

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

BRUCE THORNS,

Plaintiff,

No. 2:11-cv-01826-MCE-DAD P

vs.

S. SHANNON, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Before the court are plaintiff’s motion to compel and defendants’ motion to modify the scheduling order.

PLAINTIFF’S MOTION TO COMPEL

I. Plaintiff’s Arguments

In his motion to compel, plaintiff asserts that defendants have failed to respond to his request for production of documents which was delivered to prison staff on November 16, 2011. (Doc. No. 15 at 1.) Plaintiff provides a declaration under penalty of perjury in which he asserts that the envelope containing this discovery request was addressed to Deputy Attorney General Jeffrey Steele and that the envelope was sealed in the presence of correctional officer Zerr and given to him for mailing. (Id. at 10.) Therein, according to plaintiff, he made nine

1 production requests. However, in his pending motion plaintiff seeks an order compelling the
2 production of only the following three items: the written policies concerning coverings on cell
3 windows (request number 3), written policies concerning outdoor exercise (requests number 6),
4 and “[a]ll video surveillance tapes on C-yard from all cameras from the dates of September 7,
5 2010 to September 7, 2011” (request number 8). (Id. at 1-2.) Plaintiff argues that his request for
6 production of documents was timely because it was given to officer Zerr on November 16, 2011
7 and discovery did not close in this action until February 17, 2012. (Id. at 2.)

8 II. Defendants’ Opposition

9 Defendants oppose the motion to compel, arguing that it is untimely and that
10 plaintiff’s request for production of documents was never served on defendants. (Doc. No. 16 at
11 1-2.) According to defendants’ counsel, during his deposition on February 9, 2012, plaintiff
12 stated that he had not received documents in response to his request for production of documents.
13 (Id. at 2 & Doc. 16-4 at 3.) Defendants’ counsel informed plaintiff at that time that although
14 defendants had received plaintiff’s interrogatories and request for admissions, they had not been
15 served with a request for production of documents. (Doc. 16 at 2 & Doc. 16-4 at 3-4.) In
16 addition, defense counsel pointed out to plaintiff that his proof of service noted only the service
17 of interrogatories and request for admissions. (Id.) Defendants argue that plaintiff initially stated
18 that the discovery requests were sent together, but now claims that he sent the request for
19 production of documents separately. (Doc. No. 16 at 2 & Doc. 16-4 at 4.) In his declaration,
20 defense counsel states that plaintiff’s interrogatories and requests for admission were served on
21 November 30, 2011, and that timely responses were served on plaintiff. (Doc. No. 16-1 at 1-2.)
22 Defendants also submit the declaration of Stacy Vue, a technician with the office of the litigation
23 coordinator. (Doc. No. 16-2.) According to Ms. Vue, she reviewed the mail log and it reflects
24 that plaintiff sent legal mail to the Office of the Attorney General on December 1, 2011 but there
25 is no record that plaintiff sent mail to the Attorney General’s Office any other time in November
26 2011. (Id. at 1-2.)

1 III. Plaintiff's Reply

2 In his reply, plaintiff acknowledges that the deadline for filing his motion to
3 compel was February 17, 2012, but explains that he "misread the court's order, believing that he
4 had until May 11, 2012." (Doc. No. 17 at 3.) Plaintiff continues to assert that he gave his legal
5 mail containing the request for production of documents to correctional staff on November 16,
6 2011.

7 IV. Analysis

8 As noted by the parties, the court's discovery and scheduling order was filed on
9 November 3, 2011, and set February 17, 2012 as the deadline for conducting discovery in this
10 action. (Doc. No. 13 at 6.) The motion to compel will be denied for the following reasons.
11 First, although plaintiff is proceeding without counsel, plaintiff is required to comply with the
12 court's orders and the deadlines set forth therein. Plaintiff's explanation that he misunderstood
13 the court's scheduling order is unpersuasive. Plaintiff's motion to compel is untimely. Second,
14 plaintiff failed to act diligently. At the latest, by February 9, 2012, he was aware that no
15 production of documents had been made by defendants. Nevertheless, plaintiff did not seek a
16 court order extending the time to conduct discovery or to file a timely motion to compel. Third,
17 in any event the court is not persuaded that plaintiff's request for production of documents seeks
18 relevant evidence or that plaintiff is unable to obtain the documents in question without a court
19 order. In his request for production and his motion to compel plaintiff seeks policies concerning
20 cell windows and outdoor exercise. However, there is no indication that such regulations and
21 policies are unavailable at the prison law library. As to plaintiff's request for the production of
22 "[a]ll video surveillance tapes on C-yard from all cameras from the dates of September 7, 2010 to
23 September 7, 2011[.]" the discovery request appears to be overly broad and irrelevant to
24 plaintiff's claims in this action.

25 ////

26 ////

1 **MOTION TO MODIFY THE SCHEDULING ORDER**

2 Defendants seek an additional thirty days to file dispositive motions. The current
3 deadline is May 11, 2012. Defendants explain that there is a pending class action involving the
4 same issues as those presented in this case, that counsel has had to absorb the cases of other
5 attorneys who have retired, transferred or taken leave of absence in the past several months, and
6 that the interest of justice would be best served by allowing defendants to file a summary
7 judgment motion because the material facts in this case are largely undisputed.

8 Plaintiff opposes the motion and argues that defendants have had sufficient time
9 to file a summary judgment motion. (Doc. No. 19 at 2.) Plaintiff contends that material facts in
10 this case are in fact disputed. (Id. at 3.)

11 The court is persuaded that defendants' request is made in good faith. Moreover,
12 it is at least possible that a motion for summary judgment could result in the disposition of this
13 action without the necessity of a trial. Therefore, defendants' motion to modify the scheduling
14 order will be granted.

15 **CONCLUSION**

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

17 1. Plaintiff's March 12, 2012 motion to compel discovery (Doc. No. 15) is
18 denied;

19 2. Defendants' May 10, 2012 motion to modify the scheduling order (Doc. No.
20 18) is granted;

21 3. The May 11, 2012 deadline for the filing of pretrial motions, except motions to
22 compel, is vacated and reset to thirty days from the date of this order.

23 DATED: June 8, 2012.

24
25 DAD:4
26 thor1826.mtc.sched



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE