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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MALIK JONES,  
  
Plaintiff,  
  
v.  
J.L. BISHOP, et al.,  
  
Defendants.

NO. CV-09-0150-JLQ

**ORDER GRANTING MOTION  
TO COMPEL AND MOTION FOR  
EXTENSION OF TIME**

BEFORE THE COURT are Plaintiff’s Motion to Compel Discovery (ECF No. 85) filed October 28, 2011 and Plaintiff’s Motion for Extension of Time (ECF No. 89) filed November 10, 2011. Defendants have not responded to these motions.

**I. Introduction**

Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. The cognizable claims set forth Plaintiff’s First Amended Complaint which remain are:

- 1. Excessive force/bystander liability against Defendants Mitchell, Rigney, and Whitlow resulting from incidents occurring on April 22, 2008 and April 27, 2008;
- 2. Failure to protect against Defendants Felker and Cate; and
- 3. Retaliation against Defendant McGuire.

The deadline for all discovery and the filing of motions to compel was October 1, 2011. Defendants filed a Motion for Summary Judgment (ECF No. 84) on October 31, 2011, which seeks dismissal of all the remaining claims on the merits. Plaintiff’s response is currently due November 25, 2011. Plaintiff has been advised by the court and defense counsel of the requirements when opposing a motion for summary judgment.

**II. Discussion**

1           Though Plaintiff's motions only request time for additional discovery, the court  
2 assumes Plaintiff also desire additional time to respond to the summary judgment motion.  
3 A litigant who wishes additional facts to oppose a summary judgment motion may request to  
4 do so under Rule 56 (d) (formerly Rule 56(f)), which provides: "If a nonmovant shows by  
5 affidavit or declaration that, for specified reasons, it cannot present facts essential to justify  
6 its opposition, the court may:

7           (1) defer considering the motion or deny it;

8           (2) allow time to obtain affidavits or declarations or to take discovery; or

9           (3) issue any other appropriate order."

10 Fed.R.Civ.P. 56(d). Typically, when the parties have no opportunity for discovery, denying  
11 the Rule 56(f) motion and ruling on a summary judgment motion is likely to be an abuse of  
12 discretion.

13           Plaintiff's untimely Motion to Compel (filed just days before the filing of the Motion  
14 for Summary Judgment) indicates that at the time he filed his Motion, he had not yet received  
15 responses to his interrogatories from Defendants. Plaintiff claims to have served them on  
16 September 26 and September 27, 2011, less than the required forty-five days prior to the  
17 October 1, 2011 discovery deadline. ECF No. 73 at 1-2. As no response to either the Motion  
18 to Compel or Motion for Extension of Time has been filed by Defendants, it is unknown  
19 whether Defendants ever responded to Plaintiff's discovery.

20           Despite Plaintiff's untimely conduct, the court will allow Plaintiff a one-time short  
21 extension to complete discovery. The court has reviewed the five sets interrogatories  
22 attached to the Motion to Compel, directed to each Defendant, other than Cate. The court  
23 notes that in each set Plaintiff repeats questions such as "Do you take and/or use mind altering  
24 substances...?", "Do you use...mind altering drugs while at work...?". These questions do not  
25 seek information relevant to the Plaintiff's claims or in opposing the Motion for Summary  
26 judgment. Generally, however, the remaining four or five questions contained each seek to

1 discover the Defendants' positions on issues related to Plaintiff's claims. Some of these  
2 positions are set forth in Defendant's Motion for Summary Judgment. Although Plaintiff's  
3 interrogatories are inartfully drafted, the court finds they could be easily answered and could  
4 potentially aid in Plaintiff's response to the Motion for Summary Judgment.

5 **III. Conclusion and Order**

6 **ACCORDINGLY, for the foregoing reasons, IT IS HEREBY ORDERED:**

7 1. Plaintiff's Motion to Compel (ECF No. 85) and Motion for Extension of Time (ECF  
8 No. 89) are **GRANTED**.

9 2. The court will permit Plaintiff until **January 3, 2012** to conduct any remaining  
10 discovery necessary to respond to the Motion for Summary Judgment.

11 a. If Defendants have not yet done so, Defendants SHALL serve responses to  
12 Plaintiffs' interrogatories (at ECF No. 85) (and any other outstanding discovery  
13 requests) no later than **December 1, 2011**. Defendants shall respond fully to the  
14 interrogatories, including the contentions set forth in narrative form. Responses  
15 shall not be evasive or non-responsive.

16 b. Any *new* discovery by Plaintiff shall be served no later than **December 12,**  
17 **2011**. Responses shall be served by Defendants within fifteen (15) days of  
18 receipt.

19 3. Plaintiff's response to the Motion for Summary Judgment shall be filed and served  
20 no later than **January 16, 2012**. Defendants' Reply shall be filed **seven (7)** days after the  
21 opposition is served, per Local Rule 230(1).

22 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
23 this Order and provide a copy to Plaintiff and counsel for the defense.

24 **DATED** this 22nd day of November 2011.

25 s/ Justin L. Quackenbush  
26 JUSTIN L. QUACKENBUSH  
SENIOR UNITED STATES DISTRICT JUDGE