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

STEWART MANAGO,

Plaintiff,

No. 2:07-cv-2290 LKK KJN P

vs.

BRAD WILLIAMS, et al.,

Defendants.

ORDER

_____ /

Plaintiff seeks reconsideration of this court’s order filed November 30, 2011. In addition, defense counsel seeks an order directing plaintiff to cease corresponding with counsel without court preauthorization.

RECONSIDERATION OF NOVEMBER 30, 2011 ORDER

Plaintiff seeks reconsideration of this court’s recent ruling which, in pertinent part, denied plaintiff’s request for sanctions and additional discovery materials, with the exception of two audiotapes ordered disclosed and any related confidential material. (Dkt. No. 199.) Plaintiff again contends that the recent supplemental production of documents by Shanana Hewitt, defense counsel for all defendants except defendant Brockett, demonstrates that Ms. Hewitt misled the court and plaintiff in her prior representations that she had produced all relevant discovery. The court previously rejected this contention on the ground that the Federal

1 Rules of Civil Procedure expressly provide for the supplemental production of discovery that was
2 previously and inadvertently overlooked.

3 Discovery closed in this action on February 24, 2011, although limited extensions
4 of time were accorded for specific matters. Dispositive motions are now pending. Defendants
5 filed two motions for summary judgment (the motion on behalf of the majority of the defendants
6 was filed by Ms. Hewitt on October 28, 2011); and plaintiff filed oppositions to each motion. In
7 the court's last order, an extension of time was granted to enable plaintiff to listen to the subject
8 audiotapes and to review related confidential material, and for the filing of defendants' reply
9 briefs; the court also granted plaintiff leave to file a surreply. With the exception of this limited
10 evidence, ALL relevant discovery should have been disclosed by this date.

11 In support of his motion for reconsideration, plaintiff has attached a copy of
12 defendants' supplemental response, served on plaintiff on October 20, 2011. That response
13 includes language which indicates that defendants have not yet completed discovery. (See Dkt.
14 No. 204 at 19.) While some of this language appears to be "boilerplate," additional language
15 appears specific to the supplemental disclosure.¹ None of these statements are appropriate at this
16

17 ¹ Defendants' supplemental response provides in pertinent part (Dkt. No. 204 at 19):

18 It should be noted that responding party has not fully completed
19 investigation of the facts relating to this case, has not fully completed
20 discovery in this action, and has not completed preparation for the
21 trial. All of the responses contained herein are based only upon such
22 information and documents which are presently available to and
23 specifically known to the responding party, and relating to this case
24 and disclose only those contentions which presently occur to
25 responding party. It is anticipated that further discovery, independent
26 investigation, legal research and analysis will supply additional facts,
add meaning to the known facts, as well as establish entirely new
factual conclusions and legal contentions, all of which may lead to
substantial additions to, changes in, and variations from the
contentions herein set forth.

The following responses to plaintiff's first request for production of
documents are given without prejudice to responding party's right to
produce evidence of any subsequently discovered fact or facts which

1 stage of the litigation. The language is confounding to the undersigned, as well as plaintiff, who
2 understandably remains unconvinced that all relevant evidence has been disclosed. Accordingly,
3 the court will require Ms. Hewitt, and each of the defendants she represents, to file declarations
4 stating, under penalty of perjury, that each defendant has produced all relevant evidence; in
5 addition, Ms. Hewitt shall inform the court whether defendants' motion for summary judgment,
6 which includes approximately 1000 pages of exhibits, is based only upon evidence that has been
7 previously disclosed and produced to plaintiff. Defendant Brockett and her counsel, Mark
8 Kruger, will be required to do the same.

9 The undersigned takes seriously plaintiff's claims in this action; defendant
10 Brockett's alleged misconduct apparently resulted in her dismissal, and also underscores the
11 seriousness of the other defendants' alleged related conduct. This is a factually and legally
12 complex case that has required extraordinary court involvement. Plaintiff proceeds without
13 counsel (although he has been invited to request appointment of counsel (see Dkt. Nos. 155, 148,
14 124)), and is further disadvantaged by his incarceration and regimented access to pertinent
15 documents. Plaintiff should not be further handicapped by discovery that trickles in, particularly
16 in tandem with a disclaimer that there may still be additional relevant evidence. If there currently
17 exists any additional relevant evidence, defendants shall disclose and produce such evidence to
18 plaintiff, when defendants serve their statements of compliance and supporting declarations. See
19 Fed. R. Civ. P. 11; Local Rule 110. Failure, at this time, to disclose all relevant evidence may
20 result in a recommendation by the undersigned that any purportedly new evidence be excluded at
21 trial, as well as other potential sanctions.

22 she may later recall. Responding party accordingly reserves the right
23 to change any and all responses here as additional facts are
24 ascertained, analyses are made, legal research is completed and
25 contentions are made. The responses contained herein are made in a
26 good faith effort to supply as much factual information and as much
specification of legal contentions as is presently known, but should
in no way be to the prejudice of responding party in relation to further
discovery, research or analysis.

1 REQUEST FOR ORDER PRECLUDING CORRESPONDENCE

2 In a separate matter, Ms. Hewitt has filed a request that the court order plaintiff to
3 cease corresponding with defense counsel without court preauthorization. In an affidavit
4 supported by documentation, counsel states that plaintiff’s correspondence includes accusations
5 and threats such as the following:

6 I know criminal behavior when I observe, but I can assure you that,
7 you will regret it in the long run. (Dkt. No. 202, Ex. 1, p. 1.)

8 You must remember when you do foul moves, it will come back on
9 you. (Id., Ex. 2, p. 2.)

10 Plaintiff is informed that such communications are not authorized by the Federal
11 Rules of Civil Procedure or Local Rules; moreover, they are sanctionable. Available sanctions
12 include dismissal of the underlying action. See Fed. R. Civ. P. 11;² Local Rules 110,³ 183(a).⁴

13 The court has previously admonished plaintiff to stop burdening the court with
14 excessive filings. (See Dkt. No. 148.) Plaintiff is again admonished to refrain from filing such
15 documents with the court, and is further admonished to stop sending correspondence to defense
16 counsel. With this order, there should remain no further discovery disagreements, and hence no
17 reason for correspondence among the parties. The extended deadlines for completing the
18 briefing on defendants’ pending motions for summary judgment have been set. Pending a
19 decision of this court on those motions, there is no reason for plaintiff to further communicate

20 ² Fed. R. Civ. P. 11(c) authorizes the imposition of sanctions for conduct by counsel “or
21 unrepresented party” that includes the submission of written matters “presented for any improper
22 purpose, such as to harass”

23 ³ Local Rule 110 provides in full: “Failure of counsel or of a party to comply with these
24 Rules or with any order of the Court may be grounds for imposition by the Court of any and all
25 sanctions authorized by statute or Rule or within the inherent power of the Court.”

26 ⁴ Local Rule 183(a) provides in pertinent part: “Any individual representing himself or
herself without an attorney is bound by the Federal Rules of Civil or Criminal Procedure, these
Rules, and all other applicable law. All obligations placed on ‘counsel’ by these Rules apply to
individuals appearing in propria persona. Failure to comply therewith may be ground for dismissal,
judgment by default, or any other sanction appropriate under these Rules.”

1 with defense counsel, and no authority for any further court filing other than the authorized
2 surreply. Plaintiff is informed that failure to abide by this directive may result in the imposition
3 of appropriate sanctions.

4 CONCLUSION

5 For the foregoing reasons, IT IS HEREBY ORDERED that:

6 1. Plaintiff's motion for reconsideration (Dkt. No. 204), is denied, subject to the
7 following additional rulings:

8 a. Within twenty-one days after the filing date of this order, defense counsel shall
9 each file a statement of compliance with this order, that contains the following:

10 1. A sworn declaration by each defense counsel, supported by the separate sworn
11 declarations of each defendant whom counsel represents, that informs the court whether all
12 defendants have produced all relevant evidence; in addition, defense counsel shall each inform
13 the court whether their respective motions for summary judgment are based only upon evidence
14 that has been previously disclosed and produced to plaintiff; and

15 2. Should there exist any additional relevant evidence that has not yet been
16 disclosed to plaintiff, the evidence shall be produced to plaintiff in tandem with service of each
17 counsel's statements and supporting declarations; if additional evidence is disclosed, defense
18 counsel shall so inform the court, and provide a description of the newly disclosed evidence and
19 the reasons for its late disclosure.

20 3. The request of defense counsel (Dkt. No. 202), for an order directing plaintiff
21 to refrain from further communicating with counsel, is granted in part. Plaintiff is directed to
22 refrain from sending any further correspondence to either defense counsel or any defendant.
23 Plaintiff is also directed to refrain from filing further documents in this case, with the exception
24 of his authorized surreply.

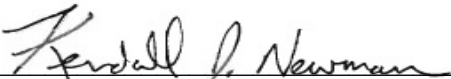
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SO ORDERED.

DATED: December 16, 2011


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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