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

KEVIN DARNELL BRYANT	)	Case No.: 1:11-cv-00446-LJO-BAM PC
	)	
Plaintiff,	)	ORDER DENYING PLAINTIFF’S SECOND
	)	MOTION FOR ORDER TO COMPEL
v.	)	PRODUCTION OF THE ORIGINAL COLOR
	)	PHOTOS
P. GALLAGHER, et al.,	)	(ECF No. 153)
	)	
Defendants.	)	
	)	
	)	

Plaintiff Kevin Darnell Bryant (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s first amended complaint, filed on July 5, 2011, against Defendant Romero for deliberate indifference to serious medical needs in violation of the Eighth Amendment; and against Defendants Gallagher and Romero for conspiracy, retaliation in violation of the Eighth Amendment and failure to protect in violation of the Eighth Amendment.

On July 8, 2013, the Court granted Plaintiff’s second motion for the issuance of a subpoena duces tecum on CHW Central California Mercy Hospital for the production of his medical records. (ECF No. 110.)

On February 28, 2014, Plaintiff filed a motion to compel production of the medical records subpoenaed from Mercy Hospital. (ECF No. 127.) On May 23, 2014, the Court issued an order

1 providing Mercy Hospital with the opportunity to show cause regarding compliance with the subpoena  
2 duces tecum within thirty (30) days. (ECF No. 139.) Mercy Hospital did not respond.

3 On July 28, 2014, the Court directed Defendants to file a response to Plaintiff's motion to  
4 compel production of the medical records from Mercy Hospital. (ECF No. 142.)

5 In response to the Court's order, Defendants provided Plaintiff a copy of his complete medical  
6 filed from Mercy Hospital in September 2014. (ECF Nos. 149, 153.) The medical file contained five  
7 black-and-white photos of Plaintiff's alleged injuries, which were taken on June 10, 2010. (ECF No.  
8 153, pp. 5-9.)

9 On September 18, 2014, Plaintiff filed the instant motion to compel Mercy Hospital to provide  
10 him with the original color photos (or color duplicates) taken of his ankle by hospital staff on June 10,  
11 2010. (ECF No. 153.) Following an extension of time, Defendants filed an opposition to Plaintiff's  
12 motion to compel production of color photos on October 14, 2014. (ECF No. 164.) Plaintiff did not  
13 file a reply and the motion is deemed submitted. Local Rule 230(l).

14 According to Defendants' opposition, after receiving Plaintiff's motion to compel, defense  
15 counsel contacted Melanie Fowler, the Director of Health Information Management at Mercy Hospital  
16 in Bakersfield. Ms. Fowler explained that color photos should have been provided as part of the  
17 medical record if such photos were available. Ms. Fowler stated that she would check Plaintiff's  
18 original medical record, and if it contained color photos, then she would send them to defense counsel.  
19 (ECF No. 164-1, Delgado Dec. ¶ 5.) On October 10, 2014, defense counsel received a package from  
20 Mercy Hospital containing color copies of the five photos from Plaintiff's medical file. (*Id.* at ¶ 6.)  
21 On October 14, 2014, defense counsel sent the five color photos to Plaintiff at California State Prison,  
22 Corcoran, via first class mail. (*Id.* at ¶ 7.)

23 Based on the record before the Court, Plaintiff has received the color copies from his medical  
24 records at Mercy Hospital. Accordingly, Plaintiff's second motion to compel, filed on September 18,  
25 2014, is now moot and is HEREBY DENIED.

26 IT IS SO ORDERED.

27 Dated: November 7, 2014

28 /s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE