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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SANTANA PORTER,
Plaintiff,
v.
DR. ALVARO C. TRAQUINA,
Defendant.

No. 2:12-cv-2266 TLN DAD P

ORDER

Plaintiff is a state prisoner proceeding pro se with this civil rights action. Plaintiff claims that defendant Traquina was deliberately indifferent to his medical needs in violation of the Eighth Amendment. This matter is before the court on defendant’s motions to compel discovery and vacate deadlines set by the court’s discovery and scheduling order.

On July 22, 2014, defendant filed a motion to compel discovery. According to the motion, on May 16, 2014, defense counsel served on plaintiff interrogatories and a request for production of documents. Plaintiff failed to respond to defendant’s discovery requests. Accordingly, on July 7, 2014, defense counsel met and conferred with plaintiff by letter. In that letter, defense counsel gave plaintiff additional time to respond to the discovery requests. Counsel also cautioned plaintiff that if he did not respond to the discovery requests defense counsel would file a motion to compel. To date, defense counsel has not received any discovery responses from plaintiff. (Def.’s Mot. to Compel at 2-7 & Ex. A.)

1 Plaintiff failed to oppose defendant's motion to compel, so on September 3, 2014, the
2 court issued an order to show cause. In response to the court's order, plaintiff filed an opposition
3 to defendant's motion to compel in which he argues that defense counsel served him with the
4 discovery requests prior to the court issuing its discovery and scheduling order. Plaintiff contends
5 that he therefore had no obligation to respond to defendant's discovery requests. (Pl.'s Opp'n to
6 Def.'s Mot. to Compel at 1-2.)

7 Although the parties to a prisoner action are exempt from the initial disclosure
8 requirements of Federal Rule of Civil Procedure 26, they may conduct discovery prior to the
9 court issuing its discovery and scheduling order. However, the usual practice of this court is to
10 refrain from compelling a party to comply with an opposing party's discovery request before all
11 defendants have answered the complaint and the court has issued its discovery and scheduling
12 order, which establishes the parameters and deadlines for discovery. See Stephen v. Kelso, No.
13 10-cv-1678 KJM KJN P, 2012 WL 371604 at *6 (E.D. Cal. Feb. 3, 2012).

14 In this case, defendant Traquina answered the complaint on May 8, 2014. On May 16,
15 2014, defense counsel served plaintiff with the discovery requests at issue, and four days later on
16 May 20, 2014, the court issued its discovery and scheduling order. The court has reviewed
17 defendant's interrogatories and request for production of documents. (Def.'s Mot. to Compel, Ex.
18 A.) Under the circumstances of this case, the court will grant defendant's motion to compel and
19 direct plaintiff to serve responses to defendant's discovery requests within thirty days. See Fed.
20 R. Civ. P. 26(b) & 37(a). The court will not impose any monetary sanctions at this time,
21 however. In addition, good cause appearing, the court will grant defendant's motion to vacate the
22 deadlines set forth in the court's discovery and scheduling order and will, by this order, grant the
23 parties additional time to complete discovery and file any pretrial motions in this action. See Fed.
24 R. Civ. P. 16.

25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. Defendant's motion to compel (Doc. No. 16) is granted;
- 27 2. Plaintiff shall respond to defendant's interrogatories and request for production of
28 documents within thirty days of the date of service of this order;

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3. Defendant's request for sanctions (Doc. No. 16) is denied;

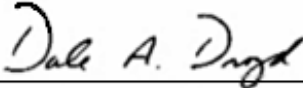
4. Defendant's motion to vacate the deadlines for discovery and pretrial motions in the court's discovery and scheduling order (Doc. No. 17) is granted;

5. The parties may conduct discovery until January 9, 2015. Any motions necessary to compel discovery shall be filed by that date. All requests for discovery pursuant to Fed. R. Civ. P. 31, 33, 34 or 36 shall be served not later than sixty days prior to that date;

6. The parties shall file all pretrial motions, except motions to compel discovery, on or before March 27, 2015. The parties shall brief motions in accordance with paragraph 8 of this court's order filed March 12, 2014; and

7. Except as set forth in this order, the court's discovery and scheduling order issued on May 20, 2014, remains in effect.

Dated: October 15, 2014



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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