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

JEFFREY D. McDONALD,
Plaintiff,

v.
CAMPBELL, et al.,
Defendants.

Case No. 2:06-CV-2404 RJT

**ORDER DENYING PLAINTIFF’S
“OPPOSITION TO DEFENDANT’S
SUPPLEMENTAL RESPONSE TO
PLAINTIFF’S REQUEST FOR
PRODUCTION OF DOCUMENTS”
AND REQUEST FOR SANCTIONS**

Before the court, Judge Robert J. Timlin, is plaintiff Jeffrey D. McDonald (“plaintiff” or “McDonald”)’s “Opposition to Defendant’s [sic] Supplemental Response to Plaintiff’s Request for Production of Documents” (the “Opposition”) and plaintiff’s “Request for Sanctions due to Defendants [sic] Dilatory Motions and Contempt for this Court’s [sic] Orders” (the “Sanctions Request”). Also before the court is defendants Roseanne Campbell (“Campbell”) and C. Gibson (“Gibson,” collectively “defendants”)’s response to the Opposition and Sanctions Request. Plaintiff has not filed a reply to defendants’ response.

I. BACKGROUND

On October 27, 2009, the court issued an order regarding outstanding discovery issues with respect to the parties’ joint status reports (the “October Discovery Order”). By their joint status reports, defendants Campbell, Gibson, and defendant correctional officer Baker (not a party to

1 the instant discovery disputes),^{1/} as well as plaintiff, apprised the court of their attempts to meet
2 and confer regarding plaintiff's request for further production of documents ("request for
3 production") and informed the court of matters on which the parties could not reach an
4 agreement. The court, by its October Discovery Order, then issued rulings with respect to the
5 disputed requests for production.

6 The current dispute between plaintiff and defendants Campbell and Gibson centers on this
7 court's rulings with respect to plaintiff's requests for further production numbered 15, 16, 19, 21,
8 22, and 23. By his Opposition and Sanctions Request, plaintiff contends that defendants have
9 failed to comply with the court's October Discovery Order as to the listed requests for
10 production. Plaintiff acknowledges that he received supplemental responses to the requests for
11 production (which he attaches to his Opposition) but asserts that defendants' supplemental
12 responses are deficient. He further argues by his Sanctions Request that he is entitled to
13 sanctions against defendants and their counsel because of the defendants' failure to obey the
14 court's order and the defendants' alleged dilatory motions in seeking extensions of time to
15 respond to the October Discovery Order, though plaintiff does not articulate what type of
16 sanctions he seeks.

17 Plaintiff's Opposition and Sanctions Request was filed on January 8, 2010. On January 20,
18 2010, defendants moved for a twelve-day extension of time to respond to plaintiff's Opposition
19 and Sanctions Request. The court granted the extension, and defendants filed their response on
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21 1. The court does not consider defendant Baker to be a party to the instant discovery disputes
22 for multiple reasons. First, the Opposition is only directed at defendants Campbell and Gibson.
23 While the Sanctions Request is directed at "defendants" and includes a reference to defendant
24 Baker's counsel, plaintiff primarily refers to the events outlined in the Opposition as the basis for
25 any court-imposed sanctions, and no where in the Sanctions Request does plaintiff specifically refer
26 to defendant Baker. Furthermore, during the February 9, 2010 telephonic status conference, counsel
27 for defendant Baker and plaintiff agreed that defendant Baker had made available to plaintiff all
28 documents ordered to be disclosed pursuant to the court's October Discovery Order. Thus, with
defendant Baker not specifically identified in the Opposition and Sanctions Request and upon the
parties' agreement that Baker has complied with the October Discovery Order, the court is left in the
dark regarding Baker's involvement in any discovery dispute. Out of an abundance of caution,
defendant Baker filed an opposition to the Sanctions Request. However, the court finds that neither
the Opposition nor the Sanctions Request implicates defendant Baker, and if plaintiff meant to so
implicate defendant Baker, plaintiff's allegations are insufficient in that respect.

1 February 5, 2010. Defendants aver that they have fully complied with this court's October
2 Discovery Order through their supplemental responses to the aforementioned requests for further
3 production and argue that plaintiff's Opposition and Sanctions Request are without merit. At a
4 February 9, 2010 telephonic status conference among the court, plaintiff, and the defendants'
5 counsel, the court granted plaintiff until March 1, 2010, to file a reply to defendants' response.
6 Plaintiff has not filed any reply.

7 II. ANALYSIS

8 Plaintiff has failed to show that defendants are not in compliance with this court's October
9 Discovery Order. Thus, he has also failed to demonstrate that he is entitled to any sanctions.
10 The court addresses each disputed request for production in turn.

11 Regarding requests for production 15 and 16, both of which are directed at defendant
12 Campbell, the court denied plaintiff's requests for further production of documents as long as
13 defendant Campbell filed a verified supplemental response attesting that she does not have any
14 responsive documents in her possession, custody, or control. Plaintiff does not dispute that
15 defendant Campbell filed a verified supplemental response in accordance with this court's order.
16 Instead, he appears to disbelieve that she does not have any responsive documents. However, his
17 distrust of defendant Campbell does not constitute noncompliance by defendant Campbell with
18 this court's October Discovery Order. Thus, with respect to requests for production 15 and 16
19 and defendant Campbell's verified supplemental response to plaintiff, the court finds that
20 defendant Campbell is in compliance with the court's October Discovery Order.

21 Likewise, with respect to requests for further production 19 and 23, directed at defendant
22 Gibson, the court denied such requests subject to defendant Gibson providing a verified
23 supplemental response^{2/} indicating that he has no responsive documents. Again, there is no
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25 2. As stated *supra*, plaintiff attaches to his Opposition the supplemental responses completed
26 by defendants Campbell and Gibson and timely provided to plaintiff on November 30, 2009.
27 However, the attachments only include an executed verification by Campbell. As to defendant
28 Gibson, plaintiff attaches a letter drafted by defense counsel that indicates defense counsel will
shortly provide plaintiff with defendant Gibson's executed verification upon his return from a two-
week trip. Furthermore, the court's October Discovery Order expressly required both defendants to
execute verifications in support of their supplemental responses. As a result, on March 15, 2010,

1 dispute that defendant Gibson timely provided plaintiff with a supplemental response which
2 represents that he has no documents responsive to requests for production 19 and 23.

3 While defendants did fail to provide plaintiff with defendant Gibson's executed verification
4 in a timely manner, plaintiff's Opposition is not explicitly based on the lack of an executed
5 verification; instead, plaintiff *simultaneously* objects to the supplemental responses of defendant
6 Gibson and defendant Campbell - who did timely provide plaintiff with an executed verification -
7 demonstrating that plaintiff objects to both defendants' representations in their supplemental
8 responses whether or not they executed verifications. In other words, plaintiff's position that
9 defendants are untruthful in their supplemental responses and actually have responsive
10 documents that they are unwilling to disclose is not premised on any lack of executed
11 verifications. Plaintiff seemingly would take the same position as to defendant Gibson even if
12 plaintiff had already received defendant Gibson's verification.

13 The court does not condone the delay in providing plaintiff with defendant Gibson's
14 executed verification. However, there is no reason to believe that the verification was not in fact
15 executed on December 5, 2009, despite the failure to then provide the verification to plaintiff.
16 Furthermore, the court cannot see how plaintiff was prejudiced in any significant way by the
17 delay in receiving the Gibson verification, as there are still no responsive documents to provide
18 plaintiff. Therefore, the court finds that defendant Gibson has sufficiently complied with the
19 court's October Discovery Order regarding requests for production 19 and 23.

20 As to request for production 21, plaintiff generally sought documents from defendant
21 Gibson regarding other lawsuits against defendant Gibson. While the court sustained certain

23 this court ordered defendants to provide it with both defendants' supplemental responses and
24 executed verifications. Defendants did so on March 17, 2010. While defendant Gibson's executed
25 verification is signed and dated December 5, 2009, defense counsel represents that "[d]ue to a
26 clerical error, Defendant Gibson's verification had inadvertently not been provided to Plaintiff after
27 Gibson returned to California." Thus, plaintiff will first receive defendant Gibson's verification
28 upon receipt of defendants' March 17, 2010 response to this court's order. However, as discussed
above, plaintiff's Opposition is not clearly premised on his failure to receive defendant Gibson's
executed verification. While compliance with this court's October Discovery Order required a
timely execution of verifications, the court finds no prejudice to plaintiff by the delay in the filing
of Gibson's verification.

1 objections to request for production 21 by its October Discovery Order, the court found
2 discoverable documents from other lawsuits not covered by the attorney-client privilege or work-
3 product protections that involved allegations against defendant Gibson similar to the allegations
4 in the instant lawsuit, *i.e.*, allegations that defendant Gibson knew of abuse of inmates by
5 correctional officers and should have and could have transferred the inmates, but failed to do so.
6 By his supplemental response, defendant Gibson represents that, other than the instant lawsuit, he
7 has not been a party to legal actions involving such allegations against him. Therefore, with the
8 exception of documents already provided to plaintiff, Gibson informed plaintiff that Gibson has
9 no responsive documents in his possession, custody, or control to disclose to plaintiff in response
10 to request for production 21. Plaintiff's cursory objection to defendant Gibson's supplemental
11 response consists primarily of plaintiff's implied assertion that defendant Gibson is being
12 untruthful. Plaintiff's objection is left rather underdeveloped, but considering plaintiff assumes
13 responsive documents must exist, the court deduces that he must mean to assert that Gibson is
14 falsely representing that he has no responsive documents.

15 However, plaintiff provides no evidence suggesting that defendant Gibson has in fact been a
16 party to other similar lawsuits or any other evidence tending to show that defendant Gibson is
17 misrepresenting the truth. The court again does not find that the delay in providing plaintiff with
18 an executed verification is sufficient evidence tending to show that defendant Gibson is lying, as
19 defendant Gibson, by ultimately executing a verification, has nonetheless made his supplemental
20 response under penalty of perjury. And, as defendant Gibson points out, he cannot produce
21 documents that to his knowledge do not exist. As such, the court finds that defendant Gibson's
22 verified supplemental response to request for production 21 satisfies this court's October
23 Discovery Order, and plaintiff's Opposition as to request for production 21 is therefore without
24 merit.

25 Finally, regarding request for production 22, while the court sustained certain objections by
26 defendant Campbell to the request, the court ordered defendant Campbell to produce any
27 documents in her possession, custody, or control not covered by the attorney-client privilege or
28 work-product protection from other lawsuits that involved allegations against Campbell similar

1 to allegations in the instant lawsuit, *i.e.*, that she knew of physical abuse of inmates perpetrated
2 by correctional officers who worked under her supervision but failed to intervene or take other
3 appropriate action. By her verified supplemental response to the court's October Discovery
4 Order, defendant Campbell represents that, while inmates have filed lawsuits against her for a
5 myriad of claims, the instant lawsuit is the only legal action of which she is aware that involves
6 allegations against her asserting that she knew of physical abuse perpetrated by correctional
7 officers who worked under her supervision but failed to intervene or otherwise adequately
8 respond to the situation. Due to his rather conclusory argument in the Opposition, the court
9 again assumes that plaintiff takes the position that defendant Campbell must be misrepresenting
10 that she knows of no other relevant lawsuits and therefore has no documents to disclose.
11 However, plaintiff once more provides the court with no evidence tending to suggest that
12 defendant Campbell is lying and actually has been involved in other lawsuits alleging like
13 allegations to the instant action. As such, the court finds that plaintiff's objection to defendant
14 Campbell's supplemental response to request for production 22 is without merit and that
15 defendant Campbell has complied with the court's October Discovery Order by her verified
16 supplemental response to request for production 22.

17 Because plaintiff has failed to show that defendants Campbell and Gibson did not comply
18 with the court's October Discovery Order, he has also failed to demonstrate that sanctions for
19 noncompliance are warranted in this matter. By his Sanctions Request, plaintiff presents no
20 other reason than the alleged failure to comply with this court's October Discovery Order as the
21 basis for imposing discovery sanctions against defendants Campbell and Gibson. The court
22 therefore will deny the Sanctions Request.

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1 **III. DISPOSITION**

2 For the foregoing reasons, it is ordered that plaintiff McDonald's Opposition and Sanctions
3 Request are denied based on the court's finding that defendants Campbell and Gibson did
4 comply with this court's discovery order dated October 27, 2009.

5 Dated: March 30, 2010

/s/ Robert J. Timlin

6 U.S. DISTRICT JUDGE
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