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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

STEVEN ROBERT CERNIGLIA,

Plaintiff,

v.

CARONA, et al.,

Defendants.

CASE NO. 1:09-cv-00651-AWI-DLB PC

ORDER DENYING MOTION TO COMPEL
AS MOOT

(Doc. 20)

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO COMPEL

/ (Doc. 21)

Order

I. Background

Plaintiff Steven Robert Cerniglia (“Plaintiff”) is a civil detainee proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s complaint, filed April 10, 2009, against Defendants Julia Corona¹ and L. Franks. Pending before the Court are two motions to compel, filed September 4, 2009, and October 13, 2009, seeking further response from Defendant Corona. (Docs. 20, 21.) On November 19, 2009, Defendant Corona filed an opposition. (Doc. 22.) On December 10, 2009, Plaintiff filed his reply. (Doc. 23.) The matter is deemed submitted pursuant to Local Rule 230(l).

II. September 4, 2009 Motion to Compel

On September 4, 2009, Plaintiff filed a motion to compel further responses from

¹ Defendant’s last name is misspelled as “Carona” by Plaintiff. The Court adopts Defendant’s spelling herein.

1 Defendant Corona. Plaintiff contends that on June 29, 2009, Plaintiff served his first Request for
2 Production of Documents (POD) and first set of Interrogatories. (Doc. 20, Mot. To Compel
3 1:25-26.) On October 13, 2009, Plaintiff states in his second motion to compel that Defendant
4 Corona served her responses to the first set of requests for POD and Interrogatories on September
5 2, 2009. (Doc. 21, Mot. To Compel 2, footnote 1.) Plaintiff raises additional arguments in this
6 second motion to compel pertaining to the same issues in his first motion. The Court finds that
7 the September 4, 2009 motion to compel is moot.

8 **III. October 13, 2009 Motion to Compel**

9 **A. Untimely Response To Discovery Requests**

10 Plaintiff contends that Defendant Corona's responses to Plaintiff's first Request for POD
11 and first set of Interrogatories were untimely. (Doc. 21, Mot. To Compel 2, footnote 1.) Plaintiff
12 contends that appropriate sanctions should apply, including Defendant Corona's waiver of all
13 objections. (Id.) Defendant does not respond to this argument.

14 The Court's discovery and scheduling order, filed June 19, 2009, set a due date of forty-
15 five (45) days after a discovery request is first served for the other party to respond. (Doc. 14,
16 Discovery Order ¶ 2.) Plaintiff contends that he served his discovery requests to Defendant
17 Corona on June 29, 2009. Thus, Defendant Corona would have until August 13, 2009 in which
18 to serve his response. Plaintiff submits a proof of service of Defendant Corona's responses,
19 which indicates a service date of September 2, 2009. (Doc. 21, Mot. To. Compel Exh. D, Decl.
20 Of Personal Service.) However, Plaintiff's proof of service of his own discovery requests
21 indicate that Dustin L. Smithson, the person who served the first set of interrogatories and first
22 set of requests for POD, served the requests on July 29, 2009, not June 29. (Doc. 21, Mot To
23 Compel, Exhs. B and C.) Thus, Defendant Corona's responses appear to be timely. Plaintiff's
24 request for discovery sanctions is denied.

25 **B. Interrogatories**

26 Plaintiff seeks to compel further responses from Defendant Corona to Interrogatories
27 Nos. 6, 7, and 9.

1 Interrogatory No. 6: Detail with specificity your definition of a “Patient Right.”

2 Response: Defendant Corona does not have definition of “Patient Right.”
3 Furthermore, this interrogatory calls for potential legal conclusion to
4 which defendant Corona lacks foundation t adequately respond.

5 Plaintiff contends that Defendant Corona’s response is inadequate and that Plaintiff is not
6 seeking legal conclusions. Defendant Corona contends that she does not have to give a legal
7 opinion and that the response was sufficient.

8 Defendant did respond to Plaintiff’s interrogatory by stating that Defendant does not have
9 a definition of Patient Right. Even if Plaintiff believes this response is not accurate, it is a
10 sufficient response. The Court will not compel Defendant Corona to serve a further response to
11 Interrogatory No. 6.

12 Interrogatory No. 7: Detail with specificity YOUR definition of a “Denial of a Patient right.”

13 Response: Defendant Corona does not have definition of “Denial of a Patient Right.”
14 Furthermore, this interrogatory calls for potential legal conclusion to
15 which defendant Corona lacks foundation to adequately respond.

16 The Court finds that Defendant’s response to Interrogatory No. 7 is sufficient for the
17 same reasons given for Interrogatory No. 6, and will not compel Defendant Corona to serve a
18 further response.

19 Interrogatory No. 9: Detail with specificity the facts of any other previous legal action
20 (including disciplinary) taken against DEFENDANT Corona as a result of
21 her denial of any “Patient Right,” of any other Civilly Committed mentally
22 ill patient during her employment with the California Department of
23 Mental Health, in an employment capacity whatsoever.

