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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RAUL HERNANDEZ,) Case No.: 1:09-cv-00828-AWI-SAB (PC)
)
Plaintiff,)
)
v.) ORDER DENYING PLAINTIFF’S MOTION
) FOR LEAVE FOR ADDITIONAL
R.D. SMITH, et al.,) INTERROGATORIES EXCEEDING 25
) [ECF No. 37]
Defendants.)
)
)
)

Plaintiff Raul Hernandez is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

**I.
RELEVANT HISTORY**

On April 25, 2014, Plaintiff filed a motion for leave to propound additional interrogatories beyond the 25 limit on Defendant Dr. Kirk. Defendant filed an opposition on May 16, 2014, and Plaintiff filed a reply on June 3, 2014.

This action is proceeding against Defendants Dr. R.D. Smith and Dr. Kirk for deliberate indifference to his dental needs. The Court specifically found cognizable the following three claims: 1) Dr. Smith’s alleged refusal to provide antibiotics and pain medication for an abscess at tooth number 8 on September 9, 2007; 2) Dr. Smith’s alleged refusal to prescribe antibiotics and pain medication on October 15, 2007; and 3) Dr. Kirk’s alleged refusal to prescribe pain medication on September 27, 2007. (ECF No. 24 at 5-6.)

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1 I.

2 DISCUSSION

3 The scope of discovery is broad. Republic of Ecuador v. Mackay, 742 F.3d 860, 866 (9th Cir.
4 2014) (citing Shoen v. Shoen, 5 F.3d 1289, 1292 (9th Cir. 1993)). “Parties may obtain discovery
5 regarding any nonprivileged matter that is relevant to any party’s claim or defense,” and “[r]elevant
6 information need not be admissible at the trial if the discovery appears reasonably calculated to lead to
7 the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1). Furthermore, “[f]or good cause, the
8 court may order discovery of any matter relevant to the subject matter involved in the action.” Id.

9 Rule 33 of the Federal Rules of Civil Procedure limits interrogatories to twenty-five per party,
10 including discrete subparts, but the Court may grant leave to serve additional interrogatories to the
11 extent consistent with Rule 26(b)(2).

12 Plaintiff served more than twenty-five interrogatories on Dr. Kirk, and Dr. Kirk refused to
13 answer the last eight interrogatories (set two, numbers 3-10) on that ground. (ECF No. 37 at 11-14.)
14 Thus, Plaintiff has already exceeded the limit of twenty-five interrogatories allowed by Rule 33(a).
15 Plaintiff seeks leave “to total the number of interrogatories to be 100 for both named defendants.”¹
16 (ECF No. 37 at 4.)

17 Defendant Kirk argues that Plaintiff’s motion should be denied because he has failed to make a
18 particularized showing why the additional discovery is necessary. Plaintiff has not attached the
19 proposed additional 100 interrogatories, nor has he shown why responses to interrogatories 3-10 of set
20 two to Dr. Kirk are necessary. Dr. Kirk further argues that interrogatories numbers 3-10 of set two are
21 not relevant to the issue of whether he was deliberately indifferent by refusing to prescribe pain
22 medication on September 27, 2007.

23 Plaintiff argues he is need of additional interrogatories because: 1) Dr. Kirk did not respond to
24 previous interrogatories to Plaintiff’s satisfaction; and 2) Defendants have the resources available to
25 avail themselves of the deposition processes while Plaintiff does not.

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28 ¹ It is not clear whether Plaintiff is seeking leave to serve 100 additional interrogatories, 100 minus the eight Dr. Kirk refused to answer, or 100 minus the number of interrogatories served on both Defendants to date.

1 Plaintiff has not shown good cause for the Court to grant leave for further interrogatories.
2 Plaintiff fails to explain which of Dr. Kirk's responses were evasive, how they were evasive, or why
3 the information sought in the interrogatories is needed. Plaintiff has not made any showing as to why
4 additional discovery is necessary. See, e.g., Eichler v. Tilton, No. CIV S-06-2894-JAM-CMK-P, 2010
5 WL 457334, at *1 (E.D. Cal. Feb. 3, 2010) ("Plaintiff is required to make some showing as to the
6 reasons for his request to propound extra interrogatories, so that the court may make a determination
7 as to the necessity therefor.") Plaintiff may not attempt to propound additional interrogatories merely
8 because he believes Dr. Kirk's responses to previous interrogatories were evasive.

9 Furthermore, the fact that Defendants have the ability to take Plaintiff's deposition is
10 irrelevant. The scope and limit of discovery is set by the parties' claims and defenses, not the parties'
11 economic resources. See Fed. R. Civ. P. 26(b)(1).

12 Moreover, Plaintiff has propounded interrogatories to Dr. Smith on April 9, 2014, and the
13 response was not due until forty-five days thereafter, i.e. May 24, 2014 (after the filing of the instant
14 motion). (ECF No. 37, at 2:26-27.) Thus, Plaintiff cannot claim additional interrogatories are needed
15 before he has exhausted the twenty-five allowed by Rule 33(a)(1). Accordingly, Plaintiff's motion for
16 leave to propound additional interrogatories beyond the twenty-five limit must be denied.

17 **III.**

18 **ORDER**

19 Based on the foregoing,

20 IT IS HEREBY ORDERED that Plaintiff's motion for leave to propound additional
21 interrogatories beyond the twenty-five limit is DENIED.

22
23 IT IS SO ORDERED.

24 Dated: June 5, 2014



25 UNITED STATES MAGISTRATE JUDGE