

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

SHAVOUGUE A. MASON,  
Plaintiff,  
v.  
M.L. MARTINEZ, et al.,  
Defendants.

No. 2:14-cv-1041 MCE AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Currently before the court are plaintiff’s motion for judicial notice (ECF No. 31), plaintiff’s motion for leave to file a supplemental declaration in support of his opposition to defendants’ motion for summary judgment (ECF No. 34), and defendants’ motion to modify the scheduling order (ECF No. 35).<sup>1</sup>

I. Motion for Judicial Notice

In his motion, plaintiff asks the court to take judicial notice of his “attempts to resolve the failures and defendant’s [sic] less than truthful responses” to his discovery requests. ECF No. 31. The court may take notice of facts that are capable of accurate and ready determination by resort

---

<sup>1</sup> Also pending are defendants’ motion for partial summary judgment (ECF No. 22), defendants’ motion to strike plaintiff’s surreply (ECF No. 28), and plaintiff’s motion to compel (ECF No. 29), which are not addressed by this order and will be considered by the court in due course.

1 to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); United States  
2 v. Bernal–Obeso, 989 F.2d 331, 333 (9th Cir. 1993). Plaintiff’s characterization of his  
3 interactions with counsel for defendants is not the kind of fact subject to judicial notice, and the  
4 court will therefore deny the motion for judicial notice. However, to the extent plaintiff is  
5 offering his letter to defendants’ counsel (ECF No. 31 at 3-5) as a supplemental exhibit to his  
6 motion to compel, the court will consider it.

7 II. Motion for Leave to File a Supplemental Declaration

8 Plaintiff moves for leave to file a supplemental declaration in support of his response to  
9 defendants’ motion for partial summary judgment. ECF No. 34. The declaration plaintiff  
10 submits is from another inmate who claims to have witnessed the incident at issue in this case.  
11 ECF No. 34 at 2. However, defendants’ motion for partial summary judgment is not based on the  
12 merits of the case, but instead is based on defendants’ claim that plaintiff did not exhaust his  
13 administrative remedies. ECF No. 22. Since the contents of the declaration submitted by  
14 plaintiff are irrelevant to whether plaintiff exhausted his administrative remedies, plaintiff’s  
15 motion will be denied. This does not preclude plaintiff from using the declaration in support of  
16 any future motion for summary judgment or response.

17 III. Motion to Modify Scheduling Order

18 Because of their pending motion for partial summary judgment for failure to exhaust and  
19 plaintiff’s motion to compel, defendants’ move to vacate the current July 10, 2015 pretrial motion  
20 deadline and request the deadline be re-set once the pending motions have been resolved. ECF  
21 No. 35. Defendants’ request is well taken, since the resolution of their motion for summary  
22 judgment based on failure to exhaust will impact the scope of any merits based summary-  
23 judgment motion they may seek to file. Additionally, effective case management supports  
24 resolving plaintiff’s pending motion to compel prior to the expiration of the time to submit  
25 dispositive motions. For these reasons, the court will grant defendants’ motion and vacate the  
26 July 10, 2015 pretrial motion deadline. The deadline will be re-set upon resolution of the  
27 defendants’ motion for partial summary judgment and plaintiff’s motion to compel.

28 ///

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


Accordingly, IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for judicial notice (ECF No. 31) is denied in part and granted in part. The motion is denied to the extent that the court will not take judicial notice of the facts put forth by plaintiff and granted to the extent plaintiff seeks to have his letter to defendants' counsel considered as an exhibit to his motion to compel.

2. Plaintiff's motion to file a supplemental declaration (ECF No. 34) is denied.

3. Defendants' motion to modify the scheduling order (ECF No. 35) is granted. The July 10, 2015 pretrial motion deadline is hereby vacated and will be re-set upon resolution of defendants' motion for partial summary judgment and plaintiff's motion to compel.

DATED: June 26, 2015

  
\_\_\_\_\_  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE