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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

CESAR URIBE,  
  
Plaintiff,  
  
v.  
  
CORRECTIONAL OFFICER J.  
McKESSON, CORRECTIONAL OFFICER  
MARTINEZ, CORRECTIONAL OFFICER  
ZARAGOSA, CORRECTIONAL OFFICER  
TUZON,  
  
Defendants.

Case No. 08cv1285 DMS (NLS)  
  
**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
FOURTH DISCOVERY MOTION TO  
COMPEL DISCLOSURE OF  
RESPONSES TO INTERROGATORIES**  
  
[Doc. No. 58]

Plaintiff Cesar Uribe filed a fourth discovery motion to compel defendants J. McKesson, J. Martinez and A. Tuzon to respond to certain interrogatories without objection. Specifically, Plaintiff argues that each Defendant should be compelled to provide a "yes" or "no" answer to each contested interrogatory. Defendants oppose the motion and argue that the responses were adequate, and that Plaintiff has not shown any actual or substantial prejudice from Defendants' responses. The court has reviewed all papers in support of and in opposition to this motion, and for the following reasons, **GRANTS in part and DENIES in part** Plaintiff's motion to compel.

**Relevant Background.**

Plaintiff sues for violations of his: (1) federal constitutional right to be free from retaliation when engaged in a protected action, and (2) state tort right for personal injury. Compl. ¶¶ 25-26. He asserts

1 these relevant facts in the Complaint. On February 22, 2007, while housed at California Substance  
2 Abuse Treatment Facility and State Prison (SATF), Plaintiff attempted to mail out his legal documents.  
3 Compl. ¶ 9. Following correctional officers McKesson's, Martinez's and Zaragosa's instructions,  
4 Plaintiff arrived at the floor office after the evening meal with his legal documents. Compl. ¶ 9. Upon  
5 arriving, McKesson, Martinez and Zaragosa told Plaintiff he should have delivered the documents before  
6 the evening meal, cursed at Plaintiff and refused to send Plaintiff's legal documents. Compl. ¶ 12.  
7 Martinez, following McKesson's orders, slammed the door and smashed Plaintiff's foot. Compl. ¶ 14.  
8 Plaintiff left the floor office to try and speak with the Sergeant, but instead, was stopped by correctional  
9 officer Tuzon, who ordered Plaintiff back to his cell. Compl. ¶¶ 15, 16. Soon thereafter, Plaintiff was  
10 brought back to the floor office after again requesting that his legal documents be mailed out. Compl. ¶  
11 17. McKesson, Martinez and Zaragosa at that time agreed to process Plaintiff's legal mail. Compl. ¶ 18.  
12 They then followed Plaintiff back to his cell, locked Plaintiff and his cell mate in a shower cage and  
13 ransacked Plaintiff's cell. Compl. ¶ 18. Many of Plaintiff's personal belongings were either confiscated  
14 or destroyed. Compl. ¶ 21. McKesson and Martinez made separate statements to Plaintiff, implying that  
15 the actions taken against Plaintiff were in retaliation for Plaintiff's attempt to mail out his legal  
16 documents. Compl. ¶ 19.

17 Plaintiff had originally served these interrogatories on November 18, 2009. The discovery  
18 deadline in this case was December 21, 2009. On January 7, 2010, Defendants' counsel received a letter  
19 from Plaintiff stating he never received responses to those interrogatories. The next day, defense  
20 counsel applied to this court to order Plaintiff to re-serve the interrogatories and grant Defendants 45  
21 days to respond to those interrogatories from the date they were mailed. [Dkt. No. 31.] For good cause  
22 shown, the court granted the request and order Plaintiff to re-serve the interrogatories. [Dkt. No. 33.]

23 Plaintiff re-served a second set of interrogatories to defendant Tuzon, a second set of  
24 interrogatories to defendant Martinez, and a third set of interrogatories to defendant McKesson.  
25 Defendants applied for a two-week extension to respond to them so as to obtain verifications for the  
26 responses. [Dkt. No. 37.] The court granted their request. [Dkt. No. 38.] The responses were served by  
27 April 5, 2010. Plaintiff filed this motion to compel on May 10, 2010. [Dkt. No. 58.] Defendants filed  
28 their opposition on May 25, 2010. [Dkt. No. 61.]

1 **DISCUSSION**

2 Plaintiff asks for supplemental responses to interrogatory (ROG) nos. 13, 14 and 17 from  
3 defendant Tuzon, ROG nos. 12 and 22 from defendant Martinez, and ROG no. 23 from defendant  
4 McKesson.

