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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

IRA DON PARTHMORE,
Plaintiff,
v.
B. KISSELL, et al.,
Defendants.

No. 2:13-cv-0819 KJM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently pending before the court are plaintiff’s motion for sanctions (ECF No. 61) and motion to stay defendants’ request for production (ECF No. 64).

I. Motion for Sanctions

On May 5, 2015, the court filed an order setting this case for a settlement conference. ECF No. 54. The parties were ordered to “have a principal capable of disposition at the Settlement Conference or to be fully authorized to settle the matter on any terms at the Settlement Conference.” Id. at 2. Plaintiff alleges that the defendants violated this order because it was relayed to him by the settlement conference judge that defendants’ counsel was only authorized to settle the case for a pre-set dollar amount. ECF No. 61. Defendants’ have filed a response to the motion, but rather than respond to the allegations, request that the motion be stricken from the

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1 record and that plaintiff be sanctioned for violating the confidentiality of the settlement
2 conference. ECF No. 62.

3 An authorization to settle for a limited dollar amount or sum certain can be found
4 incompatible with the requirement of full authority to settle, under circumstances not present
5 here. See, e.g., Nick v. Morgan's Foods, Inc., 270 F.3d 590, 596-97 (8th Cir. 2001). In instances
6 where sanctions have been imposed, the representative present at the settlement conference often
7 had an excessively low authority to settle and any offers above the representative's authority had
8 to be communicated to another individual that was only available by phone. See id. at 596
9 (representatives present at the settlement conference only had settlement authority up to \$500 and
10 had to call an individual not present to consider any offers in excess of \$500.00); Pitman v.
11 Brinker Int'l, Inc., 216 F.R.D. 481, 483 (D. Ariz. 2003) (representatives only had settlement
12 authority up to \$1,075.00 and individual with full authority was "standing by telephonically");
13 Dvorak v. Shibata, 123 F.R.D. 608, 608-09 (D. Neb. 1988) (counsel was authorized to offer no
14 more than \$2,500.00 and representative with additional authority chose not to attend settlement
15 conference even though \$2,500.00 offer was declined two days before conference, leaving
16 counsel with no authority to negotiate). These circumstances indicate that the representative was
17 not in fact an individual with full authority to settle the case, and that settlement for a sum in
18 excess of the representative's authority was contemplated.

19 Even if plaintiff is correct that counsel here only had authority to settle below a
20 predetermined amount, it is not clear that counsel lacked full authority to settle the case. There is
21 nothing to suggest that another individual with greater authority was available but not present,
22 and the motion is silent as to any non-monetary authority counsel may have had. There is nothing
23 improper in defendants determining the value of the case in advance, and being unwilling to settle
24 for an amount in excess of that valuation. While the court understands plaintiff may be
25 disappointed by the offer he received, it does not find that defendants violated the order to have
26 an individual with full authority to settle present. Accordingly, the court declines to award
27 sanctions.

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1 With respect to defendants' request that the motion for sanctions be stricken from the
2 record because it discloses confidential settlement conference discussions, this request will be
3 granted. The court declines to sanction plaintiff for filing the motion, but reminds plaintiff that
4 settlement conference negotiations are confidential.

5 II. Motion to Stay Defendants' Request for Production

6 Plaintiff has also filed a motion to stay defendants' request for production. ECF No. 64.
7 He requests that the court "order a hold on the production of these documents requested of
8 Plaintiff" because he either no longer possesses them or never possessed them. Id. at 2. Plaintiff
9 alleges that many of the requested documents were lost while he was out to court for the
10 settlement conference in this case. Id. at 1. He states he is currently in the process of trying to
11 obtain copies of the documents, many of which are available to the Attorney General's Office.
12 Id. Plaintiff has requested an Olsen review in order to review his central file and medical records
13 to try and obtain as many of the missing documents as he can. Id. at 6, ¶ 17. He has also
14 requested that property staff check to see if his documents have been misplaced, but has yet to
15 hear back on his request. Id., ¶ 16. In addition to seeking a hold on his deadline to respond to
16 defendants' request for production, he also requests that the court send him a copy of his first
17 amended complaint since his only copy was lost as a result of his trip to court. Id. at 2.

18 The court will deny plaintiff's request to stay his responses and will instead enlarge his
19 deadline to respond to the requests. Since plaintiff's documents were lost as a result of his
20 transport to and from court for the settlement conference requested by defendants, the court will
21 require the Attorney General's Office and Deputy Attorney General Sylvie Snyder to ensure that
22 plaintiff is provided an opportunity to review his central file and medical records and make copies
23 of any documents therein that are necessary to replace his missing documents. Plaintiff's
24 responses to defendants' requests for production will be due after plaintiff has had an opportunity
25 to review and copy his files. The Attorney General's Office and Deputy Attorney General Snyder
26 shall also take whatever steps are necessary to verify that plaintiff's property has not simply been
27 misplaced. To the extent plaintiff alleges that he has never possessed some of the documents

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1 requested, he is directed to Federal Rule of Civil Procedure 34(a)(1), which limits requests for
2 production to items within “the responding party’s possession, custody, or control.”

3 As a one-time courtesy, the court will grant plaintiff’s request for a copy of his first
4 amended complaint. Plaintiff is advised that the court will not make a habit of providing him
5 with copies of documents free of charge.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. Plaintiff’s motion for sanctions (ECF No. 61) is denied.

8 2. Defendants’ request to strike plaintiff’s motion for sanctions (ECF No. 62) is granted
9 and the motion for sanctions (ECF No. 61) shall be stricken from the record.

10 3. Defendants’ request to sanction plaintiff (ECF No. 62) is denied.

11 4. Plaintiff’s motion to stay his deadline to respond to defendants’ requests for production
12 (ECF No. 64) is granted in part. Plaintiff’s responses to defendants’ requests for production will
13 be due twenty-one days after plaintiff has an opportunity to review both his central file and
14 medical records and obtain the necessary copies from each.

15 5. The Attorney General’s Office and Deputy Attorney General Sylvie Snyder shall
16 ensure that plaintiff is provided an opportunity to review his central file and medical records and
17 make copies of any documents therein that are necessary to replace his missing documents. They
18 shall also take whatever steps are necessary to verify that plaintiff’s property has not simply been
19 misplaced.

20 6. As a one-time courtesy, the Clerk of the Court is directed to provide plaintiff with a
21 copy of his first amended complaint (ECF No. 21).

22 DATED: July 28, 2015.

23 _____/S/

24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE