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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RICHARD S. KINDRED,

12 Plaintiff,

13 vs.

14 CALIFORNIA DEPARTMENT OF MENTAL
15 HEALTH, et al.,

16 Defendants.

1:08-cv-01321-AWI-GSA-PC

ORDER DENYING PLAINTIFF'S THIRD
MOTION TO COMPEL
(Doc. 58.)

ORDER CLOSING DISCOVERY

17 **I. BACKGROUND**

18 Richard S. Kindred ("Plaintiff"), a civil detainee at Coalinga State Hospital ("CSH") in
19 Coalinga, California, is proceeding pro se with this civil rights action pursuant to 42 U.S.C. §
20 1983. Plaintiff filed the Complaint commencing this action on September 5, 2008. (Doc. 1.)
21 This case now proceeds on the original Complaint, against defendants Barbara Devine and
22 Linda Fields, for money damages, for the violation of Plaintiff's rights to freely exercise his
23 religion under the First Amendment.¹

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25 ¹On July 22, 2010, the Court dismissed defendants Department of Mental Health, Mayberg, Radavsky,
26 and Clark, and Plaintiff's supervisory liability claim, based on Plaintiff's failure to state a claim. (Doc. 9.) On
27 September 12, 2011, the Court dismissed defendant Ahlin, Plaintiff's RLUIPA claims, official capacity claims, and
28 claims for declaratory relief, via Defendants' motion to dismiss and for failure to state a claim, with leave to
amend. (Doc. 30.) On September 21, 2011, Plaintiff notified the Court of his intent to proceed with the original
Complaint against only defendants Devine and Fields, for money damages, on Plaintiff's First Amendment claim.
(Doc. 31.)

1 On October 20, 2011, the Court issued a Scheduling Order establishing a deadline of
2 June 20, 2012, for the parties to complete discovery, including the filing of motions to compel.
3 (Doc. 38.) On May 30, 2012, the Court issued an order extending the discovery deadline to
4 October 15, 2012. (Doc. 45.) On November 13, 2012, the Court issued an order extending the
5 discovery deadline to August 10, 2013. (Doc. 61.)

6 On November 1, 2012, Plaintiff filed a third motion to compel production of documents
7 from defendant Devine ("Defendant").² (Doc. 49.) Defendant has not filed an opposition.
8 Plaintiff's third motion to compel is now before the Court.

9 **II. PLAINTIFF'S ALLEGATIONS AND CLAIMS**

10 **A. Plaintiff's Allegations against defendants Devine and Fields**

11 At the time of the events at issue, Plaintiff was housed at CSH, defendant Barbara
12 Devine was the Program Director for Program One at CSH, and defendant Linda Fields was a
13 member of the Level of Care Staff at CSH. Plaintiff alleges that defendant Devine denied him
14 permission "to order a prayer rug, even though [prayer rugs] are not considered contraband by
15 the hospital and other patients at the hospital have them." (Cmpl., Doc. 1 at 3-4 ¶IV.)
16 Plaintiff alleges that "this action [permission to order prayer rug] was denied by defendant
17 Barbra [sic] DeVine [sic], who was the Program Director for Program One." *Id.* at 4. Plaintiff
18 also claims that one of his spiritual books was damaged, alleging that "this was done by
19 defendant Linda Fields, level of care staff and fully supported by her supervisors, who as of
20 date have not taken any action to replace or compensate plaintiff for the cost of the book." *Id.*

21 **B. Plaintiff's First Amendment Claim - Civil Detainee**

22 The First Amendment to the United States Constitution provides that "Congress shall
23 make no law respecting the establishment of religion, or prohibiting the free exercise thereof . .
24 . ." U.S. Const. amend. I. Prisoners "retain protections afforded by the First Amendment,"
25 including the free exercise of religion. *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987).

26 ²Plaintiff's first motion to compel, filed on July 20, 2012, was denied as moot by the Court on February
27 27, 2013. (Docs. 48, 64.) Plaintiff's second motion to compel, filed on August 20, 2012, was denied on March
28 12, 2013. (Docs. 49, 65.)

1 “Under the Constitution, ‘reasonable opportunities must be afforded to all prisoners to exercise
2 the religious freedom guaranteed by the First and Fourteenth Amendments.’” Pierce v. County
3 of Orange, 526 F.3d 1190, 1209 (9th Cir. 2008) (quoting Cruz v. Beto, 405 U.S. 319, 322 n. 2,
4 92 S.Ct. 1079 (1972) (addressing the rights of convicted prisoners)). “[C]ivil detainees retain
5 greater liberty protections than individuals detained under criminal process” Jones v.
6 Blanas, 393 F.3d 918, 932 (9th Cir. 2004) (citations omitted). “However, as with other First
7 Amendment rights in the inmate context, detainees’ rights may be limited or retracted if
8 required to ‘maintain [] institutional security and preserv[e] internal order and discipline.’ ”
9 Pierce, 526 F.3d at 1209 (quoting Bell v. Wolfish, 441 U.S. 520, 549, 99 S.Ct. 1861 (1979);
10 citing see, e.g., Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir. 1997)).

11 “Restrictions on access to ‘religious opportunities’ . . . must be found reasonable in light
12 of four factors: (1) whether there is a ‘valid, rational connection’ between the regulation and a
13 legitimate government interest put forward to justify it; (2) ‘whether there are alternative means
14 of exercising the right that remain open to prison inmates;’ (3) whether accommodation of the
15 asserted constitutional right would have a significant impact on guards and other inmates; and
16 (4) whether ready alternatives are absent (bearing on the reasonableness of the regulation).”
17 Pierce, 526 F.3d at 1209 (quoting Turner v. Safley, 482 U.S. 78, 89-90, 107 S.Ct. 2254 (1987);
18 citing see also Beard v. Banks, 548 U.S. 521, 126 S.Ct. 2572 (2006); and citing Mauro v.
19 Arpaio, 188 F.3d 1054, 1058-59 (9th Cir.1999) (en banc)). “Further, [when] dealing with
20 [civil] detainees, to satisfy substantive due process requirements the restriction or regulation
21 cannot be intended to serve a punitive interest.” Pierce, 526 F.3d at 1209 (citing Bell, 441 U.S.
22 at 535, 99 S.Ct. 1861).

23 **III. MOTION TO COMPEL**

24 **A. Federal Rules of Civil Procedure 26(b), 34, and 37(a)**

25 Under Rule 26(b), “[U]nless otherwise limited by court order, the scope of discovery is
26 as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to
27 any party’s claim or defense — including the existence, description, nature, custody, condition,
28 and location of any documents or other tangible things and the identity and location of persons

1 who know of any discoverable matter. For good cause, the court may order discovery of any
2 matter relevant to the subject matter involved in the action.³ Relevant information need not be
3 admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of
4 admissible evidence.” Fed. R. Civ. P. 26(b)(1).

5 Pursuant to Rule 34(a) of the Federal Rules of Civil Procedure, “any party may serve on
6 any other party a request to produce and permit the party making the request . . . to inspect and
7 copy any designated documents . . . which are in the possession, custody or control of the party
8 upon whom the request is served.” Fed. R. Civ. P. 34(a)(1). “[A] party need not have actual
9 possession of documents to be deemed in control of them.” Clark v. Vega Wholesale Inc., 181
10 F.R.D. 470, 472 (D.Nev., 1998) quoting Estate of Young v. Holmes, 134 F.R.D. 291, 294
11 (D.Nev. 1991). “A party that has a legal right to obtain certain documents is deemed to have
12 control of the documents.” Clark, 81 F.R.D. at 472. Under Rule 34(b), the party to whom the
13 request is directed must respond in writing that inspection and related activities will be
14 permitted as requested, or state an objection to the request, including the reasons. Fed. R. Civ.
15 P. 34(b)(2). Also, “[a] party must produce documents as they are kept in the usual course of
16 business or must organize and label them to correspond to the categories in the request.” Fed.
17 R. Civ. P. 34(b)(E)(I).

18 Pursuant to Rule 37(a), a party propounding discovery may seek an order compelling
19 disclosure when an opposing party has failed to respond or has provided evasive or incomplete
20 responses. Fed. R. Civ. P. 37(a)(3)(B). “[A]n evasive or incomplete disclosure, answer, or
21 response must be treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4).
22 “It is well established that a failure to object to discovery requests within the time required
23 constitutes a waiver of any objection.” Richmark Corp. v. Timber Falling Consultants, 959 F.2d
24 1468, 1473 (9th Cir.1992) (citing Davis v. Fendler, 650 F.2d 1154, 1160 (9th Cir.1981)). The
25 moving party bears the burden of demonstrating “actual and substantial prejudice” from the
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27 ³“Evidence is relevant if (a) it has any tendency to make a fact more or less probable than it would be
28 without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401.

1 denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (citations
2 omitted.).

3 **A. Plaintiff's Third Motion to Compel**

4 On September 21, 2012, Plaintiff served his Request for Production of Documents, Set
5 Two, on Defendant Devine. On October 26, 2012, Plaintiff received Defendant's Response to
6 his Request for Production of Documents, Set Two. Plaintiff now seeks an order compelling
7 Defendant Devine to produce documents in response to his Request for Production of
8 Documents, Set Two, Nos. 1 through 7, as follows.

9 > **REQUEST FOR PRODUCTION (RFP), SET TWO, NO. 1:**

10 Produce all Administrative Directives, Internal Management Directives, Special
11 Orders wherein the topic is related to Ethics of Coalinga State Hospital and/or its
12 Employees and those standards that Coalinga State Hospital and/or its Employees are to
13 abide by including A.D. 101, Administrative Directives and the Reviewing Process;
14 A.D. 218, Patient Care Policy Review Committee; A.D. 262, Nursing Policy and
15 Procedure Committee; A.D. 644, Trust Office Functions; Business and Professional
16 Code 310-313.5; State Administrative Manual (SAM); Patients' Rights Policies;
17 Professionals Code of Ethics; A Copy of the Contract that The California Office Of
18 Patients' Rights entered into with the Department of Mental Health and/or Coalinga
19 State Hospital; Professional Standards of Care and Practice; Special Orders 001.12;
20 009; 208; 215.01; 231.02; 234; 239.02; 252.01; 262; 416.02; 519; 718.01; 722.03; 801;
21 812; 813.01; and 907.

22 > **RESPONSE TO RFP, SET TWO, NO. 1:**

23 Objections: compound, overbroad, equally available to plaintiff, not
24 reasonably likely to lead to admissible evidence.

25 > **RFP, SET TWO, NO. 2:**

26 Produce the California Code of Regulations wherein the topic related to fire
27 safety inspection including title 8, title 19, title 22, and title 24. In addition, the State
28 Fire Marshal's (SFM) regulation; NFRA life safety codes, California Health and Safety

1 Code section 1250; California Fire Codes (CFC) Chapter 8 Section 807.1.2; and
2 Environment of Care PMT.

3 > **RESPONSE TO RFP, SET TWO, NO. 2:**

4 Objection: compound, overbroad, equally available to plaintiff, not
5 reasonably likely to lead to admissible evidence.

6 > **RFP, SET TWO, NO. 3:**

7 Produce all California Code of Regulations Title 22.

8 > **RESPONSE TO RFP, SET TWO, NO. 3:**

9 Objection: compound, overbroad, equally available to plaintiff, not
10 reasonably likely to lead to admissible evidence.

11 > **RFP, SET TWO, NO. 4:**

12 Produce all California Welfare and Institution Codes where in the topic is
13 related to Wellness and Recovery Planning Team (WRPT) including 4312. In addition,
14 California Administrative Code; Joint Commission on Accreditation of Health Care
15 Organization (JACHO); Enhancement Plan and Wellness and Recovery Model Support
16 System; and Clinical Outcome Evaluation System.

17 > **RESPONSE TO RFP, SET TWO, NO. 4:**

18 Objection: compound, overbroad, equally available to plaintiff, not
19 reasonably likely to lead to admissible evidence.

20 > **RFP, SET TWO, NO. 5:**

21 Produce all documents wherein the topic relates to complaint procedures,
22 individuals including California Welfare and Institution Code section 5325.9.

23 > **RESPONSE TO RFP, SET TWO, NO. 5:**

24 Objection: attorney client privilege, attorney work product privilege,
25 vague, compound, overbroad, equally available to plaintiff, not reasonably likely
26 to lead to admissible evidence.

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1 > **RFP, SET TWO, NO. 6:**

2 Produce all documents wherein the topic relates to individuals' mail and
3 packages, including California Code of Regulations, title 9, and California Welfare and
4 Institution Code 4126.

5 > **RESPONSE TO RFP, SET TWO, NO. 6:**

6 Objection: attorney client privilege, attorney work product privilege,
7 compound, overbroad, equally available to plaintiff, not reasonably likely to
8 lead to admissible evidence.

9 > **RFP, SET TWO, NO. 7:**

10 Produce all documents where the topic relates to training of staff, including the
11 Department of Mental Health's policy directive 308 (training) and policy directive 707
12 (supervisory training).

13 > **RESPONSE TO RFP, SET TWO, NO. 7:**

14 Objection: attorney client privilege, attorney work product privilege,
15 compound, overbroad, equally available to plaintiff, not reasonably likely to
16 lead to admissible evidence.

17 **Plaintiff's Arguments**

18 First, Plaintiff argues that his motion should be granted because documents that are a
19 result of the regular course of business, such as the contract that the California Office of
20 Patients' Rights entered into with the Department of Mental Health and/or Coalinga State
21 Hospital, requested in Request No. 1, are not covered under any type of attorney client or
22 attorney work product privilege.

23 Second, Plaintiff argues that he is entitled to copies of the requested documents because
24 he is indigent, has no means to pay the costs for copies, and should not have to pay for copies
25 since the documents are readily available in the Code of Civil Procedure.

26 **Ruling:** Plaintiff's motion to compel is denied.

27 As discussed above, Rule 26 provides that parties may obtain discovery regarding any
28 non-privileged matter that is relevant to any party's claim or defense, and relevant information

1 need not be admissible at the trial if the discovery appears reasonably calculated to lead to the
2 discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1). Also, for good cause, the court
3 may order discovery of any matter relevant to the subject matter involved in the action. Id.

4 The documents requested by Plaintiff in his Request for Production of Documents, Set
5 Two, are largely copies of legal authority of the state of California, and rules, policies and
6 procedures of the Department of Mental Health and Coalinga State Hospital. Defendant shall
7 not be required to produce copies of legal authority, rules, policies, and procedures equally
8 available to all parties. Many of Plaintiff's requests are also vague and overbroad. For
9 example, in Request No. 1, Plaintiff requests "*all Administrative Directives, Internal*
10 *Management Directives, Special Orders wherein the topic is related to Ethics of Coalinga State*
11 *Hospital and/or its Employees are to abide by, including ...*" (Motion, Doc. 58 at 7 [Exh. 1])
12 (emphasis added). To require Defendant to make an extensive search to locate all of the
13 documents within the scope of Plaintiff's request would be overly burdensome. Moreover,
14 Plaintiff fails to meet his burden of demonstrating that the requested discovery is relevant to his
15 claim for violation of the First Amendment. Further, Plaintiff is not entitled to compel
16 Defendant to provide him with free copies merely because he is indigent.

17 In Request No. 1, Plaintiff requests a copy of the "contract that the California Office of
18 Patients' Rights entered into with the Department of Mental Health (now known as the
19 California Department of State Hospitals) and/or Coalinga State Hospital." Plaintiff argues that
20 this document is not available to him. This request is vague and nonspecific as to date,
21 description, or topic, and it would be overly burdensome for Defendants to search for every
22 contract within the scope of Plaintiff's request.

23 In Requests Nos. 5, 6, and 7, Plaintiff requests all documents wherein the topic relates
24 to complaint procedures, individuals' mail and packages, and training of staff. These requests
25 are vague and overbroad, and Plaintiff has not met his burden of demonstrating that these
26 documents are relevant within the meaning of Rule 26.

27 Therefore, Defendant shall not be compelled to make any further response to Plaintiff's
28 Request for Production of Documents, Set Two.

1 **IV. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's third motion to compel, filed on November 1, 2012, is DENIED; and
4 2. Discovery in this action is now closed.

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8 IT IS SO ORDERED.

9 Dated: August 22, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE