

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-03331-MSK-MJW

ROBERT D. GANDY,

Plaintiff,

v.

RICK RAEMISCH, Director, Colorado Department of Corrections, in his official capacity,
JERRY BARBER, Teacher II, Arkansas Valley Correctional Facility,
RICK MARTINEZ, Programs Manager, Arkansas Valley Correctional Facility, and
STEVE HARTLEY, Warden, Arkansas Valley Correctional Facility,

Defendants.

MINUTE ORDER

Entered by Magistrate Judge Michael J. Watanabe

It is hereby ORDERED that Plaintiff's Request for Order of Protection (docket no. 76) is GRANTED for the following reasons outlined below.

It is FURTHER ORDERED that the Pro Se Incarcerated Plaintiff is not required to respond to Defendants' interrogatories, requests for production of documents, and requests for admissions.

Defendants allege that on December 6, 2013, which was the deadline set by this court to serve written discovery in the forms of interrogatories, requests for production of documents, and requests for admissions (docket no. 46 at ¶¶ 9 f. and 9 g), they placed in the U.S. Post Office Mail drop box for the Civil Litigation and Employment Section of the Colorado Attorney General's Office, an envelope which contained interrogatories, requests for production of documents, and request for admissions addressed to Plaintiff. Thus, Defendants argue that their discovery requests above were timely served upon Plaintiff.

Plaintiff argues that Defendants' discovery requests are untimely and therefore this court should enter a protective order and not require Plaintiff to respond to Defendants' untimely discovery requests. In support of Plaintiff's argument, he submits Exhibit A attached to the subject motion (docket no. 76). Exhibit A shows that the metered postage for the subject envelope reflects the date of December 9, 2013 and not December 6, 2013. Accordingly, the court finds that the discovery requests that were mailed to Plaintiff are untimely and therefore the subject motion (docket no. 76)

should be granted. See Sun Rover Energy, Inc. v. Nelson, No. 11-cv-00198-MSK-MEH, 2012 WL 2920902, at *3 (D. Colo. July 16, 2012) (citing cases and denying motion to compel based on untimely discovery requests).

It is FURTHER ORDERED that Plaintiff's Motion to Compel Pursuant to Fed. R. Civ. P. 37(a) (docket no. 74) is DENIED. The court has reviewed the responses to Plaintiff's requests for production of documents nos. 11, 12, and 13. After such review, this court finds that Defendants have fully responded to Plaintiff's requests for production of documents nos. 11, 12, and 13. See docket nos. 83-1, 83-1, and 83-3. Accordingly, Plaintiff's Motion to Compel Pursuant to Fed. R. Civ. P. 37(a) (docket no. 74) should be denied.

It is FURTHER ORDERED that Plaintiff and Defendants shall each pay their own expense (i.e., attorney fees and costs) the two subject motions (docket nos. 74 and 76).

Date: February 4, 2014
