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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LYNNARD SMITH,

Plaintiff,

v.

STEVEN G. DAVIS,

Defendant.

No. C 07-4089 JSW (PR)

**ORDER DENYING MOTION TO  
COMPEL AND TO STAY  
DISCOVERY**

(Docket Nos. 57)

This is a civil rights action filed by a state prisoner pursuant to 42 U.S.C. § 1983 against Steven G. Davis, a correctional officer at Plaintiff's former prison. Plaintiff claims that Davis retaliated against him in violation of the First Amendment. Defendant's motion to dismiss the complaint for lack of exhaustion was denied following remand from the United States Court of Appeals for the Ninth Circuit, and Defendant's motion for summary judgment was recently filed and is currently pending. Plaintiff has filed a motion to compel discovery and Defendant filed a motion to stay discovery, both of which are opposed by the other party.

Plaintiff's motion to compel is DENIED. First, has failed to comply with the requirement to meet and confer with Defendant to attempt in good faith to resolve his discovery requests prior to filing such a motion. *See* Fed. R. Civ. P. 37(a). He mailed a letter to Defendants, but it was before receiving Defendants' timely response to his discovery request. After receiving the request, he filed the motion without any further attempt to meet

1 and confer regarding his dissatisfaction with their response. Secondly, the discovery he  
2 seeks to compel is based on a request that is exceedingly overbroad. He requests all  
3 documents concerning “retaliation, misconduct, mistreatment, unnecessary use of force,  
4 falsification of documents” by Defendant. There are no claims of excessive force,  
5 falsification, or misconduct other than retaliation in this case, and there are no claims  
6 involving any other inmate. As such, documents concerning these issues could not  
7 reasonably lead to admissible evidence. For these reasons, the motion to compel is DENIED.  
8 Plaintiff is entitled to discovery that is relevant to dispute Defendant’s argument that there  
9 are no factual issues material to the questions of their liability or qualified immunity on  
10 Plaintiff’s retaliation claim. Consequently, Defendant’s motion to stay all discovery is  
11 DENIED.

12 IT IS SO ORDERED.

13 DATED: January 10, 2013

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16 JEFFREY S. WHITE  
17 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

LYNNARD A. SMITH,  
Plaintiff,

Case Number: CV07-04089 JSW

**CERTIFICATE OF SERVICE**

v.

STEVEN G. DAVIS et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 10, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Lynnard A. Smith  
D89280  
CSP Solano  
P.O. Box 4000  
Vacaville, CA 95696

Dated: January 10, 2013

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk