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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

HOANG MINH TRAN
Plaintiff,
v.
WILLIAM D. GORE, et al.
Defendants.

Case No. 10cv2682-BTM (BLM)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO COMPEL PLAINTIFF TO RESPOND TO DISCOVERY AND REQUEST FOR SANCTIONS

[ECF No. 26]

On October 11, 2012, Defendants Sarandi Marina, Lizzie Womack, and Brandt O. Pile ("Defendants") filed a motion to compel discovery and request for sanctions pursuant to Fed. R. Civ. P. ("Rule") 37, alleging that Plaintiff, a former state prisoner proceeding *pro se*, had failed to answer interrogatories and produce requested documents. ECF No. 26 ("MTC"). On October 11, 2012, the Court issued a briefing schedule ordering Plaintiff to file an opposition to the motion on or before October 30, 2012. ECF No. 27. Plaintiff failed to do so. See Docket. The Court took the matter under submission pursuant to Civil Local Rule 7.1(d)(1). ECF No. 27.

Having considered all of the briefing and supporting documents presented, and for the reasons set forth below, Defendants' motion to compel Plaintiff to respond to discovery and request for sanctions is **GRANTED IN PART AND DENIED IN PART**.

BACKGROUND

Plaintiff initiated this action with the filing of his complaint on December 20, 2010. ECF No.

1 1. On July 25, 2011, Plaintiff filed his First Amended Complaint. ECF No. 7 ("FAC"). In his FAC,
2 Plaintiff alleges that his civil rights were violated and he was denied equal protection, freedom
3 of speech, due process, adequate medical care, and freedom from cruel and unusual punishment
4 while he was detained in the George F. Bailey Detention Facility on August 1st, 6th, and 12th
5 2009. Id. at 1-4. Specifically, Plaintiff alleges that he was denied a welfare package containing
6 various personal hygiene products and forced into solitary confinement without any type of
7 hearing. Id. at 2-3. Plaintiff further contends that he was improperly denied medication for
8 hemorrhoids in retaliation for his alleged role in the high profile escape of another inmate from
9 the detention facility. Id. at 4-5. Finally, Plaintiff alleges that certain Defendants illegally
10 confiscated his bible, violating his right to freedom of religion. Id. at 6.

11 Plaintiff filed a motion for appointment of counsel on December 20, 2010. ECF No. 3.
12 That motion was denied on May 23, 2011 in an order finding that neither the interests of justice
13 nor exceptional circumstances warranted the appointment of counsel. Id. at 2.

14 On February 21, 2012, Defendant John Gill, M.D., filed a motion to dismiss Plaintiff's FAC
15 pursuant to Rule 12(b)(6) for failure to state a claim. ECF No. 19. On May 31, 2012, Defendants
16 Sarandi Marina, Lizzie Womack, and Brandt O. Pile filed answers to the FAC. ECF Nos. 21 and
17 22.

18 On August 27, 2012, Plaintiff filed another motion for appointment of counsel after being
19 released from incarceration. ECF No. 25. That motion was denied on October 24, 2012 because
20 Plaintiff again failed to establish "the extraordinary circumstances necessary to justify a pro bono
21 appointment." ECF No. 30 at 3.

22 On August 17, 2012, Defendants served Plaintiff with interrogatories and requests for
23 production of documents. MTC at 1; ECF No. 26-3 ("Lodgments") at 3-34, Exhibits 1-6. Plaintiff
24 failed to provide any discovery responses by the September 19, 2012 due date. MTC at 2.
25 Because Plaintiff does not have a contact telephone number listed on the docket, Defendants
26 attempted to meet and confer with Plaintiff by letter sent on October 4, 2012 regarding his
27 overdue responses. Id.; ECF. No. 26-2 ("Sanchez Decl.") at 1-2; and Lodgments at 36-37, Exh.
28 7. In the letter, Defendants requested that Plaintiff respond within five days. Id. Plaintiff failed

1 to do so. MTC at 2 and Sanchez Decl. at 2. To date, Plaintiff has not responded to the discovery
2 requests or Defendants' letter. Id.

3 LEGAL STANDARD

4 The scope of discovery is defined by Rule 26(b), which permits litigants to obtain
5 discovery regarding "any nonprivileged matter that is relevant to any party's claim or defense."
6 Rule 26(b)(1). In the discovery context, relevant information includes any information
7 "reasonably calculated to lead to the discovery of admissible evidence," and need not be
8 admissible at trial. Id. District courts enjoy broad discretion both to determine relevancy for
9 discovery purposes, see Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002), and to limit
10 discovery to prevent its abuse, see Rule 26(b)(2).

11 A motion to compel is appropriate when a party fails to provide responses to interroga-
12 tories submitted under Rule 33, or fails to produce relevant, non-privileged documents requested
13 pursuant to Rule 34. Rule 37(a)(3)(B). An evasive or incomplete answer or response to a
14 discovery request is "to be treated as a failure to disclose, answer, or respond." Rule 37(a)(4).
15 A motion to compel must include certification that the movant has "in good faith conferred or
16 attempted to confer with the person or party failing to make disclosure or discovery." Rule
17 37(a)(1).

18 The party seeking to compel discovery has the burden of establishing that its request
19 satisfies the relevancy requirements of Rule 26(b)(1). Soto v. City of Concord, 162 F.R.D. 603,
20 610 (N.D. Cal. 1995). Thereafter, the party opposing discovery has the burden of showing that
21 the discovery should be prohibited, and the burden of clarifying, explaining, and supporting its
22 objections. DIRECTV, Inc. v. Trone, 209 F.R.D. 455, 458 (C.D. Cal. 2002) (citing Blankenship
23 v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975)).

24 DISCUSSION

25 Defendant seeks an order compelling Plaintiff to respond "to Defendants' written discovery
26 or correspondence regarding his failure to respond." MTC at 3. In addition, Defendants seek
27 "the imposition of monetary sanctions against Plaintiff." Id. Plaintiff has not filed an opposition.
28 See Docket.

1 The Court has reviewed the interrogatories and requests for production propounded by
2 Defendants to Plaintiff. Lodgments, Exhibits 1-6. Because the Court finds that the discovery
3 requests are both relevant and appropriate, and because Plaintiff has failed to provide any
4 explanation or justification for his failure to respond to the requests, Defendants' motion to
5 compel is **GRANTED**. Plaintiff must provide responses to all of the interrogatories and
6 requests for production [Lodgments, Exhibits 1-6] on or before **November 30, 2012**.

7 Defendants also request \$206.00 compensation for fees incurred in preparing the instant
8 motion to compel. Sanchez Decl. at 2. This Court "must, after giving an opportunity to be
9 heard, require the party or deponent whose conduct necessitated the motion ... to pay the
10 movant's reasonable expenses incurred in making the motion" unless, inter alia, "circumstances
11 make an award of expenses unjust." Rule 37(a)(5)(A).

12 Given Plaintiff's status as a *pro se* litigant and repeated statements that he is indigent
13 [ECF Nos. 2, 6, and 33]¹, the Court finds an award of monetary sanctions at this time would be
14 unjust. See Hughes v. Rowe, 449 U.S. 5, 9-10 (1980) (Section 1983 complaints filed by *pro se*
15 prisoners held "to less stringent standards"). Therefore, Defendants' request for monetary
16 sanctions is **DENIED**.

17 However, the Court reminds Plaintiff that "[p]ro se litigants must follow the same rules
18 of procedure that govern other litigants." Briere v. Chertoff, 271 Fed.Appx. 682, 683 (9th Cir.
19 2008) (quoting King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987)). Plaintiff elected to bring the
20 instant action and he is bound by the rules governing litigation. The Court therefore stresses to
21 Plaintiff that he **must** comply with this order and respond to the written discovery by **November**
22 **30, 2012**. The Court warns Plaintiff that failure to comply with this Order and failure to respond
23 to all of the written discovery by **November 30, 2012**, may result in the imposition of monetary
24 sanctions, evidentiary sanctions, and/or the dismissal of his case. See Rules 11 & 37 (court's
25 authority to impose sanctions for violations of rules of procedure); Chambers v. NASCO, Inc., 501
26 U.S. 32, 45 (1991) (court's "inherent" power to impose sanctions); CivLR 83.1 ("failure to comply
27

28 ¹Plaintiff has brought at least two other cases where he has also asserted that he cannot afford counsel
because he is indigent. See Tran v. Ortega, et al., S.D. Cal. Civil Case No. 10cv2457-BTM (WVG) (ECF Nos. 2 and
29 at 3); see also Tran v. Gore, et al., S.D. Cal. Civil Case No. 10cv0464 GPC (DHB) (ECF Nos. 2, 3, and 12).

1 with ... any order of the court may be ground for imposition by the court of ... monetary
2 sanctions or attorney's fees and costs").

3 The Court is aware that Plaintiff has, on multiple occasions, claimed that he is mentally
4 incompetent and unable to represent himself due to both the physical and mental impairments
5 from which he is suffering. ECF Nos. 3 and 25. In fact, this issue has been raised in both the
6 instant matter and other cases that have been filed by Plaintiff in the Southern District of
7 California. See Tran v. Gore, S.D. Cal. Civil Case No. 10cv0464 GPC (DHB) at ECF Nos. 12 and
8 55; and Tran v. Ortega, S.D. Cal. Civil Case No. 10cv2457 BTM (WVG) at ECF Nos. 3, 27, and 29;
9 see also Bias v. Moynihan, 508 F.3d 1212, 1225 (9th Cir. 2007) (stating that a court “may take
10 notice of proceedings in other courts, both within and without the federal judicial system, if those
11 proceedings have a direct relation to matters at issue.”) (quoting Bennett v. Medtronic, Inc., 285
12 F.3d 801, 803 n.2 (9th Cir. 2002)). However, despite Plaintiff’s claims, the district court has
13 repeatedly held that Plaintiff is capable of representing himself and does not qualify for the
14 appointment of *pro bono* counsel. ECF Nos. 4 & 30; see also Tran v. Gore, S.D. Cal. Civil Case
15 No. 10cv0464 GPC (DHB) at ECF Nos. 4, 23, 61, 151, 167, 171, and 174; and Tran v. Ortega,
16 S.D. Cal. Civil Case No. 10cv2457 BTM (WVG) at ECF Nos. 4, 28, and 30. The Court, therefore,
17 reiterates that despite Plaintiff’s alleged ailments, Plaintiff is required to respond to all of
18 Defendants’ discovery requests by **November 30, 2012**. Failure to do so could result in the
19 dismissal of this case.

20 **IT IS SO ORDERED.**

21 DATED: November 7, 2012

22 

23 BARBARA L. MAJOR
24 United States Magistrate Judge