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

TROY HAYLES,

Plaintiff,

No. 2:09-cv-3061 JFM (PC)

vs.

DR. ERICA WHEATHERFORD, et al.,

Defendants.

ORDER

_____ /

On July 8, 2011, the undersigned denied plaintiff’s December 23, 2010 and April 13, 2011 motions to compel due to plaintiff’s failure to demonstrate that the documents he seeks from defendants in fact exist. Plaintiff was ordered to submit an opposition to defendants’ motion for summary judgment within twenty-one days from the date of that order.

On July 18, 2011, plaintiff filed a motion for extension of time and a motion for reconsideration. Plaintiff seeks a 60-day continuance to file an opposition because the institution where he is housed, California Medical Facility (“CMF”), is on lock-down due to a recent riot. Further, in an attempt to show that the documents he seeks from defendants do exist, plaintiff declares that he submitted an Inmate Request Form No. 22 to the Department of Mental Health’s supervisor to obtain copies of those documents. After he failed to receive a response, plaintiff filed an Inmate Grievance Form. During the informal interview, plaintiff was informed that the

1 documents he seeks do exist and are accessible by all staff members. Plaintiff then withdrew his
2 appeal, but states he has been unable to file it with the court due to the lock-down.

3 Upon review, the undersigned concludes that the discovery dispute in this matter
4 persists. Plaintiff's motion for reconsideration makes a sufficient showing that certain
5 documents that he sought from defendants exist but were not provided to him. At this juncture,
6 therefore, consideration of defendants' motion for summary judgment is premature.

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Defendants' motion for summary judgment is denied without prejudice;
9 2. Plaintiff's motion for an extension of time is denied;
10 3. Plaintiff's motion for reconsideration is partially granted. Plaintiff shall
11 submit documentation within forty-five days of the date of this order demonstrating that the
12 documents he seeks from defendants are available. The court will reconsider plaintiff's motion
13 to compel at that time.

14 DATED: July 28, 2011.

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17 UNITED STATES MAGISTRATE JUDGE

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