24 Response: Not applicable.

25 Defendant contends that “[t]he reasonable interpretation of ‘not applicable,’ is that there
26 is no ‘previous legal action.’” (Doc. 22, Opp’n 2:6-7.) The Court finds Defendant’s response to
27 Interrogatory No. 9 inadequate. Plaintiff and the Court should not have to guess as to what
28 Defendant Corona means regarding “not applicable.” If Defendant objects to this interrogatory,
Defendant should state with specificity her objections and reasons. “Not applicable” fails to
explain why Defendant cannot answer the interrogatory, and is not a recognized objection.
Defendant is to furnish a further response to Plaintiff’s Interrogatory No. 9 from the first set

1 within thirty (30) days from the date of service of this order.

2 **C. Request for POD**

3 Plaintiff seeks an order compelling further response to Plaintiff's request for POD Nos. 4,
4 7, and 8.

5 POD No. 4: All DOCUMENTS that describe, comprise, consist of, contain, evidence,
6 relate to or refer to Visiting Room Communication Log to which the
7 Visiting Room Hospital Police Officer utilized in documenting the denial
8 or Plaintiff's family visit on July 18, 2008.

9 Response: Not applicable, defendant Corona did not utilize a Visiting Room
10 Communication Log to document the "... denial of Plaintiff's family visit
11 on July 18, 2008."

12 Plaintiff contends that this log was used in denying Plaintiff visitation. Defendant contends that
13 she did not use this log, and thus does not have to produce it.

14 The Court finds Defendant's objection to be inadequate. "Relevant information need not
15 be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of
16 admissible evidence." Fed. R. Civ. P. 26(b)(1). Defendant in effect contends that the
17 communication log is not relevant, but that is not the threshold requirement for discovery.
18 Plaintiff's complaint contends that Defendant Corona denied him visitation with his family on
19 July 18, 2008. The visitation room communication log may contain information relevant to the
20 denial of this visit, and appears reasonably calculated to lead to the discovery of admissible
21 evidence. Accordingly, Defendant is to furnish a further response to Plaintiff's request for
22 production of document No. 4 within thirty (30) days from the date of service of this order.

23 POD No. 7: All DOCUMENTS that describe, comprise, consist of, contain, evidence,
24 relate to or refer to any other legal action taken against DEFENDANT
25 Corona regarding her denial of any rights, of any other Civilly Committed
26 Patients during her employment with the California Department of Mental
27 Health, in any employment capacity.

28 Response: Not applicable.

29 Plaintiff contends that a history of violation by Defendant Corona regarding patients
30 rights is relevant to the complaint. Defendant contends again that "not applicable" should
31 obviously mean that there are no documents relative to any alleged other legal action.

32 As stated previously, the Court finds "not applicable" is not an objection. Defendant is to

1 serve a further response to Plaintiff's Request for POD No. 7 within thirty (30) days from the
2 date of service of this order.

3 POD. No. 8: All DOCUMENTS that describe, comprise, consist of, contain, evidence,
4 relate to, or refer to any and all training that DEFENDANT Corona has
5 received and/or continues to receive related to the "Rights" of the Civilly
Committed mentally ill patients at Coalinga State Hospital.

6 Response: Not available at this time.

7 Plaintiff contends that Defendant should respond to this request. Defendant's counsel
8 contends that he is trying to locate any such documents, but is unsure as to their availability.

9 As it appears that Defendant is in the process of ascertaining the existence and
10 availability of documents responsive to this request, the Court will not compel Defendant Corona
11 to serve a further response to request for POD No. 8. However, if this material later becomes
12 available, Defendant has a duty to supplement her initial response. Fed. R. Civ. P. 26(e).

13 **IV. Conclusion and Order**

14 Based on the foregoing, it is HEREBY ORDERED that:

- 15 1) Plaintiff's motion to compel, filed September 4, 2009, is DENIED as moot;
- 16 2) Plaintiff's motion to compel, filed October 13, 2009, is GRANTED in part and
17 DENIED in part as follows:
 - 18 A) Plaintiff's request for discovery sanctions for untimely response is denied;
 - 19 B) Plaintiff's request for an order compelling further response to
20 Interrogatories Nos. 6 and 7 (first set), and request for Production of
21 Documents No. 8, (first set) is DENIED;

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- 1 C) Plaintiff's request for an order compelling further response to Interrogatory
2 No. 9 (first set), and requests for Production of Documents Nos. 4 and 7
3 (first set), is GRANTED; and
4 D) Defendant Corona is to serve a further response to Interrogatory No. 9
5 (first set), and requests for Production of Documents Nos. 4 and 7 (first
6 set), within **thirty (30) days** from the date of service of this order.

7 IT IS SO ORDERED.

8 **Dated: April 5, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE