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

JON CHRIST,

Plaintiff,

No. CIV S-10-0760 EFB P

vs.

R. BLACKWELL, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.¹ He has filed several motions which include: (1) a motion for an order allowing plaintiff to contact incarcerated witnesses (Docket No. 24); (2) a motion to compel discovery (Docket No. 27); and (3) a motion to file documentary evidence (Docket No. 29). The court will address each in turn.

I. Motion for Order Allowing Plaintiff to Contact Incarcerated Witnesses

Plaintiff seeks an order from this court that would allow him to contact five inmates incarcerated at California State Prison – Solano and another inmate incarcerated in an unknown

¹ This case is before the undersigned pursuant to the parties’ consent. See 28 U.S.C. § 636; see also E.D. Cal. Local Rules, Appx. A, at (k)(1)-(2).

1 institution. Dckt. Nos. 24, 36, 37², 38. Defendants oppose plaintiff's motions, arguing that
2 plaintiff should not be allowed to circumvent the reasonable restrictions on inmate-to-inmate
3 communications imposed by the California Department of Corrections and that plaintiff can
4 avail himself of Federal Rule of Civil Procedure 31 (deposition upon written questions) to obtain
5 necessary information from his incarcerated witnesses. Dckt. No. 26.

6 Under Rule 31, a party may depose any person by written questions. However, where the
7 deponent is incarcerated, the party must obtain the court's permission to conduct the deposition.
8 Fed. R. Civ. P. 31(a)(2)(B). Further, unless the parties stipulate otherwise, the party noticing the
9 deposition is required to provide the questions to an "officer", as that term is defined in Rule
10 28(a), who will take the deponent's responses to the questions, certify them, and send them to
11 the noticing party.³ *Id.* Rules 31(b), 30(b)(5). Defendants have not stated that they are
12 unopposed to the court granting plaintiff leave to depose the listed individuals under Rule
13 31(a)(2)(B) nor indicated a willingness to stipulate that plaintiff may depose the individuals by
14 written questions in some manner not requiring the participation of a deposition officer. Thus,
15 proceeding under Rule 31 may not provide a viable alternative to direct communication, due to
16 plaintiff's incarceration and the incarceration of his witnesses.

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20 ² Docket No. 37 is a request by plaintiff for an extension of time to present evidence from
21 plaintiff's witnesses to the court. Plaintiff does not indicate whether he intends to file a motion to
22 which that evidence may be relevant or whether he generally wishes to present the evidence at
23 trial. No dispositive motion is currently pending to which the evidence might be relevant.
24 Accordingly, the court will deny plaintiff's request for an extension of time. If plaintiff wishes
25 to present the evidence at trial, he may so indicate in his pretrial statement and follow the proper
26 procedures for doing so (see Docket No. 19 regarding trial testimony of incarcerated witnesses).

24 ³ Rule 28(a) provides that a deposition may be taken before "an officer authorized to
25 administer oaths either by federal law or by the law in the place of examination" or "a person
26 appointed by the court where the action is pending to administer oaths and take testimony," and
defines "officer" as "a person appointed by the court under this rule or designated by the parties
under Rule 29(a)."

1 However, plaintiff may avail himself of the process provided for in California Code of
2 Regulations, title 15, § 3139.⁴ While plaintiff has indicated that communications from two of his
3

4 ⁴ That regulation provides:

5 [(a)] Inmates shall obtain written authorization from the Warden/Regional Parole
6 Administrator or their designee/assigned probation officer, person in charge of the
7 County Jail and/or other State Correctional Systems, at a level not less than
8 Correctional Captain/Facility Captain or Parole Agent III, to correspond with any
9 of the following:

8 (1) Inmates under the jurisdiction of any county, state or federal, juvenile
9 or adult correctional agency.

10 (2) Persons committed to any county, state or federal program as a civil
11 addict.

12 (3) Persons on parole or civil addict outpatient status under the jurisdiction
13 of any county, state or federal, juvenile or adult correctional agency.

14 (4) Persons on probation.

15 (b) Inmates may initiate requests to correspond with the above by contacting their
16 Correctional Counselor I (CCI). Parolees may initiate request by contacting their
17 Parole Agent (PA).

18 Inmates may be allowed to correspond with the persons described in subsections
19 3139(a)(1) through (4) provided those persons meet the criteria of approval of no
20 known gang affiliation, or involvement with a known terrorist group or
21 racketeering enterprise.

