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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEONARD FARLEY,

Plaintiff,

v.

DR. HAROLD TATE,

Defendant.

CASE NO. 1:06-cv-1760-LJO-MJS (PC)

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL

(ECF Nos. 65)

_____ /

Plaintiff Leonard Farley ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

I. INTRODUCTION; PROCEDURAL HISTORY

Plaintiff's Amended Complaint has been screened and found to state a cognizable claim against Defendants Capot and Tate. (Order, ECF No. 17.) Defendants filed a Motion to Dismiss (ECF No. 22); it was granted on March 25, 2009 (ECF No. 33). On appeal, the Ninth Circuit found that the claim against Defendant Capot had been properly dismissed, but that the district court had erred in dismissing the claim against Defendant Tate. (Mem., ECF No. 39.) Accordingly, the case proceeded against Defendant Tate, and he filed his Answer on August 25, 2010. (Answer, ECF No. 48.) The parties then undertook discovery.

Before the Court is Plaintiff's January 25, 2011 Motion to compel Defendant Tate's further responses to Plaintiff's request for production of documents, interrogatories and requests for admission. (Mot., ECF No. 65.) Defendant Tate filed an Opposition on February 14, 2011. (Opp'n, ECF No. 66.)

1 **II. PLAINTIFF'S REQUESTS**

2 _____ Plaintiff seeks to compel Defendant Tate's additional response to all of Plaintiff's
3 discovery requests. Plaintiff's various requests are listed, by category of discovery device,
4 below:

5 **A. Plaintiff's Requests for Production of Documents**

- 6 _____ 1. Any and all grievances, complaints, or other documents received by the
7 Defendants or their agents at Tehachapi State Prison concerning
8 mistreatment, inadequate medical care, denial of treatment of inmates by
9 Defendant Dr. Harold Tate, and any memoranda, investigative files, or other
10 documents created in response to such documents, since January 1, 2005.
- 11 2. Any and all policies, directives, or instructions to staff governing sick call
12 procedures, both in general population and in segregation.
- 13 3. The Plaintiff's complete medical records from September 5, 2004 to the date
14 of [Defendant Tate's] response.
- 15 4. Any logs, lists, or other documentation reflecting grievances filed by
16 Tehachapi State Prison inmates about receiving inadequate medical care,
17 or denial of treatment from Dr. Harold Tate, from January 1, 2004 to the Date
18 of [Defendant Tate's] response.
- 19 5. Any and all documents created by any Tehachapi State Prison staff member
20 in response to a grievance filed by the Plaintiff in January, 2005 concerning
21 his medical care.
- 22 6. Any and all documents created by any Tehachapi State Prison staff member
23 from September 5, 2004 to date, concerning the Plaintiff's medical care and
24 not included in items 4,5,6, of [Plaintiff's Request for Production of
25 Documents].

26 **B. Plaintiff's Interrogatories Combined with Requests for Production of**
27 **Documents**

- 1 1. State the duties of Defendant Dr. Harold Tate, Chief Medical Officer at
2 Tehachapi State Prison. If those duties are set forth in any job description
3 or other document, produce the document
- 4 2. State the duties of Defendant Dr. Harold Tate, Chief Medical Officer at
5 Tehachapi State Prison, insofar as they pertain to providing medical care to
6 prisoners or transportation of prisoners to medical appointments or facilities.
7 If those duties are set forth in any job description or other document, product
8 the document.
- 9 3. State the names, titles, and duties of all staff members at Tehachapi State
10 Prison, other than Defendant Tate, who have responsibility for scheduling
11 prisoners' medical appointments outside the prison, or for evaluating
12 requests for specialized treatment or evaluation. If those duties are set forth
13 in any job description, or other document, produce the document.
- 14 4. State the names, titles, and duties of all staff members at Tehachapi State
15 Prison, other than Defendant, who have responsibility for ensuring that
16 inmates requests for medical attention are responded to. If those duties are
17 set forth in any job description, or other document, produce the document.
- 18 5. State the procedure in effect during September, 2004 at Tehachapi State
19 Prison for conducting sick call, including the procedure by which inmates sign
20 up for or request sick call. If the procedure is different for segregation
21 inmates than for general population inmates, state both procedures. If those
22 procedures are set forth in any policy, directive, or other document, produce
23 the document.
- 24 6. State the names, titles, and duties of all staff members at Tehachapi State
25 Prison who have responsibility for responding to, investigating or deciding
26 inmate grievances. If those duties are set forth in any job description, policy,
27 directive, or other document, produce the document.
- 28 7. State the procedure in effect during September, 2004 at Tehachapi State

1 Prison for responding to, investigating and deciding inmate grievances. If the
2 procedure for handling grievances based on medical complaints is different
3 from the procedure for handling other kinds of grievances, state both
4 procedures. If those procedures are set forth in any directive, manual or
5 other document, produce the document.

6 **C. Plaintiff's Requests for Admission**

- 7 1. The Plaintiff was transported to the emergency room of Mercy Hospital in
8 Bakersfield California, on April 12, 2005.
- 9 2. The Plaintiff was examined at Mercy Hospital by physician Dr. Ronald
10 Rodriguez.
- 11 3. Dr. R. Rodriguez concluded that the Plaintiff was suffering from a cancerous
12 tumor.
- 13 4. Dr. Rodriguez, removed cancerous tumor on April 13, 2005.
- 14 5. It is the routine and established practice at Tehachapi Prison to send a
15 "Tehachapi Prison Hospital Referral Form" along with every inmate who is
16 taken to a hospital.
- 17 6. It is the routine and established practice at Mercy Hospital to write on the
18 referral form the patient's diagnosis, the treatment provided at the hospital,
19 and directions for follow-up treatment after the patient's return to the prison.
- 20 7. It is the routine and established practice at Tehachapi Prison for the Chief
21 Medical Officer to review all referral forms to ensure that the patient receives
22 appropriate follow up treatment.
- 23 8. Dr. Rodriguez's directions regarding Plaintiff's continued treatment of cancer
24 situation, and provision of physical therapy were placed in writing on a
25 referral form.
- 26 9. The referral form containing Dr. Rodriguez's directions was returned to the
27 prison along with the Plaintiff consistently with the prison's routine and
28 established practice.

1 10. Dr. Tate, reviewed the referral from bearing Dr. Rodriguez's directions
2 consistently with the prison's routine and established practice.

3 11. As of this date, the Plaintiff has not been provided with physical therapy
4 needed to heal correctly from surgery on April 13, 2005.

5 12. There is an informal policy at Tehachapi Prison giving low priority to the
6 medical needs of the inmates housed there.

7 13. The failure to remove the Plaintiff's cancerous tumor in a timely manner
8 resulted from the application of the informal policy stated in item 12 of this
9 request.

10 14. Defendant Tate knew of this policy and acquiesced in it's [sic] application to
11 the Plaintiff.

12 15. Defendant Tate took no action to ensure that the Plaintiff [sic] tumor was
13 removed in a timely manner.

14 16. There is an informal policy at Tehachapi Prison that inmates are not sent out
15 of the prison for medical care unless their lives are at risk.

16 17. The failure to provide needed surgery to the Plaintiff resulted from the
17 application of the informal policy stated in item 14 of this request.

18 18. Defendant Tate knew of this policy and acquiesced in it's [sic] application to
19 the Plaintiff.

20 19. Defendant Tate took no action to ensure that Plaintiff receive the proper
21 medical care after surgery on April 13, 2005.

22 20. Defendant Tate took no action to ensure that Plaintiff be placed in proper
23 housing so he could receive proper treatment after surgery on April 13, 2005.

24 21. The failure to provide physical therapy, proper housing for the Plaintiff
25 presents a substantial risk to Plaintiff [sic] health and safety.

26 **III. PLAINTIFF'S ARGUMENT**

27 Plaintiff served his discovery requests on September 14, 2010. Defendant Tate did
28 not respond in the time allotted under applicable rules. After Plaintiff wrote and advised

1 him that responses were past due, Defendant requested that his deadline to respond be
2 extended to December 15, 2010. At some point prior to December 20, 2010, Plaintiff
3 received Defendant Tate's responses. On December 20, 2010, Plaintiff wrote and advised
4 that the responses were incomplete and requested additional information. Plaintiff advised
5 that he would file a Motion to Compel if he did not hear from Defendant Tate within 20
6 days.

7 Plaintiff now argues that Defendant Tate waived his objections by his failure to
8 timely respond to the discovery requests. Plaintiff also argues that the information sought
9 in each of his discovery requests is relevant to the claims and defenses in his case.
10 However, Plaintiff only explains the relevancy of the information sought in one of his
11 multiple discovery requests even though he is seeking to compel further answers to all of
12 his requests. Except as to that one, Plaintiff does not explain why Defendant Tate's
13 responses were deficient, why Defendant Tate's objections were not justified, and why the
14 information he sought is relevant to the prosecution of this action.

15 **IV. DEFENDANT'S OPPOSITION**

16 Defendant first argues that Plaintiff failed to identify which of Defendant Tate's
17 responses to Plaintiff's requests for production of documents were inadequate. Defendant
18 correctly notes that Plaintiff has the burden of informing the Court "which discovery
19 requests are the subject of his motion to compel, which of [Defendant's] responses are
20 disputed, why he believes [Defendant's] responses are deficient, why [Defendant's]
21 objections are not justified, and why the information he seeks through discovery is relevant
22 to the prosecution of this action." Haynes v. Sisto, No. CIV S-08-2177, 2010 WL 4483486,
23 at *1 (E.D. Cal. Nov. 1, 2010).

24 Defendant Tate also argues that he has produced all responsive documents in his
25 possession, custody, or control. (Opp'n at 2.) He either: 1) produced all of the responsive
26 documents, 2) notified Plaintiff that he did not have any responsive documents, or 3)
27 informed Plaintiff that Plaintiff could inspect Defendant's central and medical files. (Opp'n
28 at 3.)

1 **III. ANALYSIS**

2 _____ “Parties may obtain discovery regarding any nonprivileged matter that is relevant to
3 any party's claim or defense.... Relevant information need not be admissible at the trial if
4 the discovery appears reasonably calculated to lead to the discovery of admissible
5 evidence.” Fed. R. Civ. P. 26(b)(1). For document production requests, responding parties
6 must produce documents which are in their “possession, custody or control.” Fed. R. Civ.
7 P. 34(a)(1). “Property is deemed within a party's ‘possession, custody, or control’ if the
8 party has actual possession, custody, or control thereof or the legal right to obtain the
9 property on demand.” Allen v. Woodford, No. CV–F–05–1104, 2007 WL 309945, at*2
10 (E.D.Cal. Jan.30, 2007) (citing In re Bankers Trust Co., 61 F.3d 465, 469 (6th Cir. 1995));
11 accord Bovarie v. Schwarzenegger, No. 08cv1661, 2011 WL 719206, at *4 (S.D.Cal. Feb.
12 22, 2011); Evans v. Tilton, No. 1:07CV01814, 2010 WL 1136216, at *1 (E.D.Cal. Mar.19,
13 2010).

14 Once Defendant Tate objects to a discovery request, it is Plaintiff's burden to assert
15 in his Motion to Compel why the objection is not justified. In general, Plaintiff must inform
16 the Court which discovery requests are the subject of his motion to compel, and, for each
17 disputed response, inform the Court why the information sought is relevant and why
18 Defendant’s objections are not meritorious.

19 Plaintiff explains why Defendant’s objections are not meritorious and the documents
20 sought are relevant only with regard to the first one of his requests for documents. Plaintiff
21 argues that the requested items are relevant to show Defendant Tate’s “motive,
22 opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or
23 accident.” (Mot. at 32.) However, nothing presented to the Court suggest that any such
24 matters are relevant to claims raised in Plaintiff’s First Amended Complaint. (Am. Compl.,
25 ECF No. 15.) Plaintiff also neglected to inform the Court that Defendant Tate had granted
26 Plaintiff permission to inspect and copy his “central and medical Files” pursuant to
27 institutional policies. (Mot. at Ex. E.) Plaintiff does not indicate if he availed himself of this
28 opportunity. Plaintiff fails to offer any evidence that Defendant had possession, custody,

1 or control over documents which were requested and not made available for inspection and
2 copying. Plaintiff's Motion to Compel further production of documents shall accordingly be
3 denied.

4 _____ Plaintiff has failed to inform the Court why he believes Defendant's other responses
5 are deficient and why the information he seeks is relevant to the prosecution of his action.

6 _____ Plaintiff's argument that Defendant Tate's tardiness in responding to Plaintiff's
7 discovery requests resulted in Defendant waiving his objections to Plaintiff's discovery
8 requests is also without merit. Plaintiff did not object when Defendant's attorney asked for
9 additional time to respond to Plaintiff's discovery requests. (Mot. at Ex. C.) It appears that
10 Plaintiff effectively acquiesced to Defendant's delay; in Plaintiff's affidavit attached to his
11 current Motion he refers to a "deal" he entered into with Defendant's counsel to extend the
12 response deadline. (Id. at 14.)

13 **III. CONCLUSION**

14 In accordance with the above, Plaintiff's January 25, 2011, Motion to Compel (ECF
15 No. 65) is hereby DENIED.

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17
18 IT IS SO ORDERED.

19 Dated: September 13, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE