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

PAUL DEAN ROBERTS,

Plaintiff,

No. 2:12-cv-0247 KJM AC P

vs.

CALIFORNIA DEPT. OF
CORRECTIONS,

Defendant.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se who seeks relief pursuant to Title II of the Americans with Disabilities Act (ADA). The court previously issued a discovery and scheduling order, which directed that the parties complete discovery by October 5, 2012, and file dispositive motions by December 28, 2012. See Doc. No. 12.

On September 19, 2012, plaintiff filed with the court a motion to extend discovery. In support, plaintiff alleged that after attending yard one day, plaintiff discovered that his case file, except for three items, was missing. See Doc. No. 14 at 1. In its order denying plaintiff's motion to extend discovery, the court noted that plaintiff's statements about his missing case file were not made under penalty of perjury. See Doc. No. 16 at 2. The court advised plaintiff that, if he filed a statement with the court stating, under penalty of perjury, that

1 his entire case file was taken from his cell by prison officials, the court would look into the
2 matter. Id.

3 On October 16, 2012, plaintiff filed a “Statement Under Penalties of Perjury In
4 Response to This Courts [sic] Order of October 1, 2012.” See Doc. No. 21. In his statement,
5 plaintiff declares that “all copies and/or original documents plaintiff had accumulated, prepared,
6 served, or received during the court of this case (IE: Order from this Court including the June 15,
7 2012 discovery and scheduling order, letters, motions, investigative notes, retained copies of
8 discovery request [request for admissions], research documents and all other personally prepared
9 documents) were removed from plaintiff’s cell during plaintiff’s absence.” Id. at 1. Plaintiff
10 additionally declares that his case file could only have been accessed and removed from his
11 assigned cell by prison staff unlocking his prison cell door by a key possessed only by prison
12 staff. Id. at 2. Plaintiff concludes that he believes that prison staff removed his papers. Id.

13 Plaintiff has also moved again to extend discovery. See Doc. No. 18.

14 Because plaintiff has now sworn to his allegations, the court will order defendant
15 California Department of Corrections and Rehabilitation (“CDCR”) to provide a response to the
16 allegations raised in plaintiff’s sworn statement. Plaintiff will be given an opportunity to
17 respond. Plaintiff’s motion to extend discovery, as well as all pending deadlines, will be held in
18 abeyance pending disposition of this order to show cause.

19 Accordingly, IT IS HEREBY ORDERED that:

20 1. Within thirty (30) days of the filing date of this order, defendant shall file a
21 response to plaintiff’s October 19, 2012 response (Doc. No. 21);

22 2. Plaintiff may file an optional reply to defendant’s response within thirty (30)
23 days after service of defendant’s response; and

24 3. All pending deadlines, as well as plaintiff’s motion to extend discovery (Doc.

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26 ///

1 No. 18), are held in abeyance pending disposition of this order to show cause.

2 DATED: December 10, 2012.

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ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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