaintiff also admits he failed to respond to defendants’ document requests. *Id.* at 4-5. According to plaintiff,

1 officials at his institution are denying plaintiff access to a copy machine, and therefore, plaintiff  
2 cannot produce copies of documents responsive to defendants' requests. *Id.* at 5. Additionally,  
3 plaintiff claims that some of his legal materials have been confiscated, and despite his multiple  
4 requests to prison staff, the property has not been returned to him.<sup>1</sup> *Id.* at 5-9.

5 Notwithstanding the obstacles described by plaintiff with respect to defendants'  
6 document requests, plaintiff is still obligated to respond to each request. *See* Fed. R. Civ. P.  
7 34(b)(2)(A). As to each request, plaintiff must either produce the responsive document(s) or  
8 object to the request with an explanation as to why the document(s) cannot be produced. *Id.* at  
9 24(b)(2)(B). While plaintiff is not required to produce documents that are not in his possession,  
10 custody or control, plaintiff must still provide a response to each document request certifying  
11 that there are no responsive documents in plaintiff's possession. *See* Fed. R. Civ. P. 34(a).

12 Accordingly, it hereby is ORDERED that:

13 1. Defendants' motion to compel is granted, and plaintiff is ordered to serve a proper  
14 response to defendants' document requests, as explained herein, within 20 days of the date of  
15 this order.

16 2. To the extent plaintiff is unable to produce responsive documents because they are: (a)  
17 among his legal materials that have been confiscated; or (b) unable to be photocopied, plaintiff  
18 shall, within 20 days of the date of this order, submit a declaration to the court, detailing his  
19 efforts to obtain the requested documents, including copies of his requests to prison officials, and  
20 copies of the responses/denials from those prison officials. Thereafter, the court will rule on  
21 defendants' request for monetary sanctions.

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23 <sup>1</sup> Plaintiff requests that the court take judicial notice of documents he has filed in this  
24 lawsuit and in other lawsuits, which apparently relate to plaintiff's claims of being denied access  
25 to the courts since January 24, 2008. Dckt. No. 187 at 2-4. The court may take judicial notice of  
26 adjudicative facts not subject to reasonable dispute. Fed. R. Evid. 201. Plaintiff's filings in this  
action and other actions are not "adjudicative facts," as they do not relate to plaintiff's efforts to  
respond to defendant's June 8, 2009 document requests. Therefore, the request for judicial  
notice is denied.

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3. Plaintiff's request for judicial notice is denied.

4. Plaintiff is warned that failure to comply with this and/or future orders may result in sanctions, including the sanction of dismissal.

Dated: October 2, 2009.

  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE