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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

DONALD JEFFERY,

Plaintiff,

v.

M. T. A. BENNGE, et al.,

Defendants.

CASE NO. 1:06-cv-00752-SMS PC

ORDER DENYING PLAINTIFF’S MOTION  
TO COMPEL AND FOR SANCTIONS, AND  
AMENDING SCHEDULING ORDER

(Doc. 81)

Amended Discovery Deadline: 06/17/2010

Amended Pretrial Dispositive Motion  
Deadline: 09/17/2010

**Order on Motion to Compel**

**I. Plaintiff’s Motion to Compel**

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff Donald Jeffery, a state prisoner proceeding pro se and in forma pauperis. Plaintiff filed this action on June 15, 2006, and it is proceeding on Plaintiff’s third amended complaint against Defendants Cantu and Knight for use of excessive force, in violation of the Eighth Amendment. On October 13, 2009, Plaintiff filed a motion seeking to compel responses to his requests for the production of documents, and for sanctions. Defendants filed an opposition on October 28, 2009, and Plaintiff filed a reply on November 16, 2009.

The discovery phase of this litigation commenced on October 2, 2008. (Doc. 39.) Therefore, any discovery requests served prior to that date are invalid and the Court declines to further address Plaintiff’s complaints that his discovery requests served prior to October 2, 2008, received no

1 response. (Doc. 81, Motion to Compel, Ex. G.) Properly at issue are Plaintiff’s requests for the  
2 production of documents, sets one and two, dated September 1, 2009, and September 8, 2009. (Id.,  
3 Exs. C & D, court record pp. 26-28, 34-37.)

4 **A. Standard**

5 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any  
6 party’s claim or defense . . . . Relevant information need not be admissible at the trial if the  
7 discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Fed. R.  
8 Civ. P. 26(b)(1). For document production requests, responding parties must produce documents  
9 which are in their “possession, custody or control.” Fed. R. Civ. P. 34(a)(1).

10 If Defendants object to one of Plaintiff’s discovery requests, it is Plaintiff’s burden on his  
11 motion to compel to demonstrate why the objection is not justified. Ordinarily, Plaintiff must inform  
12 the Court which discovery requests are the subject of his motion to compel, and, for each disputed  
13 response, inform the Court why the information sought is relevant and why Defendants’ objections  
14 are not justified.

15 **B. Request for Production of Documents, Set One**

16 **POD 1:** Plaintiff seeks all records and documents generated in connection with the subject  
17 matter of this lawsuit from December 3, 2003, to present.

18 **Ruling:** Plaintiff’s motion to compel is denied. This request is exceedingly overbroad and  
19 vague, and is not drafted to seek only relevant information.

20 **POD 2:** Plaintiff seeks a copy of his third amended complaint and Defendants’ answer.

21 **Ruling:** Plaintiff’s motion to compel is denied. Plaintiff is responsible for keeping copies  
22 of documents filed in this action, and has made no showing that would justify ordering Defendants  
23 to provide copies of filings in this action.

24 **POD 3:** Plaintiff seeks copies of all inmate appeals, citizens’ complaints, and lawsuits filed  
25 by inmates in which assaults or batteries by Defendants Knight and Cantu, and Sergeant Martinez  
26 are alleged, and Plaintiff seeks the locations of all such complaining inmates and witnesses.

27 **Ruling:** Plaintiff’s motion to compel is denied. This request is exceedingly overbroad. It  
28 is not limited by time period or to factual situations similar to that alleged by Plaintiff. Further,

1 Plaintiff has made no showing of relevancy or offer of proof as to how this information would be  
2 used. Finally, Plaintiff is entitled to seek relevant, discoverable documents in existence. Under no  
3 circumstance may Plaintiff seek to have Defendants create documents for him, such as his request  
4 for a list of witness locations.

5 **PODs 4, 5, and 8:** Plaintiff seeks a variety of personal information on Edger, Shaw, and the  
6 individuals listed on his witness list (correct spelling of names, status and standing with CDCR for  
7 Edger and Shaw, current and/or last known addresses, telephone numbers, and other information).  
8 (Doc. 81, Motion to Compel, court record p. 30.)

9 **Ruling:** Plaintiff's motion to compel is denied. As to Edger and Shaw, this action is not  
10 proceeding on any claims against Edger or Shaw, and Plaintiff has not made any showing of  
11 relevance as to this information. With respect to the other witnesses, Plaintiff must show relevance,  
12 which he has not done, and he is not seeking the production of any specific documents. Rather,  
13 Plaintiff is seeking information in response to his questions, an inquiry not appropriately made in  
14 a document production request. Defendants may not be compelled to conduct an investigation on  
15 Plaintiff's behalf and provide him with information not already set forth in a specific, existing  
16 document.

17 **POD 6:** Plaintiff seeks all medical reports and records, including but not limited to x-rays  
18 and prescriptions, relating to injuries to Defendant Knight from the date of the incident (December  
19 4, 2003) to present.

20 **Ruling:** Plaintiff's motion to compel is denied. Plaintiff's request for Defendant's medical  
21 records in total for the past five years is overly broad and not limited to obtaining information  
22 relevant to Plaintiff's claims.

23 **POD 7:** Plaintiff seeks a list/cell roster showing the full names, CDCR numbers, and cells  
24 of all inmates housed at CSATF, D Facility, Building 3, on the date of the incident (December 4,  
25 2003), and the current locations and full contact information for the inmates.

26 **Ruling:** Plaintiff's motion to compel is denied. Plaintiff's request must be narrowed to  
27 documents which exist. Given Plaintiff's familiarity with prison procedures, he should be aware of  
28 what types of movement sheets or log books are kept which document inmates' names and locations

1 for a particular building on a given date. Plaintiff should rephrase his request to net such  
2 information. Further, and again, Plaintiff may only seek documents which exist. It is highly unlikely  
3 that there is a responsive document setting forth the names of those inmates housed in Plaintiff's  
4 building on December 4, 2003, but listing their current addresses. If no such document exists,  
5 Defendants may not be compelled to produce it.

6 **POD 9:** Plaintiff seeks all inmate appeals and complaints against former Defendant Edger.

7 **Ruling:** Plaintiff's motion to compel is denied. Plaintiff is not proceeding in this action  
8 against Edger, and had made no showing that this information is relevant.

9 **C. Request for Production of Documents, Set Two**

10 **POD 1:** Plaintiff seeks copies of all CDCR policies and procedures in effect on December  
11 5, 2003, which related to the evaluation and care of CCCMS inmates who were suicidal.

12 **Ruling:** Plaintiff's motion to compel is denied. This action is not proceeding on a claim  
13 arising from Plaintiff's medical or mental health care, and Plaintiff has made no showing that this  
14 information is relevant.

15 **POD 2:** Plaintiff seeks copies of all CDCR policies and procedures in effect on December  
16 5, 2003, which were applicable to medical and custody staff and which related to the handling of  
17 situations in which an inmate stated he was suicidal or planned to harm himself, including training  
18 received.

19 **Ruling:** Plaintiff's motion to compel is denied. This action is not proceeding on a claim  
20 arising from Plaintiff's medical or mental health care, and Plaintiff has made no showing that this  
21 information is relevant.

22 **POD 3:** Copies of lawsuits relating to mental health care, including court orders directing  
23 CDCR and the Governor to fix or improve the mental health care delivery system in CDCR prisons.

24 **Ruling:** Plaintiff's motion to compel is denied. This action is not proceeding on a claim  
25 arising from Plaintiff's medical or mental health care, and Plaintiff has made no showing that this  
26 information is relevant.

27 **POD 4:** Copies of documents and books relating to CDCR institutional staff training  
28 provided to custody and medical staff at CSTAF on the mental health care of inmates, including

1 training provided to Benнге, Shaw, and Martinez from January 2003 to present.

2 **Ruling:** Plaintiff's motion to compel is denied. This action is not proceeding on a claim  
3 arising from Plaintiff's medical or mental health care, and Plaintiff has made no showing that this  
4 information is relevant.

5 **POD 5:** Copies of Plaintiff's mental health evaluations conducted after the incident,  
6 including doctor's and psychiatrist's reports.

7 **Ruling:** Plaintiff's motion to compel is denied. This action is not proceeding on a claim  
8 arising from Plaintiff's medical or mental health care, and Plaintiff has made no showing that this  
9 information is relevant.

10 **III. Conclusion and Order**

11 Plaintiff's motion to compel is denied in its entirety for the reasons set forth herein. In light  
12 of the denial of the motion, there is no basis for the imposition of sanctions. Fed. R. Civ. P. 37. The  
13 Court sua sponte extends the deadlines for the completion of all discovery and for filing pretrial  
14 dispositive motions to allow Plaintiff to conduct one further round of discovery in light of the  
15 information and admonitions set forth in this order.

16 The discovery deadline shall be extended to June 17, 2010, which is more than adequate to  
17 allow Plaintiff additional time to draft new discovery requests and file a motion to compel if  
18 necessary. Plaintiff is cautioned that Defendants have forty-five days within which to respond to a  
19 properly served discovery request. Therefore, Plaintiff must draft and serve his discovery requests  
20 sufficiently in advance of June 17, 2010, to ensure that Defendants have forty-five days to respond  
21 and Plaintiff has time to file a motion to compel, if necessary.

22 Accordingly, it is HEREBY ORDERED that:

- 23 1. Plaintiff's motion to compel and for sanctions, filed October 13, 2009, is DENIED;
- 24 2. The deadline for the completion of all discovery, including filing motions to compel,  
25 is extended to June 17, 2010; and

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1           3.       The deadline for filing pretrial dispositive motions is extended to September 17,  
2                   2010.

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4 IT IS SO ORDERED.

5 **Dated:** February 4, 2010

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

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