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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERTO HERRERA,
Plaintiff,
v.
P. STATTI, et al.,
Defendants.

No. 2:10-cv-1154 MCE DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se with this civil rights action. Pending before the court is plaintiff's motion for an order imposing supplemental sanctions. Defendant Medina has filed an opposition to the motion, and plaintiff has filed a reply.

Plaintiff's motion is difficult to decipher. Indeed, in plaintiff's reply to defendant's opposition to the motion plaintiff states that he does not even remember filing the motion. In any event, insofar as plaintiff wishes to proceed with this motion, as best as the court can tell it appears that plaintiff is requesting court-ordered sanctions be imposed against defendant Medina for refusing to file opposition to plaintiff's motion to compel. However, this court previously struck as untimely both of plaintiff's motions to compel and informed defendant Medina that he was not required to respond to them. (Doc. No. 137) Accordingly, the court will deny plaintiff's motion for sanctions.

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1 Also pending before the court is defense counsel's notice of election to voluntarily
2 withdraw defendant Medina's motion for summary judgment. On January 7, 2015, this court
3 issued an order that construed plaintiff's opposition to defendant's motion for summary judgment
4 as a motion to withdraw or amend his admissions pursuant to Rule 36(b) of the Federal Rules of
5 Civil Procedure. (Doc. No. 166) The court instructed defense counsel to show cause as to why
6 the court should not grant plaintiff's motion to withdraw or amend his admissions, or,
7 alternatively, the court instructed counsel that the defendant could elect to voluntarily withdraw
8 the pending motion for summary judgment without prejudice to renewing it on the merits. (Id.)
9 Counsel's notice of withdrawal seeks 120 days leave to file a new motion for summary judgment.

10 Under the circumstances of this case, the court will grant plaintiff's motion to withdraw or
11 amend his admissions. Specifically, the court finds that permitting withdrawal or amendment of
12 the admissions will "promote the presentation of the merits" of this case. Fed. R. Civ. P. 36(b).
13 In addition, in light of defendant's withdrawal notice, the court finds that defendant Medina
14 would not be prejudiced in "maintaining or defending this action on the merits." Id. The court
15 will also direct plaintiff to re-serve defense counsel with responses to the defendant Medina's
16 requests for admission, set one. Plaintiff's responses must be signed. Fed. R. Civ. P. 36(a)(3).
17 Finally, good cause appearing, the court will deem defendant Medina's motion for summary
18 judgment withdrawn and grant the defendant 120 days to file a new motion for summary
19 judgment on the merits of this case.

20 Accordingly, IT IS HEREBY ORDERED that:

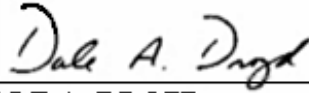
- 21 1. Plaintiff's motion for supplemental sanctions (Doc. No. 141) is denied;
- 22 2. Plaintiff's opposition to defendant's motion for summary judgment construed as a
23 motion to withdraw or amend his admissions pursuant to Rule 36(b) (Doc. No. 162) is granted;
- 24 3. Within twenty-one days of the date of service of this order plaintiff shall re-serve his
25 responses to defendant Medina's requests for admission. Plaintiff's responses must be signed;
- 26 4. Defendant Medina's motion for summary judgment (Doc. No. 121) is deemed
27 withdrawn; and

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5. Defendant Medina is granted 120 days from the date of this order to file a motion for summary judgment on the merits of the case.

Dated: January 29, 2015



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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