

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY C. BONTEMPS,

Plaintiff,

v.

RON BARNES et al.,

Defendants.

No. 2:12-cv-2249 TLN DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court is defendant Abbott’s motion to compel. Plaintiff has not filed an opposition to the motion.¹

BACKGROUND

Plaintiff is proceeding on his original complaint in this action. Therein, plaintiff alleges that he was outside the chow hall when he told defendant Abbott that he needed to go get his medication. Defendant Abbott then started violently searching plaintiff. During the search, defendant Abbott pushed and shoved plaintiff, kicked plaintiff’s leg, which was in an air cast, and

¹ As this court previously advised plaintiff, he is required to respond or state in writing his lack of opposition to all motions filed by defendants in this action. Plaintiff is cautioned that his failure to timely oppose these motions may be deemed a waiver of opposition to them. See L.R. 230(1). Failure to oppose or affirmatively state his non-opposition to defense motions may also result in a recommendation that this action be dismissed due to plaintiff’s failure to prosecute the action.

1 groped and squeezed plaintiff's genitals. Defendant Abbott also told plaintiff that he was
2 conducting the search due to the paperwork that plaintiff had filed against the defendant's fellow
3 correctional officers. At screening, the court found that plaintiff's complaint appeared to state a
4 cognizable claim for excessive use of force and retaliation against defendant Abbott. (Doc. Nos.
5 1 & 8.)

6 **APPLICABLE LEGAL STANDARDS**

7 Under Rule 26 of the Federal Rules of Civil Procedure, "[p]arties may obtain discovery
8 regarding any non-privileged matter that is relevant to any party's claim or defense." Fed. R. Civ.
9 P. 26(b). "Relevant information need not be admissible at trial if the discovery appears
10 reasonably calculated to lead to the discovery of admissible evidence." Id.

11 With respect to requests for production, a party may propound requests for production of
12 documents that are within the scope of Federal Rule of Civil Procedure 26(b). Fed. R. Civ. P.
13 34(a). With respect to interrogatories, a party may propound interrogatories related to any matter
14 that may be inquired into under Federal Rule of Civil Procedure 26(b). Fed. R. Civ. P. 33(a)(2).

15 Under Rule 37 of the Federal Rules of Civil Procedure, "a party seeking discovery may
16 move for an order compelling an answer, designation, production, or inspection." Fed. R. Civ. P.
17 37(a)(3)(B). The court may order a party to provide further responses to an "evasive or
18 incomplete disclosure, answer, or response." Fed. R. Civ. P. 37(a)(4). "District courts have
19 'broad discretion to manage discovery and to control the course of litigation under Federal Rule
20 of Civil Procedure 16.'" Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting
21 Avila v. Willits Env'tl. Remediation Trust, 633 F.3d 828, 833 (9th Cir. 2011)).

22 **DEFENDANT'S MOTION TO COMPEL**

23 Defendant Abbott has moved to compel plaintiff's responses to Defendant's Requests for
24 Production, Set One, and Defendant's Interrogatories, Set One. According to defense counsel,
25 defendant Abbott served plaintiff with the discovery requests on December 23, 2014, making
26 plaintiff's responses due February 9, 2015. Plaintiff has not responded to any of the discovery
27 requests. Defense counsel inquired about the discovery requests during plaintiff's deposition, and
28 plaintiff acknowledged he had received them but had not responded to them. Defendant Abbott

1 now seeks an order compelling plaintiff to respond to the discovery requests as well as attorney's
2 fees associated with filing the pending motion to compel and a stay of this case until plaintiff
3 complies with any court order. (Def.'s Mot. to Compel at 3-5 & Exs. A & B.) As noted above,
4 plaintiff has not opposed or otherwise responded to defendant's motion.

5 Based on the record in this case, the court will grant defendant's motion to compel
6 plaintiff's responses to Defendant's Requests for Production, Set One, and Defendant's
7 Interrogatories, Set One. With respect to defendant's requests for production of documents, if
8 plaintiff has any relevant documents or materials in his possession or control, he must produce
9 them in response to defendant's discovery requests. If plaintiff is not in possession or control of
10 relevant materials, he must state under oath that the requested documents do not exist or are not in
11 his possession or control. See Fed. R. Civ. P. 34(a)(1). With respect to the interrogatories posed
12 by defendants, plaintiff must answer each interrogatory "separately and fully in writing under
13 oath." Fed. R. Civ. P. 33(b)(3). Plaintiff is cautioned that "[t]he discovery process is subject to
14 the overriding limitation of good faith obligation." Asea v. Southern Pacific Transportation Co.,
15 669 F.2d 1242, 1247 (9th Cir. 1981).

16 Turning now to defendant's request for the award of monetary sanctions against plaintiff,
17 under Rule 37(d) of the Federal Rules of Civil Procedure, the court has broad discretion to order
18 sanctions if a party fails to serve answers, objections, or written responses to properly served
19 discovery requests. See Fed. R. Civ. P. 37(d). The court finds that defendant's request for
20 monetary sanctions is premature. Plaintiff is an inmate proceeding pro se and in forma pauperis.
21 Although plaintiff's inability to pay should not be the only reason for the court's denial of
22 monetary sanctions, it is a factor that may be considered. See Warren v. Guelker, 29 F.3d 1386,
23 1390 (9th Cir. 1994). As such, the court will deny defendant's request for the imposition of
24 sanctions without prejudice to the renewal of that request should plaintiff fail to comply with this
25 court's order.

26 Finally, as to defendant's request for a stay, the court declines to enter a stay of this action
27 at this time. If defense counsel finds that additional time is needed to file a dispositive motion
28 because of plaintiff's failure to timely respond to defendant's discovery requests, counsel may

1 request a modification to the scheduling order at a later date. Under the current scheduling order
2 governing this action, dispositive motions are not due for filing until May 22, 2015.

3 Accordingly, the court will grant defendants' motion to compel but deny defendant's
4 request for monetary sanctions without prejudice and defendant's request for a stay of this action.

5 **CONCLUSION**

6 Accordingly, IT IS HEREBY ORDERED that:

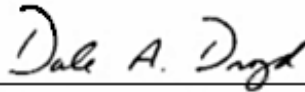
7 1. Defendant's motion to compel plaintiff's responses to Defendant's Requests for
8 Production, Set One, and Defendant's Interrogatories, Set One (Doc. No. 29) is granted;

9 2. Within twenty-one days of the date of service of this order, plaintiff shall serve on
10 defense counsel his responses to Defendant's Requests for Production, Set One, and Defendant's
11 Interrogatories, Set One;

12 3. Defendant's request for sanctions (Doc. No. 29) is denied without prejudice; and

13 4. Defendant's request for a stay of this action (Doc. No. 29) is denied.

14 Dated: April 8, 2015

15 

16 _____
17 DALE A. DROZD
18 UNITED STATES MAGISTRATE JUDGE

19 DAD:9
20 bont2249.mtc