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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

IREN ANDERSON,

CASE No. 1:09-cv-01924-LJO-MJS (PC)

Plaintiff,

ORDER GRANTING PLAINTIFF'S MOTION
TO COMPEL FURTHER RESPONSE TO
REQUEST FOR PRODUCTION OF
DOCUMENTS SERVED JULY 17, 2012 AND
EXTENDING TIME TO OPPOSE SUMMARY
JUDGMENT

v.

RON D. HANSEN, et al.,

(ECF No. 50)

Defendants.

ORDER GRANTING DEFENDANTS'
MOTION TO COMPEL FURTHER
RESPONSE TO SET ONE
INTERROGATORIES AND REQUEST FOR
PRODUCTION OF DOCUMENTS

(ECF No. 55)

ORDER AMENDING DISCOVERY AND
SCHEDULING ORDER AS AMENDED

(ECF No. 52)

DISCOVERY CUT-OFF DATE:
April 4, 2013

DISPOSITIVE MOTION DEADLINE:
June 13, 2013

1
2 **I. PROCEDURAL HISTORY**

3 Plaintiff Iren Anderson, a state prisoner proceeding pro se and in forma
4 pauperis, filed this civil rights action on November 2, 2009 pursuant to 42 U.S.C. §
5 1983. (Compl., ECF No. 1.) This matter proceeds on his Second Amended Complaint
6 (Second Am. Compl., ECF No. 19) claims of excessive force by Defendant
7 Hansen, failure to protect against Defendant Hartley and failure to intervene against
8 Defendant Lewis. (Order Finding Cognizable Claims, ECF No. 20.) Defendants Hansen,
9 Hartley, and Lewis have answered. (Answers, ECF Nos. 25, 43.)

10 On August 23, 2012, Plaintiff filed a Motion to Compel a further response from
11 Defendant Hartley to a request for production of documents served July 17, 2012. That
12 request sought prior administrative grievances, appeals and complaints relating to use
13 of force by Defendant Hansen. (Pl. Mot. to Compel, ECF No. 50.) Defendant Hartley
14 filed Opposition on September 12, 2012. (Def.'s Opp'n to Mot., ECF No. 51.) No reply
15 to the Opposition has been filed and the time for doing so has expired. Local Rule
16 230(l).

17 On October 25, 2012, Defendants Hartley, Hansen and Lewis filed a Motion to
18 Compel further responses to set one of their interrogatories and request for production
19 of documents served May 3, 2012; they seek the identity of all witnesses supporting
20 Plaintiff's allegations and declarations from those witnesses. (Defs.' Mot. to Compel,
21 ECF No. 55.) No opposition has been filed and the time for doing so has expired. Local
22 Rule 230(l).

23 On January 9, 2013, Defendant Hartley filed a Motion for Summary Judgment.
24 (Mot. Summ. J., ECF No. 62.)

25 The foregoing Motions to Compel are now before the Court.

26 **II. LEGAL STANDARDS**

27 **A. Discovery Generally**

28 Plaintiff is proceeding pro se as a state prisoner challenging his conditions of

1 confinement. As a result, the parties are relieved of some requirements which would
2 otherwise apply, including initial disclosure and the need to meet and confer in good
3 faith prior to involving the Court in a discovery dispute. Fed. R. Civ. P. 26(a)(1); Fed. R.
4 Civ. P. 26(c); Fed. R. Civ. P. 37(a)(1); Local Rules 240, 251; Discovery and Scheduling
5 Order, ECF No. 26, ¶5.

6 However, regardless of Plaintiff's incarceration, this is a civil action to which the
7 Federal Rules of Civil Procedure apply, and the discovery process is subject to the
8 overriding limitation of good faith. Asea, Inc. v. Southern Pac. Transp. Co., 669 F.2d
9 1242, 1246 (9th Cir. 1981). Parties may obtain discovery regarding any nonprivileged
10 matter that is relevant to any party's claim or defense, and for good cause, the Court
11 may order discovery of any matter relevant to the subject matter involved in the action.
12 Fed. R. Civ. P. 26(b)(1). Relevant information need not be admissible at the trial if the
13 discovery appears reasonably calculated to lead to the discovery of admissible
14 evidence. Id.

15 Generally, if the responding party objects to a discovery request, the party
16 moving to compel bears the burden of demonstrating why the objections are not
17 justified. E.g., Grabek v. Dickinson, No. CIV S-10-2892 GGH P, 2012 WL 113799, at *1
18 (E.D. Cal. Jan. 13, 2012); Womack v. Virga, No. CIV S-11-1030 MCE EFB P, 2011 WL
19 6703958, at *3 (E.D. Cal. Dec. 21, 2011); Mitchell v. Felker, No. CV 08-119RAJ, 2010
20 WL 3835765, at *2 (E.D. Cal. Sep. 29, 2010); Ellis v. Cambra, No. 1:02-cv-05646-AWI-
21 SMS PC, 2008 WL 860523, at *4 (E.D. Cal. Mar. 27, 2008). This requires the moving
22 party to inform the Court which discovery requests are the subject of the motion to
23 compel, and, for each disputed response, why the information sought is relevant and
24 why the responding party's objections are not meritorious. Grabek, 2012 WL 113799, at
25 *1; Womack, 2011 WL 6703958, at *3; Mitchell, 2010 WL 3835765, at *2; Ellis, 2008
26 WL 860523, at *4.

27 Nonetheless, the Court is vested with broad discretion to manage discovery,
28 Hunt v. County of Orange, 672 F.3d 606, 616 (9th Cir. 2012); Survivor Media, Inc. v.

1 Survivor Productions, 406 F.3d 625, 635 (9th Cir. 2005); Hallett v. Morgan, 296 F.3d
2 732, 751 (9th Cir. 2002), and where the discovery request seeks information which,
3 based on the record, is clearly within the scope of discovery and the objection lacks
4 merit, the Court may elect to exercise its discretion to reach the merits of the dispute,
5 the moving party's initial burden notwithstanding. E.g., Marti v. Baires, No. 1:08-cv-
6 00653-AWI-SKO PC, 2012 WL 2029720, at *3 (E.D. Cal. Jun. 5, 2012); Williams v.
7 Adams, No. 1:05-cv-00124-AWI-SMS PC, 2009 WL 1220311, at *1 (E.D. Cal. May 4,
8 2009).

9 Courts in the Eastern District of California have required that at a minimum "[t]he
10 moving party plaintiff has the burden of informing the court (1) which discovery requests
11 are the subject of his motion to compel; (2) which of the defendant's responses are
12 disputed; (3) why he believes the defendant's responses are deficient; (4) why the
13 defendant's objections are not justified; and (5) why the information he seeks through
14 discovery is relevant to the prosecution of this action." Walker v. Karelis, 2009 WL
15 3075575, *1 (E.D. Cal. September 21, 2009). The court must limit discovery if the
16 burden of the proposed discovery outweighs its likely benefit. Fed. R. Civ. P.
17 26(b)(2)(C)(iii). "In each instance [of discovery], the determination whether . . .
18 information is discoverable because it is relevant to the claims or defenses depends on
19 the circumstances of the pending action." Fed. R. Civ. P. 26 Advisory Committee's Note
20 (2000 Amendment) (Gap Report) (Subdivision (b)(1)).

21 **B. Production of Documents**

22 A party may serve on any other party a request within the scope of Rule 26(b) to
23 produce and permit the requesting party or its representative to inspect, copy, test, or
24 sample items in the responding party's possession, custody or control. Fed. R. Civ. P.
25 34(a)(1). "Property is deemed within a party's 'possession, custody, or control' if the
26 party has actual possession, custody, or control thereof or the legal right to obtain the
27 property on demand." Allen v. Woodford, No. CV-F-05-1104 OWW LJO, 2007 WL
28 309945, *2 (E.D. Cal. Jan. 30, 2007), citing In re Bankers Trust Co., 61 F.3d 465, 469

1 (6th Cir. 1995); accord Bovarie v. Schwarzenegger, No. 08cv1661 LAB (NLS), 2011 WL
2 719206, at *4 (S.D. Cal. Feb. 22, 2011); Evans v. Tilton, No. 1:07CV01814 DLB PC,
3 2010 WL 1136216, at *1 (E.D. Cal. Mar. 19, 2010).

4 **C. Interrogatories**

5 A party may propound interrogatories relating to any matter that may be inquired
6 into under Federal Rule of Civil Procedure 26(b). An interrogatory is not objectionable
7 merely because it asks for an opinion or contention that relates to fact or the application
8 of law to fact. Fed. R. Civ. P. 33(a).

9 The responding party is obligated to respond to the interrogatories to the fullest
10 extent possible. See Fed. R. Civ. P. 33(b)(3). Any objections must be stated with
11 specificity. Fed. R. Civ. P. 33(b)(4). The responding party shall use common sense and
12 reason in its responses; hyper-technical, quibbling, or evasive objections will not be
13 viewed favorably by the court. Haney v. Saldana, 2010 WL 3341939 at *3 (E.D. Cal.
14 Aug. 24, 2010). Further, the responding party has a duty to supplement any responses
15 if the information sought is later obtained or the response provided needs correction.
16 Fed. R. Civ. P. 26(e)(1)(A).

17 All grounds for objection to an interrogatory must be stated “with specificity.” Fed.
18 R. Civ. P. 33(b)(4); see Nagele v. Electronic Data Systems Corp., 193 F.R.D. 94, 109
19 (W.D.N.Y. 2000) (objection that interrogatories were “burdensome” overruled because
20 objecting party failed to “particularize” the basis for objection); see also Mancina v.
21 Mayflower Textile Services Co., 253 F.R.D. 354, 358 (D.MD. 2008) (boiler-plate
22 objections waived any legitimate objections responding party may have had); Chubb
23 Integrated Sys., Ltd. v. National Bank of Wash., 103 F.R.D. 52, 58 (D.D.C. 1984) (the
24 objecting party must state reasons for any objection, “irrelevant” did not fulfill party’s
25 burden to explain its objections); Mitchell v. National R.R. Passenger Corp., 208 F.R.D.
26 455, 458 at n.4 (D.D.C. 2002) (objections must explain how request or interrogatory is
27 overbroad or unduly burdensome); Pulsecard, Inc. v. Discovery Card Services, Inc.,
28 168 F.R.D. 295, 310 (D. Kan. 1996) (objection on grounds as vague and ambiguous

1 overruled if reason and common sense to attribute ordinary definitions to terms and
2 phrases provided needed clarity).

3 **III. DISCUSSION**

4 **A. Plaintiff's July 17, 2012 Request for Production of Documents**

5 **Request:** "[P]rior grievances, appeals, CDC 602's, complaints, staff complaints,
6 personnel complaints lodged against Defendant Ron D. Hansen, maintained by his
7 employer, the California Department of Corrections and Rehabilitation while assigned at
8 Avenal State Prison, between the dates of June 1, 2006, up to and including, June 1,
9 2010." (Pl. Mot. to Compel at 3:18-23.)

10 **Response:** Defendant Hartley objected on grounds the request was served
11 within forty-five days of the [then applicable] August 23, 2012 discovery cut-off date,
12 and therefore untimely. (Def.'s Opp'n at Ex. B.)

13 **Ruling:** Plaintiff argues he served this discovery request "well before the
14 discovery cut-off date." (Pl. Mot. Compel at 1.) Plaintiff is mistaken. Defendant's
15 objection is sustained as to the then applicable discovery deadline. Plaintiff's request
16 was served on July 17, 2012 and was untimely under the then controlling discovery
17 cut-off date of August 23, 2012.

18 However, for good cause shown the Court will further amend the Discovery and
19 Scheduling Order as amended to extend the discovery cut-off date and dispositive
20 motion deadlines and direct Defendant Hartley to make a further response to Plaintiff's
21 above request.

22 **B. Defendants' May 3, 2012 Set One Interrogatories and Request for**
23 **Production of Documents**

24 **Interrogatory No. 1:** "Identify all witnesses (if the witness is an inmate include
25 their CDCR number) that were present that support your allegations that on June 17,
26 2008, Defendant Hansen used excessive force against you, as alleged in your second
27 amended complaint."

28 **Response:** "Three presently unnamed State prisoner witnesses [under security

1 privilege, privacy rights and express desires of these individuals to remain unnamed
2 pending appointment of counsel and/or protective orders, they have agreed to appear,
3 testify to June 17, 2008 observations; owing to Defendants current practices of
4 threatening, harassing, intimidating such prisoner witnesses, which includes placement
5 in Ad Seg, transferring, unannounced searches and confiscation of property, and
6 creating circumstances resulting in physical abuse, they will not be exposed until their
7 protection may be assured]”.

8 **Ruling:** Plaintiff objects to disclosure on grounds of inmate security and privacy.
9 Plaintiff’s objection is overruled and Defendants’ motion to compel a further response is
10 granted.

11 Parties may obtain discovery regarding any nonprivileged matter that is relevant
12 to any party's claim or defense including the existence, description, nature, custody,
13 condition, and location of any documents or other tangible things and the identity and
14 location of persons who know of any discoverable matter. Fed. R. Civ. P. 26(b).

15 The purpose of discovery is to allow a broad search for facts, the names of
16 witnesses, or any other matters which may aid a party in the preparation or presentation
17 of his case. Engl v. Aetna Life Ins. Co., 139 F.2d 469, 472 (2d Cir. 1943). Disclosure of
18 names and addresses of witnesses is generally a matter of right. U.S. v. Chatham City
19 Corp., 72 F.R.D. 640, 644 (S.D. Ga. 1976); Bell v. Swift & Co., 283 F.2d 407, 409 (5th
20 Cir. 1960); see Lesser v. Wildwood, 2003 WL 22228757 at *3, *4 (S.D.N.Y. September
21 29, 2003) (defendant required to respond to plaintiff’s interrogatory requesting names of
22 all witnesses with knowledge or information relevant to subject matter of action).

23 Plaintiff has not shown good cause to protect the unidentified inmate witnesses
24 from annoyance or oppression under Rule 26(c). Under liberal discovery principles of
25 federal rules, those opposing discovery are required to carry a heavy burden of showing
26 why discovery should be denied. Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th
27 Cir. 1975). Party seeking protective order bears burden of demonstrating “good cause”
28 required to support such order; it is moving party's burden to show “particular need” for

1 protection. Great West Life Assur. Co. v. Levithan, 152 F.R.D. 494, 496 (E.D. Pa. 1994)

2 **Request for Production No. 3:** “Produce any and all documents that support
3 your claim that Defendants Hansen, Hartley and Lewis violated your constitutional
4 rights.”

5 **Response:** These documents have been acquired by Defendants and include
6 Incident Report, and related CDCR documentation which Defendants currently
7 possess.

8 **Ruling:** Defendants argue that Plaintiff failed to produce, or assert a privilege
9 for, the three inmate-witness affidavits he later identified in his deposition.¹ Defendants’
10 request for a further response is granted. The witness statements are reasonably within
11 the scope of Rule 26 discovery, are covered by Request for Production No. 3, and are
12 in the possession of Plaintiff.

13 Plaintiff is advised that failure to comply with his discovery obligations may result
14 in the Court limiting the evidence he can present in support of his claim. For example, if
15 Plaintiff fails to reveal a witness who has information regarding a particular contention,
16 that witness may be precluded from testifying about that subject should this matter
17 proceed to trial. See, e.g., Hindin/Owen/Engelke, Inc. V. Skilstaf, Inc., 2003 WL
18 25667624, *2 (C.D.Cal. Feb.7, 2003). Failure to comply with this Order may also result
19 in other sanctions, including dismissal of this action. Fed. R. Civ. Proc. 37(b)(2).

20 **Request for Production No. 5:** “Produce all other documents that support your
21 claims against Defendants Hansen, Hartley and Lewis in this lawsuit.”

22 **Response:** See Responses to Request for Admission and Responses to
23 Interrogatories, which supply and identify all related documents, provisions, statutes
24 and regulations which Defendants have violated that support the allegations and
25 causes of action.

26 **Ruling:** Defendants similarly argue that Plaintiff failed to produce, or assert a
27 privilege for, the three inmate-witness affidavits he later identified. Defendants’ request

28 ¹ Attached as Ex. C. To Defs.’ Mot. to Compel.

1 is granted for the reasons stated in the ruling on Request for Production No. 3 above.

2 **C. Scheduling Order Deadlines**

3 In order to allow time for the parties' further responses consistent with this
4 Order, and for good cause, the Court hereby amends the Discovery and
5 Scheduling Order as amended (Discov. and Sched. as Am., ECF No. 52) such that the
6 Discovery Cut-Off Date shall be April 4, 2013, and the Dispositive Motion Deadline shall
7 be June 13, 2013.

8 **D. Summary Judgment Opposition Deadline**

9 The Court takes notice that Plaintiff's opposition to Defendant Hartley's Motion
10 for Summary Judgment is due by February 4, 2013. Local Rule 230(I). Given the further
11 responses and deadline extensions above, and Plaintiff's pro se status, the Court finds
12 good cause to extend Plaintiff's deadline to submit opposition to Defendant Hartley's
13 Motion for Summary Judgment to sixty days following service of this Order.

14 **IV. ORDER**

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

- 16 1. Plaintiff's Motion to Compel further responses to the July 17, 2012 request
17 for production of documents (ECF No. 50) is GRANTED;
- 18 2. Defendants' Motion to Compel further responses to their set one
19 interrogatories and request for production (ECF No. 55) is GRANTED;
- 20 3. The parties have **thirty (30) days** from the date of service of this order
21 within which to serve their respective further responses;
- 22 4. The Discovery and Scheduling Order as amended (ECF No. 52) is hereby
23 further amended such that the Discovery Cut-Off Date shall be April 4,
24 2013, and the Dispositive Motion Deadline shall be June 13, 2013; and
- 25 5. Plaintiff's time to file opposition to Defendant Hartley's Motion for

26 *////*

27 *////*

28 *////*

1 Summary Judgment (ECF No. 62) is extended to **sixty (60) days** following
2 service of this Order.

3
4 IT IS SO ORDERED.

5 Dated: January 31, 2013

/s/ Michael J. Seng
6 UNITED STATES MAGISTRATE JUDGE

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