

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DENELL CAVER,

Case No. 1:11-cv-01025-AWI-SKO (PC)

Plaintiff,

ORDER DENYING MOTION TO COMPEL
RESPONSES TO PODS 3 AND 4, WITHOUT
PREJUDICE TO RENEWAL WITHIN
THIRTY DAYS, ACCOMPANIED BY
DEFENDANT GARCIA'S RESPONSES

v.

E. GOMEZ, et al.,

Defendants.

(Doc. 64)

Plaintiff Denell Caver, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 20, 2011. This action is proceeding on Plaintiff's second amended complaint, filed on April 10, 2012, against Defendants Gomez, Stark, and Garcia for acting with deliberate indifference to Plaintiff's safety, in violation of the Eighth Amendment.

The deadline for the completion of all discovery between Plaintiff and Defendant Garcia was July 15, 2014, and on June 2, 2014, Plaintiff filed a timely motion to compel Defendant Garcia to respond to the interrogatories and requests for the production of documents ("PODs") served by Plaintiff on April 1, 2014. (Docs. 62, 64.) On June 9, 2014, based on receipt of Defendant Garcia's responses on May 28, 2014, Plaintiff filed a notice of withdrawal of his

1 motion to compel as to all discovery requests except for PODs 3 and 4.¹ Defendant Garcia filed
2 an opposition on June 30, 2014, and Plaintiff filed a reply on July 21, 2014.

3 The discovery process is subject to the overriding limitation of good faith. *Asea, Inc. v.*
4 *Southern Pac. Transp. Co.*, 669 F.2d 1242, 1246 (9th Cir. 1981) (quotation marks and citation
5 omitted). Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
6 party's claim or defense, and for good cause, the Court may order discovery of any matter relevant
7 to the subject matter involved in the action. Fed. R. Civ. P. 26(b)(1) (quotation marks omitted).
8 Relevant information need not be admissible at the trial if the discovery appears reasonably
9 calculated to lead to the discovery of admissible evidence. *Id.* (quotation marks omitted).

10 Generally, "[t]he party opposing discovery bears the burden of resisting disclosure,"
11 *Rogers v. Giurbino*, 288 F.R.D. 469, 479 (S.D. Cal. 2012) (citation omitted), but in cases such as
12 this, the parties were relieved of the meet and confer requirement and the requirement that they
13 file a joint statement regarding their discovery disagreement, Fed. R. Civ. P. 26(c)(1), 37(a)(1);
14 Local Rule 251. As a result, Plaintiff bears an initial procedural burden in moving to compel.
15 Fed. R. Civ. P. 7(b)(1). Plaintiff must identify which discovery requests are at issue and why he is
16 entitled to the relief he seeks (e.g., why the information is relevant and why the objections lack
17 merit). *E.g., Grabek v. Dickinson*, No. CIV S-10-2892 GGH P, 2012 WL 113799, at *1 (E.D. Cal.
18 Jan. 13, 2012); *Womack*, 2011 WL 6703958, at *3; *Mitchell v. Felker*, No. CV 08-119RAJ, 2010
19 WL 3835765, at *2 (E.D. Cal. Sep. 29, 2010); *Ellis v. Cambra*, No. 1:02-cv-05646-AWI-SMS PC,
20 2008 WL 860523, at *4 (E.D. Cal. Mar. 27, 2008).

21 In this case, Plaintiff identified the PODs at issue but he did not provide a copy of
22 Defendant Garcia's responses. Without that information, the Court cannot determine whether
23 Plaintiff is entitled to the relief he seeks.

24 Defendant Garcia addressed this procedural deficiency in his opposition, and in reply,
25 Plaintiff provided a copy of Defendant's response to interrogatory 8, which Plaintiff contends
26 supports his need for the documents sought. Plaintiff did not, however, provide Defendant
27

28 ¹ If Plaintiff served his discovery requests on April 1, 2014, the deadline for Defendant Garcia to serve his responses
was May 19, 2014. Fed. R. Civ. P. 6(d); Disc./Sched.Order, ¶2.

1 Garcia's responses to PODs 3 and 4, and the absence of the responses in the record precludes the
2 Court from determining the sufficiency of Defendant's responses and/or objections.

3 The Court is vested with broad discretion to manage discovery and under the
4 circumstances, which include the timeliness of the motion to compel, Plaintiff's pro se status, and
5 Defendant's unavailing relevancy argument, Plaintiff shall have thirty days to renew his motion to
6 compel responses to PODs 3 and 4, supported by a copy of Defendant's responses. *Hunt v. Cnty.*
7 *of Orange*, 672 F.3d 606, 616 (9th Cir. 2012).

8 Accordingly, based on the foregoing, Plaintiff's motion to compel responses to PODs 3
9 and 4 is HEREBY DENIED, without prejudice to renewal within **thirty (30) days**, accompanied
10 by a copy of Defendant Garcia's responses to PODs 3 and 4.

11
12
13 IT IS SO ORDERED.

14 Dated: July 28, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28