22 (c) The CCI/PA shall interview the inmate/parolee and/or review their
23 C-file/Field File to obtain the information required to process an inmate's Request
24 for Correspondence Approval, CDC Form 1074 (Rev. 08/87). If an inmate's
25 request to correspond with another inmate/parolee is denied, the CCI/PA shall
26 advise the inmate in writing.

21 (1) When reviewing the initiating inmates C-file, staff shall ascertain
22 whether prior approval exists. If prior approval exists, a copy of the
23 previously approved CDC Form 1074 shall be forwarded to both
24 institutional mailrooms.

25 (2) When an initiating inmate's request to correspond with another inmate
26 meets the, criteria for approval per section 3139(b), and no prior approval
exists, the CCI/PAI shall ensure that a CDC Form 1074 is completed.

 (3) If the request is approved, staff shall retain the fifth page in the
C-File/Field/File at the requesting institution/parole office. The remaining

1
2 four pages shall be forwarded, intact, to the institution/parole
3 office/probation office/other county, state or federal facility where the
4 other requested correspondent is housed. Neither a photocopy of the CDC
5 Form 1074, nor the fifth page, shall be forwarded to the C-File or
6 mailroom while the correspondence approval is pending.

7 (4) If the request to correspond is denied at the institution/parole
8 office/probation office/other state correctional facility, the reason for
9 denial shall be annotated on the CDC Form 1074, and it shall be returned,
10 in its entirety, to the sending institution/ parole office.

11 (5) Copies/photocopies shall not be delivered to the requested inmate, the
12 receiving institutions mailroom, or the housing unit.

13 (6) Upon receipt of the disapproved CDC 1074, staff at the sending
14 institution/field office shall ensure that the 2nd page is returned to the
15 initiating inmate.

16 (7) If correspondence is approved at the institution/parole office, staff
17 shall ensure that the CDC Form 1074 is completed. They shall retain the
18 third and fourth pages for distribution. If the third page and fourth pages
19 are not legible, the CCI/PAI shall make photocopies of the first page prior
20 to forwarding the completed CDC Form 1074 to the sending institution.
21 The approved CDC Form 1074 will be distributed as directed on the form.

22 (8) Photocopies of the CDC Form 1074 shall not be made for the housing
23 unit(s). The housing units shall not keep records of approved
24 correspondents.

25 (9) The mailroom supervisor shall establish and maintain a record of
26 approved CDC Form 1074s.

(10) When a CDCR inmate requests to correspond with an inmate in a
county, state, or federal facility, or if the request is from a county, state, or
federal inmate, the CCI shall ensure that a CDC Form 1074 is completed
along with a cover letter that thoroughly explains the need for the CDC
Form 1074. If the request is denied, the CCI shall ensure that a letter is
forwarded to the requesting agency thoroughly explaining the denial.

(d) There shall be no limits set on the number of times approved
inmates/parolees/probationers can correspond with one another unless revoked.
The approval to correspond may be revoked due to disciplinary violations
involving correspondence between the inmates/parolees or as a result of a
classification action based on safety and security. Any such restriction, or
revocation of approval, shall be communicated to inmate(s)/parolee(s) and to the
warden(s)/parole administrator(s) of the institution/facility where the
inmate(s)/parolee(s) are housed.

1 witnesses have been confiscated under § 3139(I) as unapproved, he has not indicated that he has
2 gone through the process outlined in § 3139(a)-(c) to obtain approval to correspond with those
3 inmates. Accordingly, the court will deny plaintiff's motions for an order allowing him to
4 contact incarcerated witnesses without prejudice. If plaintiff attempts to engage in
5 communications with his witnesses by following the proper procedures under § 3139(a)-(c) and
6 is denied access or is otherwise unable to effectively communicate with his witnesses, and those
7 communications are necessary to the litigation of this action, plaintiff may file another motion

8
9 (e) Wardens at institutions where there are segregated housing units such as, but
10 not limited to, Security Housing Units (SHU), Administrative Segregation Units
11 (ASU), and Psychiatric Services Units (PSU), shall outline in their local
12 procedure any further restrictions on correspondence due to safety and security
13 concerns, limited to those specific housing units.

14 (f) The most restrictive a facility can be with respect to inmate mail privileges is
15 to limit correspondence between inmates to only the following:

- 16 (1) Immediate Family Members as defined in section 3000.
- 17 (2) Co-litigants on active cases, until the case is resolved.
- 18 (3) Incarcerated natural parent of the inmate's child.

19 A facility may not restrict mail privileges between an inmate and any of the above
20 three types of correspondents, unless the inmate or the correspondent violates
21 section 3006 or other CCR section.

22 (g) Approval to correspond shall remain in effect upon transfer to another
23 departmental facility or another parole office.

24 (h) If an inmate's transfer is based on case factors that create security concerns,
25 such as, but not limited to, placement in SHU, ASU, or PSU, a reexamination by
26 committee of all approved correspondence shall be conducted. The CCI shall
review and recommend to committee whether to continue approval of the
correspondence.

(I) If an institution/parole office receives mail from an unapproved inmate/parolee
correspondent, staff shall mark the envelope with "Not an Approved
Correspondent" or equivalent language and return it to the sender.

(j) Inmates confined in departmental facilities may correspond with former
inmates. Prior approval of the warden, superintendent, or person in charge of the
correctional facility is required if the person was discharged from a facility within
the past twelve months.

1 describing his attempts to engage in the process provided by § 3139(a)-(c), why that process
2 failed him, and why the evidence from the witness is relevant and seeking appropriate relief.

3 **II. Motion to Compel**

4 Plaintiff seeks an order compelling defendants to respond to his requests for production
5 of documents (hereinafter “RFPs”). Dckt. No. 27. Defendants originally responded to plaintiff’s
6 RFPs by objecting that plaintiff had not identified the specific defendant subject to each request.
7 Plaintiff then served amended RFPs on December 21, 2010, specifying which defendant each
8 request was directed to. Plaintiff filed the motion to compel responses to the RFPs on January
9 10, 2011.

10 Under Federal Rule of Civil Procedure 34(b)(2)(A), defendants had 30 days from service
11 of the amended RFPs to respond; that is, until January 20, 2011. Thus, the January 10 motion
12 was premature. However, the date on which the responses were due is apparently in dispute. In
13 their January 24, 2011 opposition to the motion to compel, defendants assert, without citation,
14 that their responses were not due until February 7, 2011. The assertion is unexplained and the
15 court does not know how defendants arrived at that date. Dckt. No. 30 at 1-2. Nonetheless,
16 defendants state that they are responding to plaintiff’s RFPs. *Id.* However, plaintiff filed reply
17 briefs on February 7, 2011 and February 18, 2011 implying that he has not received any RFP
18 responses.

19 On the information before the court, it appears that defendants have either wholly failed
20 to substantively respond to plaintiff’s RFPs or have failed to respond in the time required.
21 Because defendants have represented to the court that they are responding to the requests, the
22 court will defer ruling on plaintiff’s motion to compel at this time and instead order defendants
23 to show cause within 14 days of the date of this order why they should not be compelled to
24 respond to the RFPs and why sanctions and/or an award of expenses should not issue under
25 Federal Rule of Civil Procedure 37.

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1 **III. Motion to File Documentary Evidence**

2 Plaintiff has filed a “motion to file documentary evidence,” appending 106 pages of
3 documents, denoted Exhibits A-Z. Dckt. No. 29. It is unclear what this evidence is filed in
4 support of, although plaintiff indicates that the documents show that he exhausted his
5 administrative remedies. *Id.* at 1. Currently, no dispositive motion is pending to which the
6 attached documents might be relevant. The court will accept the documents for filing, but
7 informs plaintiff that, should he rely on the evidence in future briefs, he must cite specifically to
8 the exhibit and page number; the court will not dig through the exhibits to find evidence
9 supporting plaintiff’s arguments. If plaintiff wishes the exhibits to be a part of his complaint,
10 plaintiff must seek leave to file an amended complaint that includes the exhibits. L.R. 220 (all
11 pleadings must be complete within themselves and contain all exhibits or attachments referred to
12 within the pleading).

13 **IV. Order**

14 Accordingly, it is hereby ordered that:

- 15 1. Plaintiff’s November 3, 2010, April 11, 2011, and April 20, 2011 motions for an order
16 allowing plaintiff to contact witnesses (Docket No. 24, 37, 38) are denied without prejudice;
17 2. Plaintiff’s April 8, 2011 motion for an extension of time (Docket No. 36) is denied;
18 3. Defendants shall show cause within 14 days of the date of this order why the court
19 should not issue an order compelling their responses to plaintiff’s requests for production of
20 documents and why sanctions and/or an award of expenses should not issue under Federal Rule
21 of Civil Procedure 37 for their failure to respond or failure to timely respond to those discovery
22 requests;
23 4. Plaintiff’s January 18, 2011 motion to file documentary evidence (Docket No. 29) is
24 granted.

25 DATED: May 17, 2011.

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EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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