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

DANIEL TREGLIA,

Plaintiff,

No. 2:09-cv-0352 KJN P

vs.

DIRECTOR OF CALIFORNIA
DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel. On February 22, 2010, plaintiff filed a motion to compel discovery and a motion for sanctions. On February 25, 2010, defendants filed an opposition to both motions. Plaintiff has not filed a reply.

Plaintiff contends he served a request for admissions on December 14, 2009, and a request for documents on December 17, 2009. However, counsel for defendants wrote plaintiff on February 11, 2010, and stated the only discovery request received was entitled "Plaintiff's Second Request for Production of Documents," propounded to defendants Villasenor and the Secretary of CDCR. (Defts.' Opp'n at Ex. B.) Counsel stated he had not received nor reviewed any "Request for Admissions" nor any other request for production, and assumed the use of "Second Request" was an error. (Defts.' Opp'n at Ex. B.) Defendants' response to this request

1 was signed and served on January 29, 2010. (Defts.' Opp'n at Ex. A.)

2 Plaintiff attached a copy of "Plaintiff's First Request for Production of
3 Documents" and "Request for Admissions" to his motion to compel. (Id., Ex. 1.) However,
4 plaintiff failed to provide a certificate of service for these discovery requests,¹ so the court cannot
5 determine whether plaintiff mailed the documents or to what address. Moreover, plaintiff failed
6 to address defendants' opposition by filing a reply. Because plaintiff has failed to rebut the
7 information provided by defendants, the motion to compel will be denied. The motion for
8 sanctions will also be denied.

9 On April 26, 2010, plaintiff filed a motion to voluntarily dismiss claims five, ten,
10 eleven, fourteen and fifteen of his complaint. On May 18, 2010, defendants were directed to
11 notify the court of any objections. On May 21, 2010, defendants filed a notice of non-opposition
12 to the dismissal of claims five, ten, eleven, fourteen and fifteen. Good cause appearing,
13 plaintiff's April 26, 2010 motion to voluntarily dismiss claims five, ten, eleven, fourteen and
14 fifteen of the February 6, 2009 complaint will be granted.

15 Finally, on May 20, 2010, plaintiff filed a pretrial statement. Plaintiff's filing is
16 premature. First, defendants' motion for summary judgment is pending. Pretrial statements
17 should be prepared after all dispositive motions have been resolved. Second, upon resolution of
18 the summary judgment motion, the court will issue a revised scheduling order that sets forth
19 deadlines for the filing of pretrial statements. Thus, plaintiff's pretrial statement will be
20 disregarded.

21 In accordance with the above, IT IS HEREBY ORDERED that:

22 1. Plaintiff's February 22, 2010 motion to compel discovery and motion for
23 sanctions are denied.


24 ///

25 ¹ The certificate of service provided by plaintiff was completed for the motion to compel
26 discovery, not the discovery requests.

1 2. Plaintiff's April 26, 2010 motion to voluntarily dismiss certain claims is
2 granted. Claims five, ten, eleven, fourteen and fifteen are dismissed from the February 6, 2009
3 complaint.

4 3. Plaintiff's May 20, 2010 pretrial statement is disregarded.

5 DATED: May 24, 2010
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9 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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