5 **Rule 33.**

6 "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's  
7 claim or defense. . ." Fed. R. Civ. P. 26(b)(1). A party may serve on another party interrogatories that  
8 "ask[] for an opinion or contention that [is] related to fact or the application of law to fact . . ." Fed. R.  
9 Civ. P. 33(a)(2). "Each interrogatory must, to the extent it is not objected to, be answered separately and  
10 fully in writing under oath." Fed. R. Civ. P. 33(a)(3). "The grounds for objecting to an interrogatory  
11 must be stated with specificity." Fed. R. Civ. P. 33(a)(4).

12 **Defendant Tuzon.**

13 Plaintiff propounded ROG nos. 13, 14 and 17 to defendant Tuzon. In response to all those  
14 ROGs, Tuzon objected that the ROGs are "vague, overbroad, and ambiguous as to time." Plaintiff asks  
15 this court to strike the objections because the ROGs are "clear and narrow." Defendant Tuzon has  
16 withdrawn his form objections to the three ROGs, specifically, the objections that they are overbroad,  
17 vague and ambiguous as to time.

18 Thus, the substantive responses to these ROGs remain at issue:

- 19 ● **ROG no. 13:** Did plaintiff tell you that defendants J. McKesson, J. Martinez and A.  
20 Zaragosa refused to mail out his legal mail?
- 21 ● **Response:** [A]t approximately 7:00 p.m., Plaintiff had put his dress blues on and wanted  
22 to leave his cell. Defendant asked where Plaintiff wanted to go, to which he stated he  
23 wanted to go to see the Facility Sergeant and ask him to process his mail, because  
24 Plaintiff believed that the floor officers would not process his legal mail. Defendant told  
25 him the Sergeant was not going to process the legal mail because it's not his job, and that  
26 the floor officers would process the legal mail during their shift. Shortly thereafter, one of  
27 the floor officers called Plaintiff back into the E2 office to process his mail.
- 28 ● **ROG no. 14:** Did you order plaintiff to go lock up in his cell after he told you that the  
defendants J. McKesson, J. Martinez, and A. Zaragosa were refusing to send out his legal  
mail?
- **Response:** Defendant advised him that Plaintiff's mail would be picked up during the  
third watch shift and told Plaintiff to return to his cell after advising him to wait until  
mail pickup. Normally, if the evening program opens up, inmates can go to the E2 office.  
While having this conversation, one of the floor officers called Plaintiff back into the E2  
office, and Defendant believes that Plaintiff's legal mail was processed.

1           ●     **ROG no. 17:** Did you see plaintiff attempt to exit the housing unit?

2           ●     **Response:** Defendant further objects that the request is irrelevant because it is not likely  
3           to lead to the discovery of admissible evidence. To the extent that Plaintiff is referring to  
4           the February 22, 2007, incident at approximately 7:00 p.m., Plaintiff asked Defendant to  
          see the Sergeant, who Defendant believes was in his office outside of housing unit E2 at  
          that time, to process his legal mail.

5           Plaintiff argues that the responses to each of these three ROGs are incomplete because they are  
6           evasive, mischaracterize the facts and should have been answered with a “yes” or “no.” He asks this  
7           court to order Tuzon to respond “yes,” or, deem the answer to be “yes” in response to the interrogatory.  
8           Tuzon argues that Rule 33 does not require a “yes” or “no” response. Further, in support of all his  
9           responses, Tuzon argues that he clarified his responses, recalled that he had a conversation with Plaintiff  
10          during the incident, and relayed the facts that he remembered in those responses.

11          The court finds that defendant Tuzon has adequately responded to Plaintiff’s interrogatories. In  
12          support of his responses, Tuzon signed a declaration stating, “the responses are true and correct to the  
13          best of my knowledge.” This affirmation, coupled with the fact that Tuzon was recalling events from  
14          February 2007--over three years earlier--show the court that he sufficiently responded to the ROGs to the  
15          best of his knowledge. The court, therefore, will not compel any further responses to these ROGs.

16          **Defendant Martinez.**

17          Plaintiff propounded ROG nos. 12 and 22 to defendant Martinez. In response to all those ROGs,  
18          Martinez objected that the ROG “is vague, overbroad, and ambiguous as to time.” Plaintiff asks this  
19          court to strike the objections because the ROGs are “clear and narrow.” Defendant Martinez has  
20          withdrawn his form objections to the two ROGs, specifically the objections that they are overbroad,  
21          vague and ambiguous as to time.

22          Thus, the substantive responses to these ROGs remain at issue:

23          ●     **ROG no. 12:** Did defendant J. McKesson tell you to close the floor office door while  
24          plaintiff was standing in the doorway requesting that his legal mail be signed?

25          ●     **Response:** Defendant denies that he witnessed any E2 floor officer closing the door on  
26          Plaintiff on February 22, 2007, or any other day. Inmates are required to stay behind a  
          yellow line outside the door when approaching the office. Inmates are allowed to knock  
          on the door.

27          Plaintiff argues that the response to this ROG is incomplete because it is evasive,  
28          mischaracterizes the facts and should have been answered with a “yes” or “no.” Martinez argues that the

1 response is responsive because he denies he heard Officer McKesson tell him to close the front door on  
2 Plaintiff while "Plaintiff was standing in the doorway requesting that his legal mail be signed." While in  
3 the opposition Martinez says he denies he heard McKesson say such a statement, he does not state that in  
4 the answer to ROG no. 12. In the response, he says that he did not witness any officer close a door. This  
5 answer is non-responsive. Based on Martinez's non-responsive answer, and his re-characterization in  
6 the opposition of what his response actually was, the court compels Martinez to provide a further,  
7 responsive answer to Plaintiff to ROG no. 12.

- 8 ● **ROG no. 22:** How many correctional officers does it take to sign an inmate's legal mail?
- 9 ● **Response:** Defendant objects that the request . . . is argumentative and irrelevant because  
10 it is not requesting information that would lead to the discovery of admissible evidence.

11 Here, Plaintiff argues this ROG is relevant to his retaliation claim to show Defendants' intent that  
12 they did not want to take and send out Plaintiff's legal mail, and that because Plaintiff insisted, they  
13 punished him for it. Plaintiff also says that "it is common knowledge and common sense that it only  
14 takes one officer to take and sign an inmate's legal mail." Mem. Ps&As, p.8. The court sustains  
15 Martinez's relevance objection to this ROG. The question is at the very least irrelevant, and any  
16 numerical response that Martinez could provide would not be likely to lead to the discovery of  
17 admissible evidence regarding intent in a retaliation claim. The court will not compel any further  
18 response to this ROG.

19 **Defendant McKesson.**

- 20 ● **ROG no. 23:** During your employment as a correctional officer at CSATF, has an inmate  
21 ever filed a lawsuit against you before February 22, 2007?
- 22 ● **Response:** Defendant objects to this request it is vague, overbroad, and ambiguous as to  
23 time as to "filed a CDCR 602 appeal against you." Moreover, Plaintiff's request is  
24 irrelevant because it seeks information that would not lead to the discovery of admissible  
25 evidence. Notwithstanding Defendant's objections and after reasonable inquiry,  
26 Defendant admits that he is aware that inmates have filed CDC 602 appeals against him.

25 Plaintiff seeks a supplemental response because here, McKesson repeated the same answer as in  
26 response to ROG no. 22, which asks about whether a CDCR 602 appeal had been ever filed against  
27 McKesson. McKesson admits a transcription error in the response provided. In the opposition,  
28 McKesson states that "after a reasonable inquiry, Defendant is aware that inmates have filed lawsuits

1 against him before February 22, 2007, and further notes that this interrogatory is factually similar to  
2 request no. 24, to which he had earlier responded with this information.”<sup>1</sup> Opp’n, p.7.

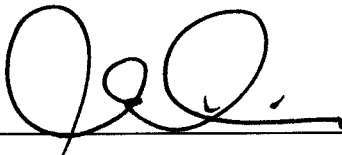
3 The court finds this supplemental response in the opposition to be adequate, and will not compel  
4 a further response.

5 CONCLUSION

6 For the reasons stated above, the court **GRANTS in part** and **DENIES in part** Plaintiff’s  
7 motion to compel. Defendant Martinez shall serve a supplemental response to ROG no. 12 to Plaintiff  
8 **within 10 days** of the date of this order.

9 **IT IS SO ORDERED.**

10 Dated: 6-21-2010



11  
12 VICTOR E. BIANCHINI

13 United States Magistrate Judge  
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27 <sup>1</sup>ROG no. 24 asks, “Prior to February 27, 2007, have you ever been sued for prison-related incidents  
28 against inmates?”