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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD JOSEPH CRANE,
Plaintiff,
v.
RODRIGUEZ, et al.,
Defendants.

No. 2:15-cv-0208 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel. On February 15, 2017, the discovery and scheduling order was vacated, and the parties were allowed to conduct discovery on the issue of exhaustion until March 14, 2017. (ECF No. 104.) The parties were advised that the court would issue a revised scheduling order, if appropriate, following resolution of the motion for summary judgment. (ECF No. 104 at 3.) Multiple motions are pending, which this court addresses below.

Plaintiff’s Motions to File Amended Opposition

On February 15, 2017, plaintiff’s opposition, signed February 12, 2017, was filed with the court, before plaintiff had benefit of the February 15, 2017 order. Since that date, plaintiff has filed multiple requests to file a revised opposition following completion of discovery. Defendants contend that plaintiff should not be granted leave to file a second opposition or sur-reply without complying with Rule 56(d)(1). In his March 13, 2017, motion, plaintiff explained that he filed his

1 opposition to the motion for summary judgment because he was unsure whether the court would
2 grant his request for stay and permit discovery on the issue of exhaustion.

3 In light of the court's order granting leave to conduct discovery on the issue of exhaustion,
4 which was filed the same day as plaintiff's opposition to the motion for summary judgment, the
5 court is inclined to grant plaintiff leave to file an amended opposition on that basis alone.
6 However, since then, defendants have filed a reply in which they withdrew portions of their
7 motion for summary judgment. In addition, plaintiff subsequently filed a motion to compel
8 discovery, for which briefing will not be completed until May 21, 2017. (ECF No. 128.)

9 "The district court is given broad discretion in supervising the pretrial phase of litigation."
10 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992) (citation and internal
11 quotation marks omitted).

12 In a § 1983 action, discovery usually occurs first, then the parties file dispositive motions.
13 Because discovery responses are now at issue, and defendants have withdrawn portions of their
14 motion for summary judgment, the undersigned vacates defendants' motion for summary
15 judgment without prejudice to its renewal or re-filing¹ after the discovery disputes are resolved.
16 Plaintiff's motions for extensions of time to file an amended opposition are denied as moot, and
17 his motion to modify the scheduling order and for stay is also denied as moot.

18 Plaintiff's Multiple Requests for Sanctions

19 Plaintiff filed multiple requests for sanctions based on the withdrawal of defendant
20 Weeks' motion to compel apparently because plaintiff had already mailed his responses to the
21 motion. (ECF No. 113-14, 123, 125.) Plaintiff's requests are unfounded. Under the Federal
22 Rules, defendant Weeks was permitted to file a motion to compel discovery when he had not
23 received timely discovery responses. That plaintiff presented his opposition to the motion to
24 compel to prison officials thirty minutes before he received defendant Weeks' notice of
25 withdrawal does not provide a basis for this court to impose sanctions. As noted by defendant
26

27 ¹ Defendants are granted leave to file an amended motion that omits those portions they now
28 withdraw from their first motion. District courts have discretion to entertain successive motions
for summary judgment. Hoffman v. Tonnemacher, 593 F.3d 908, 911 (9th Cir. 2010).

1 Weeks, parties are permitted to withdraw pleadings. See Fed. R. Civ. P. 11. Plaintiff's requests
2 for sanctions are denied.

3 In his motion to modify, plaintiff requests sanctions based on his alleged challenges to two
4 letters appended as exhibits. After reading the motion and the opposition, the undersigned finds
5 no basis for the imposition of sanctions. Any confusion over the deadlines for producing
6 discovery has been minimized by granting plaintiff an extension of time to file a reply to
7 defendants' opposition to plaintiff's motion to compel.

8 Repeat Admonishment

9 Plaintiff was previously cautioned that requests for sanctions should be filed only in
10 extraordinary circumstances. (ECF No. 97 at 7.) Federal Rule of Civil Procedure 37(b) provides
11 that if a party "fails to obey an order to provide or permit discovery," the court may issue
12 appropriate sanctions, including establishing facts as proven, striking pleadings, dismissal,
13 rendering a default judgment against the disobedient party, or finding a party in contempt of
14 court. Fed. R. Civ. P. 37(b)(2)(A). Rule 41(b) also provides the court with the discretion to
15 dismiss an action if the plaintiff fails to prosecute his action or to comply with the Federal Rules
16 or court orders. Fed. R. Civ. P. 41(b); See also E.D. Cal., Local Rules 110, 183(a).

17 By repeatedly seeking sanctions, plaintiff unnecessarily burdens the court and the parties
18 by multiplying these proceedings, increasing the cost of this litigation. In addition, the record
19 reflects that plaintiff filed multiple motions seeking the same relief before the court could address
20 his prior motions. Plaintiff is advised that this court faces a very large prisoner caseload, and he
21 should wait for the court's ruling rather than repeatedly file duplicate requests or motions.
22 Multiple filings by plaintiff impinges on this court's ability to manage its heavy docket, and
23 further delays the issuance of court rulings.

24 Thus, plaintiff is again cautioned that he should refrain from filing baseless requests for
25 sanctions. In addition, plaintiff should exercise restraint and discretion in filing motions with the
26 court.

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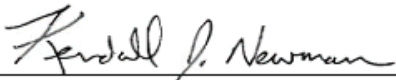
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Conclusion

Accordingly, IT IS HEREBY ORDERED that:

- 1. Defendants’ motion for summary judgment (ECF No. 84) is vacated without prejudice to its renewal or re-filing after the discovery disputes are resolved;
- 2. Plaintiff’s motions (ECF Nos. 115, 120, 126, 129) are denied as moot; and
- 3. Plaintiff’s requests for sanctions (ECF Nos. 113, 114, 123, 125 & 129) are denied.

Dated: May 9, 2017


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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