

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY EARL EVANS,

Plaintiff,

v.

JAMES E. TILTON, et al.,

Defendants.

CASE NO. 1:07-cv-01814-DLB (PC)

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S MOTION
TO COMPEL

(Doc. 50)

Order

I. Background

Plaintiff Johnny Earl Evans (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s complaint, filed December 13, 2007, against Defendants S. Zamora and Youssef. Pending before the Court is Plaintiff’s motion to compel, filed October 21, 2009. (Doc. 50, Pl.’s Mot. To Compel.) On November 9, 2009, Defendants filed their opposition. (Doc. 54, Defs.’ Opp’n.) On January 6, 2010, Plaintiff filed his reply. (Doc. 58, Reply.) The matter is deemed submitted pursuant to Local Rule 230(l).

II. Motion to Compel

Plaintiff seeks to compel further responses to his requests for Admissions (set two) served on Defendants Youssef, and Interrogatories (set two) served on Defendant Youssef.

1 **A. Interrogatories, Set Two**

2 Interrogatory No. 1: On February 7, 2006, doctor I. Patel examined Plaintiff Evans’s right
3 Achilles tendon-determined that the tendon was partially ruptured, painful,
4 unable to stand on and recommended in a CDC 7243 a medical evaluation
5 be urgently performed on plaintiff by an orthopedic surgeon. The question:
6 please identify the name for the utilization management nurse that
7 reviewed the recommendation.

8 Interrogatory No. 2: Was the February 7, 2006 CDCD 7243 urgent medical recommendation
9 that plaintiff be evaluated by an orthopedic reviewed by the (MAR)
10 medical committee; Yes ___ or NO ___ comments.

11 Interrogatory No. 3: If so, what date did the (MAR) medical committee reviewed the CDC
12 7243 urgent medical recommendation that plaintiff be evaluated by an
13 orthopedic surgeon; comments.

14 Interrogatory No. 4: Did you sit on the (MAR) medical committee that reviewed the February
15 7, 2006 CDC 7243 urgent recommendation that plaintiff be evaluated by
16 an orthopedic surgeon; Yes ___ or No ___ comment.

17 Interrogatory No. 5: On April 13, 2005 Plaintiff filed a 602 grievance complaining he was in
18 pain and it was difficult for him to walk. The grievance named the CMO
19 as a respondent. The question: Did you review the grievance; Yes ___ or
20 No ___ comments.

21 Interrogatory No. 6: Did you delegate the duty to a subordinate staff to respond to the
22 grievance; Yes ___ or No ___ comments.

23 Interrogatory No. 7: Did you prescribe any medical treatment to treat plaintiff’s pain he
24 reported he was experiencing in the partially torn Achilles tendon;
25 Yes ___ or No ___ comments.

26 Interrogatory No. 8: Did any medical staff medical treatment to treat plaintiff’s complaints of
27 pain and not being able to walk on the torn tendon foot; Yes ___ or
28 No ___ comments.

Interrogatory No. 13: What is the identity and name of the person that signed the May 8, 2006
CDC 7243 authorization for plaintiff to be removed from KVSP for off-
site medical treatment; comments.

Defendant objects that Interrogatories Nos. 2, 3, 4, 5, 6, 7, 8, and 13 are beyond the twenty-five
interrogatories allowed under the Federal Rules. Defendant also objects that the interrogatories
are overbroad, compound, and not reasonably calculated to lead to the discovery of admissible
evidence. Defendant responds to Interrogatories Nos. 1, 2, 3, 4, and 13 by stating that he has no
recollection of the 7243 request. Defendant responds to Interrogatories Nos. 5 and 6 by stating
that he has no recollection of any appeals filed by Plaintiff. Defendant responds to Interrogatory
No. 7 by stating that he has no recollection of prescribing medication. Defendant responds to

1 Interrogatory No. 8 by stating that he has no recollection of any medical complaint or any
2 prescribed treatment. Defendant responds that this information is likely in Plaintiff’s medical
3 file.¹

4 When answering interrogatories, parties have an affirmative duty to furnish any and all
5 information available to the party. *Trane Co. v. Klutznik*, 87 F.R.D. 473, 476 (W.D. Wis. 1980).
6 A party cannot plead personal ignorance if the information is within his control. *Id.*
7 “Information which is controlled by a party is available to him.” *Id.* It is this Court’s experience
8 that either individual defendants who are employed by CDCR and/or the Attorney General can
9 generally obtain documents from CDCR by requesting them in order to answer an interrogatory.
10 A sufficient answer generally requires a conscientious and good faith effort to comprehend the
11 question and to answer it explicitly. Answers given to interrogatories are sworn under oath, and
12 may be used for impeachment purposes.

13 Defendant stated that he cannot recall. The Court will not compel a further response from
14 Defendant. However, should Defendant stand on this answer and subsequently submit
15 documents or other evidence that demonstrate the prior answer was evasive, incomplete, or
16 nonresponsive, Defendant will be precluded from using these documents as evidence in support
17 of a motion for summary judgment, or at trial. Fed. R. Civ. P. 37(c)(1). He must, at minimum,
18 supplement his responses, and explain the method by which he obtained these documents. Most
19 importantly, he will also be required to demonstrate that the prior answer was given in good faith
20 given that he now has and seeks to use these documents. *See* Fed. R. Civ. P. 26(e)(1).

21 **B. Requests For Admission, Set Two**

22 **1. Request for Admission No. 2**

23 Admission No. 2: Admit that medical protocol requires the medical committee at KVSP to
24 review CDC 7243 “urgent” request for approval of off-site treatment
25 within 24 hours.

26 ¹ Plaintiff contends that he does not exceed the 25 interrogatory limit because the second set contains only
27 sixteen interrogatories. Plaintiff misunderstands the Federal Rules of Civil Procedure, which places a limit of 25
28 written interrogatories total on a party, not per set. Because Defendant responded, this objection is moot. Since
Plaintiff is proceeding pro se, the Court will grant Plaintiff leave to exceed the 25 interrogatory limit for these
interrogatories.

1 Response: Defendant object to this request in that it is duplicative of Request No. 4 of
2 Plaintiff's First Set of Requests for Admissions. Defendant further objects
3 that this request is vague and ambiguous. Subject to and without waiving
or limiting this objection, Defendant responds as follows: Denied.

4 Defendant responded to the request for admission by denying. Defendant sufficiently
5 responded. The Court will not compel a further response to this admissions request.

6 **2. Request for Admission Nos. 3 and 4**

7 Admission No. 3: Admit that medical protocol at KVSP require that an x-ray be perform on
8 a diagnosed fractured achilles tendon within one to two weeks; Yes ___ or
No ___.

9 Response: Defendant objects to this request in that it is duplicative of Request No. 5
10 of Plaintiff's First Set of Requests for Admissions. Defendant further
11 objects that this request is vague and ambiguous as to "medical protocol"
and "require." Subject to and without waiving or limiting this objection,
12 Defendant responds as follows: Defendant lacks sufficient knowledge and
information to admit or deny this request.

13 Admission No. 4: Admit that medical protocol at KVSP require that an MRI scan be perform
14 on a diagnosed partially torn achilles tendon within one to three weeks;
Yes ___ or No ___.

15 Response: Defendant objects to this request in that it is duplicative of Request No. 6
16 of Plaintiff's First Set of Requests for Admissions. Defendant further
17 objects that this request is vague and ambiguous as to "medical protocol"
and "requires." Subject to and without waiving or limiting this objection,
Defendant responds as follows: Defendant lacks sufficient knowledge and
information to admit or deny this request.

18 Defendant contends that he does not have sufficient knowledge to admit or deny, based on his
19 limited access to documents at KVSP.

20 As this is the defendant's verified response, should this defendant challenge any such
21 hypothetical testimony, Plaintiff may use the response to seek to impeach him. However, the
22 Court will not compel a further response to these requests for admission.

23 **3. Request for Admission Nos. 5, 6, 9, 10, 11, and 12**

24 Admission No. 5: Admit that a medical diagnosed partially torn achilles tendon is considered
25 by physicians to be a serious medical injury; Yes ___ on No ___
26 [Defendant Yousif have stated he is a chief physician and surgeon certified
by the California Medical Board. He is qualified to answer th medical
admissions and other similar admissions];

27 Response: Defendant objects to this request in that it is duplicative of Request No. 7
28 of Plaintiff's First Set of Requests for Admissions. Defendant further
objects that this is an incomplete hypothetical as it does not state enough

1 facts for Defendant to provide an opinion. Subject to and without waiving
2 or limiting this objection, Defendant responds as follows: Because this is
3 an incomplete hypothetical, Defendant lacks sufficient knowledge and
4 information to admit or to deny this request.

5 Admission No. 6: Admit that a partially torn achilles tendon will probably cause pain;
6 Yes ___ or No ___.

7 Response: Defendant objects to this request in that it is duplicative of Request No. 8
8 of Plaintiff's First Set of Requests for Admissions. Defendant further
9 objects that this is an incomplete hypothetical as it does not state enough
10 facts for Defendant to provide an opinion. Subject to and without waiving
11 or limiting this objection, Defendant responds as follows: Because this is
12 an incomplete hypothetical, Defendant lacks sufficient knowledge and
13 information to admit or to deny this request.

14 Admission No. 9: Admit that a report of acute pain in a diagnosed partially torn achilles
15 tendon conventionally should be prescribed medication to treat the pain;
16 Yes ___ or No ___.

17 Response: Defendant objects to this request in that it is duplicative of Request No. 9
18 of Plaintiff's First Set of Requests for Admissions. Defendant further
19 objects that this is an incomplete hypothetical as it does not state enough
20 facts for Defendant to provide an opinion. Subject to and without waiving
21 or limiting this objection, Defendant responds as follows: Because this is
22 an incomplete hypothetical, Defendant lacks sufficient knowledge and
23 information to admit or to deny this request.

24 Admission No. 10: Admit that some form of medical apparatus should be prescribed to assist
25 a patient who has reported he can not stand on the foot diagnosed with a
26 partially torn achilles tendon; Yes ___ or No ___.

27 Response: Defendant objects to this request in that it is duplicative of Request No. 10
28 of Plaintiff's First Set of Requests for Admissions. Defendant further
objects that this is an incomplete hypothetical as it does not state enough
facts for Defendant to provide an opinion. Subject to and without waiving
or limiting this objection, Defendant responds as follows: Because this is
an incomplete hypothetical, Defendant lacks sufficient knowledge and
information to admit or to deny this request.

Admission No. 11: Admit that to repair a partially torn achilles tendon, surgery is required;
Yes ___ or No ___.

Response: Defendant objects to this request in that it is duplicative of Request No. 12
of Plaintiff's First Set of Requests for Admissions. Defendant further
objects that this is an incomplete hypothetical as it does not state enough
facts for Defendant to provide an opinion. Subject to and without waiving
or limiting this objection, Defendant responds as follows: Because this is
an incomplete hypothetical, Defendant lacks sufficient knowledge and
information to admit or to deny this request.

Admission No. 12: Admit that if a diagnosed partially torn achilles tendon is not surgically
repaired, the torn tissue will atrophy, heal improperly, and remain
permanently injured; Yes ___ or No ___.

1 Response: Defendant objects to this request in that it is duplicative of Request No. 14
2 of Plaintiff's First Set of Requests for Admissions. Defendant further
3 objects to this request in that it is vague and ambiguous as to "surgically
4 repaired" and permanently injured." Defendant further objects that this is
5 an incomplete hypothetical as it does not state enough facts for Defendant
6 to provide an opinion. Subject to and without waiving or limiting this
7 objection, Defendant responds as follows: Because this is an incomplete
8 hypothetical, Defendant lacks sufficient knowledge and information to
9 admit or to deny this request.

10 Defendant contends that he lacks sufficient knowledge to admit or deny because the
11 hypothetical is incomplete. The Court agrees that Plaintiff's requests for admission here are an
12 incomplete hypothetical. The Court will not compel a further response to these requests for
13 admission.

14 **4. Request for Admission No. 13**

15 Admission No. 13: Admit that you did not prescribe any medical treatment to combat
16 plaintiff's painful partially torn achilles tendon; Yes ___ or No ___.

17 Response: Defendant objects to this request in that it is duplicative of Request No. 21
18 of Plaintiff's First Set of Requests for Admissions. Subject to and without
19 waiving or limiting this objection, Defendant responds as follows:
20 Defendant lacks sufficient knowledge and information to admit or deny
21 this request as Plaintiff's medical records are not in Defendant's custody
22 or control.

23 Defendant contends that he lacks sufficient knowledge because Plaintiff's medical records are
24 not in Defendant's custody or control. The lack of immediate control over Plaintiff's medical
25 records is not in itself sufficient reason to lack knowledge to admit or deny a request. A party
26 must make a reasonable inquiry regarding the necessary information to admit or deny. Fed. Civ.
27 P. 36(a)(4); Asea, Inc. v. Southern Pac. Transp. Co., 669 F.2d 1242, 1247 (9th Cir. 1981). Even
28 if Defendant is no longer employed at Kern Valley State Prison, Defendant as a chief medical
officer of CDCR would seem to have the legal right to obtain this information from Plaintiff's
medical record. Defendant's other objection is unpersuasive, unless Defendant's response to
Request No. 21 in the first set of Requests for Admission was sufficient, as stated above.
Accordingly, Defendant Youssef is ordered to serve further response to Plaintiff's request for
admission No. 13, set two, within thirty (30) days from the date of service of this order.

///

///

1 **III. Conclusion and Order**

2 Based on the foregoing it is HEREBY ordered that:

- 3 1) Plaintiff's request for an order compelling further response to Interrogatories Nos.
4 2, 3, 4, 5, 6, 7, 8, and 13 (set two) is DENIED;
- 5 2) Plaintiff's request for an order compelling further response to Requests for
6 Admission Nos. 2, 3, 4, 5, 6, 9, 10, 11, and 12 (set two) is DENIED;
- 7 3) Plaintiff's request for an order compelling further response to Request for
8 Admission No. 13 (set two) is GRANTED; and
- 9 4) Defendant Youssef is to serve further response to Plaintiff's request for admission
10 No. 13, set two, within **thirty (30) days** from the date of service of this order.

11
12 IT IS SO ORDERED.

13 **Dated: April 20, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE