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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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12 CARLOS MANUEL FLORES,

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14 Plaintiff,

15 vs.

16 CORCORAN STATE PRISON, et al.,

17
18 Defendants.
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1:12-cv-00977-GSA-PC

ORDER GRANTING DEFENDANT
MOON'S MOTION TO COMPEL
(Doc. 18.)

ORDER FOR PLAINTIFF TO RESPOND
TO REQUESTS TWO, THREE, AND FOUR
OF DEFENDANT MOON'S REQUEST FOR
PRODUCTION OF DOCUMENTS, SET
ONE, WITHIN THIRTY DAYS

21 **I. BACKGROUND**

22 Carlos Manuel Flores ("Plaintiff") is a state prisoner proceeding pro se and in forma
23 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
24 commencing this action on June 18, 2012. (Doc. 1.) The parties have consented to Magistrate
25 Judge jurisdiction pursuant to 28 U.S.C. § 636(c). (Docs. 5, 15.) This case now proceeds
26 with the First Amended Complaint, filed by Plaintiff on September 17, 2012, against defendant
27 Dr. Moon ("Defendant"), for failure to provide adequate medical care to Plaintiff, in violation
28 of the Eighth Amendment. (Doc. 7.)

1 On January 15, 2013, the court issued a Scheduling Order establishing pretrial deadlines,
2 including a deadline of September 15, 2013 for completion of discovery. (Doc. 13.) On
3 September 13, 2013, Defendant filed a motion to compel discovery responses. (Doc. 18.)
4 Plaintiff has not filed an opposition to the motion to compel. (Court Record.)

5 **II. MOTION TO COMPEL**

6 **A. Legal Standards**

7 **Rule 26(b) - Scope of Discovery**

8 Under Rule 26(b), “[U]nless otherwise limited by court order, the scope of discovery is
9 as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to
10 any party's claim or defense — including the existence, description, nature, custody, condition,
11 and location of any documents or other tangible things and the identity and location of persons
12 who know of any discoverable matter. For good cause, the court may order discovery of any
13 matter relevant to the subject matter involved in the action.¹ Relevant information need not be
14 admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of
15 admissible evidence.” Fed. R. Civ. P. 26(b)(1).

16 **Rule 34 - Production of Documents**

17 Under Rule 34(a), “any party may serve on any other party a request to produce and
18 permit the party making the request . . . to inspect and copy any designated documents . . .
19 which are in the possession, custody or control of the party upon whom the request is served.”
20 Fed. R. Civ. P. 34(a)(1). “[A] party need not have actual possession of documents to be
21 deemed in control of them.” Clark v. Vega Wholesale Inc., 181 F.R.D. 470, 472 (D.Nev. 1998)
22 quoting Estate of Young v. Holmes, 134 F.R.D. 291, 294 (D.Nev. 1991). “A party that has a
23 legal right to obtain certain documents is deemed to have control of the documents.” Clark, 81
24 F.R.D. at 472. Under Rule 34(b), the party to whom the request is directed must respond in
25 writing that inspection and related activities will be permitted as requested, or state an objection
26 to the request, including the reasons. Fed. R. Civ. P. 34(b)(2). Also, “[a] party must produce

27 ¹“Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be
28 without the evidence; and (2) the fact is of consequence in determining the action.” Fed. R. Evid. 401.

1 documents as they are kept in the usual course of business or must organize and label them to
2 correspond to the categories in the request.” Fed. R. Civ. P. 34(b)(E)(I).

3 **Court’s Scheduling Order**

4 The court’s Scheduling Order of January 15, 2013, instructed the parties that
5 “[r]esponses to written discovery requests shall be due forty-five (45) days after the request is
6 first served.” (Doc. 13 at 1 ¶2.) The parties were also informed that “[u]nless otherwise
7 ordered, Rule 251 shall not apply, and the requirement set forth in Federal Rules of Civil
8 Procedure 26 and 37 . . . shall not apply.”² (Id. at 2 ¶5.)

9 **Rule 37 - Motions to Compel**

10 Pursuant to Rule 37(a), a party propounding discovery or taking a deposition may seek
11 an order compelling responses when an opposing party has failed to respond or has provided
12 evasive or incomplete responses. Fed. R. Civ. P. 37(a)(3)(B). “[A]n evasive or incomplete
13 disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.”
14 Fed. R. Civ. P. 37(a)(4). “It is well established that a failure to object to discovery requests
15 within the time required constitutes a waiver of any objection.” Richmark Corp. v. Timber
16 Falling Consultants, 959 F.2d 1468, 1473 (9th Cir.1992) (citing Davis v. Fendler, 650 F.2d
17 1154, 1160 (9th Cir.1981)). The moving party bears the burden of demonstrating “actual and
18 substantial prejudice” from the denial of discovery. See Hallett v. Morgan, 296 F.3d 732, 751
19 (9th Cir. 2002) (citations omitted).

20 **B. Defendant’s Motion**

21 Defendant seeks an order compelling Plaintiff to respond to Defendant’s Request for
22 Production of Documents, Set One. Defendant provides evidence that on February 5, 2013,
23 defense counsel served Defendant’s Request for Production of Documents, Set One, upon
24 Plaintiff. (Declaration of Jennifer Marquez (“Marquez Decl.”), Doc. 18-1 at ¶2, Exh. A.)

25
26 ²“Federal Rules of Civil Procedure 26 and 37 [require] that a party seeking relief from the court
27 concerning obligations to respond to requests for discovery certify that he or she has in good faith conferred or
28 attempted to confer with the other party or person in an effort to resolve the dispute prior to seeking court action
shall not apply. Voluntary compliance with this provision of Rules 26 and 37 is encouraged, however.” (Doc. 13
at 2 ¶5.)

1 Thus, pursuant to the court's Scheduling Order, Plaintiff's responses to the Request for
2 Production were due no later than March 25, 2013.³ (Doc. 13 at 1 ¶2.) On April 12, 2013,
3 defense counsel sent Plaintiff a letter about his failure to respond and produce documents,
4 requesting Plaintiff to provide responses no later than May 10, 2013, or a motion to compel
5 would be filed. (Marquez Decl. at ¶¶3, 4, Exh. B.) As of September 13, 2013, the date of
6 Defendant's motion to compel, Plaintiff had not provided any response to defense counsel's
7 letter or to the Request for Production. (Id. at ¶5.)

8 Defendant seeks an order compelling Plaintiff to respond and produce documents in
9 response to the Request for Production. Specifically, Defendant seeks to compel responses to
10 the following three requests in the Request for Production:

11 **REQUEST FOR PRODUCTION NO. 2:**

12 All documents that support your contention that Dr. Moon
13 violated your civil or constitutional rights.

14 **REQUEST FOR PRODUCTION NO. 3:**

15 All documents that support your contention that you suffered
16 injury or harm as a result of the purported acts or omissions by
17 Defendant Dr. Moon.

18 **REQUEST FOR PRODUCTION NO. 4:**

19 All medical records relating to your contention that Dr. Moon
20 violated your civil or constitutional rights.

21 Defendant argues that the requested discovery is nonprivileged and relevant to
22 Plaintiff's claims and to Dr. Moon's defense of this case.

23 **C. Discussion**

24 Based on the evidence set forth above by Defendant, the court finds that Plaintiff failed
25 to timely respond to Defendant's Request for Production of Documents, Set One, thus waiving
26 any objections. The court also finds that Defendant's requested discovery concerns matters

27 ³ Pursuant to Rule 6(d), "When a party may or must act within a specified time after service and service is
28 made under Rule 5(b)(2)(C), (D), (E), or (F), 3 days are added after the period would otherwise expire under Rule
6(a.) Fed. R. Civ. P. 6(d).

1 relevant to the subject matter involved in this action. Plaintiff has not filed any opposition to
2 Defendant's motion to compel. Based on this evidence, the court finds good cause to grant
3 Defendant's motion to compel.

4 **III. CONCLUSION**

5 Based on the foregoing, and good cause appearing, IT IS HEREBY ORDERED that:

- 6 1. Defendant Moon's motion to compel, filed on September 13, 2013, is
7 GRANTED;
- 8 2. Plaintiff is required to respond to Requests Two, Three, and Four of Defendant's
9 Request for Production of Documents, Set One, within thirty (30) days of the
10 date of service of this order;
- 11 3. No objections to the discovery requests are permitted; and
- 12 4. Plaintiff's failure to comply with this order shall result in a recommendation that
13 this action be dismissed.

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17 IT IS SO ORDERED.

18 Dated: December 5, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE