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

ALBERTO VILLESICAS,)	Case No.: 1:12-cv-02068-SAB (PC)
Plaintiff,)	
v.)	ORDER DENYING PLAINTIFF’S MOTION
)	TO COMPEL AND DENYING PLAINTIFF’S
M.T. DOTSON, et al.,)	MOTION FOR RECONSIDERATION OF DENIAL
Defendants.)	OF THIRD REQUEST FOR EXTENSION OF THE
)	DISCOVERY DEADLINE
)	[ECF Nos. 43, 47]
)	

Plaintiff Alberto Villescas is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of the United States Magistrate Judge. Local Rule 302.

This action is proceeding on Plaintiff’s claim of deliberate indifference to a serious risk of harm against Defendant D. Fisher, retaliation against Defendants C. Hernandez, M.T. Dotson, J. Madrigal, and W. Tucker, and excessive force against Defendant W. Tucker. (ECF No. 14.)

On June 4, 2015, Plaintiff filed a motion to compel discovery. (ECF No. 43.) Defendants filed an opposition on June 22, 2015. (ECF No. 44.) Pursuant to Local Rule 230(l), the motion is deemed submitted for review.

On July 16, 2015, Plaintiff filed a motion for reconsideration of the Court’s denial of Plaintiff’s third request for an extension of the discovery deadline. (ECF No. 47.) Because the Court does not

1 need a response to Plaintiff's motion for reconsideration, the Court elects to rule on the motion prior to
2 expiration period to file a response pursuant to Local Rule 230(J).

3 **I.**

4 **DISCUSSION**

5 **A. Legal Standard**

6 Plaintiff is proceeding pro se and he is a state prisoner challenging his conditions of
7 confinement. As a result, the parties were relieved of some of the requirements which would
8 otherwise apply, including initial disclosure and the need to meet and confer in good faith prior to
9 involving the Court in a discovery dispute. Fed. R. Civ. P. 26(a)(1); Fed. R. Civ. P. 26(c); Fed. R. Civ.
10 P. 37(a)(1); Local Rules 240, 251; ECF No. 22, Discovery and Scheduling Order, ¶4. Further, where
11 otherwise discoverable information would pose a threat to the safety and security of the prison or
12 infringe upon a protected privacy interest, a need may arise for the Court to balance interests in
13 determining whether disclosure should occur. See Fed. R. Civ. P. 26(c); Seattle Times Co. v.
14 Rhinehart, 467 U.S. 20, 35 n.21, 104 S.Ct. 2199 (1984) (privacy rights or interests implicit in broad
15 purpose and language of Rule 26(c)); Burlington N. & Santa Fe Ry. Co. v. United States Dist. Court
16 for the Dist. of Montana, 408 F.3d 1142, 1149 (9th Cir. 2005) (discussing assertion of privilege); Soto
17 v. City of Concord, 162 F.R.D. 603, 616 (N.D. Cal. 1995) (recognizing a constitutionally-based right
18 of privacy that can be raised in discovery); see also Garcia v. Clark, No. 1:10-CV-00447-LJO-DLB
19 PC, 2012 WL 1232315, at *6 n.5 (E.D. Cal. Apr. 12, 2012) (noting inmate's entitlement to inspect
20 discoverable information may be accommodated in ways which mitigate institutional safety concerns);
21 Robinson v. Adams, No. 1:08-cv-01380-AWI-BAM PC, 2012 WL 912746, at *2-3 (E.D. Cal. Mar.
22 16, 2012) (issuing protective order regarding documents containing information which implicated the
23 safety and security of the prison); Orr v. Hernandez, No. CV-08-0472-JLQ, 2012 WL 761355, at *1-2
24 (E.D. Cal. Mar. 7, 2012) (addressing requests for protective order and for redaction of information
25 asserted to risk jeopardizing safety and security of inmates or the institution if released); Womack v.
26 Virga, No. CIV S-11-1030 MCE EFB P, 2011 WL 6703958, at *5-6 (E.D. Cal. Dec. 21, 2011)
27 (requiring defendants to submit withheld documents for in camera review or move for a protective
28 order).

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

10 Generally, if the responding party objects to a discovery request, the party moving to compel
11 bears the burden of demonstrating why the objections are not justified. Grabek v. Dickinson, No. CIV
12 S-10-2892 GGH P, 2012 WL 113799, at *1 (E.D. Cal. Jan. 13, 2012); Womack, 2011 WL 6703958, at
13 *3; Mitchell v. Felker, No. CV 08-119RAJ, 2010 WL 3835765, at *2 (E.D. Cal. Sep. 29, 2010); Ellis
14 v. Cambra, No. 1:02-cv-05646-AWI-SMS PC, 2008 WL 860523, at *4 (E.D. Cal. Mar. 27, 2008).
15 This requires the moving party to inform the Court which discovery requests are the subject of the
16 motion to compel, and, for each disputed response, why the information sought is relevant and why
17 the responding party's objections are not meritorious. Grabek, 2012 WL 113799, at *1; Womack,
18 2011 WL 6703958, at *3; Mitchell, 2010 WL 3835765, at *2; Ellis, 2008 WL 860523, at *4.
19 However, the Court is vested with broad discretion to manage discovery and notwithstanding these
20 procedures, Plaintiff is entitled to leniency as a pro se litigation; therefore, to the extent possible, the
21 Court endeavors to resolve his motion to compel on its merits. Hunt v. County of Orange, 672 F.3d
22 606, 616 (9th Cir. 2012); Survivor Media, Inc. v. Survivor Productions, 406 F.3d 625, 635 (9th Cir.
23 2005); Hallett v. Morgan, 296 F.3d 732, 751 (9th Cir. 2002).

24 **B. Motion to Compel**

25 1. Plaintiff's Motion is Untimely

26 On April 25, 2014, the Court issued the discovery and scheduling order, setting the deadline
27 for completion of all discovery (including motions to compel) as December 25, 2014. (ECF No. 22.)
28

1 On October 31, 2014, Plaintiff moved to extend the discovery deadline. (ECF No. 26.)
2 Defendants did not object to Plaintiff's request. The Court granted Plaintiff's request and the
3 discovery deadline was extended to March 5, 2015. (ECF No. 29.)

4 On January 29, 2015, Plaintiff moved for a second extension of the discovery deadline. (ECF
5 No. 35.) As with Plaintiff's prior request, Defendants did not oppose Plaintiff's second request. (ECF
6 No. 36.) The Court granted Plaintiff's second request, and the discovery deadline was extended to
7 May 5, 2015. (ECF No. 37.)

8 On April 21, 2015, Plaintiff moved for a third extension of the discovery deadline. (ECF No.
9 39.) Defendants opposed Plaintiff's request on May 8, 2015. (ECF No. 40.) The Court denied
10 Plaintiff's third request on May 27, 2015, based on Plaintiff's failure to demonstrate good cause.
11 (ECF No. 42.) Consequently, the May 5, 2015, discovery remained in full force and effect.

12 With applicable of the mailbox rule,¹ Plaintiff filed the instant motion to compel on May 28,
13 2015, and Plaintiff's motion is untimely.² (ECF No. 43.) Plaintiff does not explain the delay in
14 bringing his motion, and Plaintiff has not filed or been granted an extension of the discovery deadline
15 to file a motion to compel. Accordingly, Plaintiff's motion to compel is untimely and is subject to
16 denial on that basis alone. In any event, notwithstanding the untimeliness of Plaintiff's motion, it must
17 be denied on procedural grounds and for lack of merit.

18 2. Procedural Defects of Motion to Compel as to Defendants' Interrogatory Responses

19 In his motion to compel, Plaintiff does not include a copy of Defendants' interrogatory
20 responses, and Plaintiff's motion provides no indication of what, if any, objections by Defendants
21 were unjustified. Thus, it is impossible to decipher exactly which discovery requests the court should
22 compel Defendants to answer. Although Plaintiff is proceeding pro se, as the moving party he bears
23 "the burden of informing the Court of which discovery requests are the subject of the motion to
24 compel, which of the responses are disputed, why the responses are deficient, why the objections are
25 not justified, and why the information sought is relevant to the prosecution of this case." Robinson v.

26 _____
27 ¹ See Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009) (citing Houston v. Lack, 487 U.S. 266, 270-271 (1988)).

28 ² The April 25, 2014, discovery and scheduling order specifically stated that the deadline for the completion of discovery included the filing of all motions to compel discovery. (ECF No. 22, Order ¶ 7.)

1 Adams, Civ. No. 08-1380, 2010 WL 1948252, at *2 (E.D. Cal. May 11, 2010) (citing Hallett v.
2 Morgan, 296 F.3d 732, 751 (9th Cir. 2002) (moving party bears the burden of showing that denial of
3 discovery requests in actual and substantial prejudice)) (other citations omitted). Because Plaintiff’s
4 motion to compel does not provide sufficient detail it must be denied.

5 3. Defendants’ Responses to Requests for Production of Documents

6 If a party, in response to a request for production under Rule 34, fails to produce or permit
7 inspection, the discovery party may move for an order compelling production. Fed. R. Civ. P.
8 37(a)(3). As the moving party, Plaintiff bears the burden of informing the Court of (1) which
9 discovery requests are the subject of his motion to compel, (2) which of Defendants’ responses are
10 disputed, (3) why he believes Defendants’ responses are deficient, (4) why Defendants’ objections are
11 not justified, and (5) why the information he seeks through discovery is relevant to the prosecution of
12 this action. See, e.g., Brooks v. Alameida, No. CIV S-03-2343 JAM EFB P, 2009 WL 331358, *2
13 (E.D. Cal. Feb. 10, 2009 (“Without knowing which responses plaintiff seeks to compel or on what
14 grounds, the court cannot grant Plaintiff’s motion.”))

15 In his motion to compel, Plaintiff states he “seeks any and all grievances, complaints, or other
16 documents received by the Defendants or their agents and any and all memoranda, investigative files
17 or other documents created in response to such documents. The Defendants state their objections
18 generally and fail to provide at the very least an explanation and list of any documents or provide any
19 information about the documents to be reviewed by a Judge. Plaintiff seeks documents pertaining to
20 complaints and allegations about Defendants, not about their medical data, or information about their
21 records of tardiness, leaves, etc. The information sought is highly relevant. The documents are
22 evidence that support the claims against Defendants.” (ECF No. 43, Mot. at 2:11-18.)

23 Defendants submit that Plaintiff propounded fourteen requests for production of documents,
24 and Defendants either provided responsive materials or verified that they were unable to locate such
25 materials after a diligent search, with respect to ten of the requests. Defendants address the four of
26 Plaintiff’s requests for production of documents, which presumably may be the subject of the instant
27 motion to compel. Based on Defendants’ submission and analysis, the Court likewise will address
28

1 Plaintiff's request for production of documents, set one, numbers 1, 2, 3, and 11. The ten other
2 requests will be addressed separately below.

3 **a. Request for Production 1, Set One**

4 **Request for Production 1:**

5 "Any and all documents (electronic or otherwise) concerning Appeals, Complaints,
6 Confrontations, Disciplinary Actions, Evaluations, Grievances, Internal Affairs Reports,
7 Investigations, Peer Reviews, Personnel Files, Reprimands, Staff Misconduct, Suits, and
8 Supervisor Reviews for each Defendant: D. Fischer, M.T. Dotson, W. Tucker, C. Hernandez, J.
9 Madrigal."

10 **Response to Request for Production 1:**

11 Defendants object on the grounds that this request is overbroad and calls for vast amounts of
12 information that is simply irrelevant to Plaintiff's claims against the five Defendants. So too,
13 the request is unduly burdensome because it would require Defendants or other officials to
14 spend countless hours searching for items that may or may not exist, but are irrelevant to the
15 claims in this case in either event. Last, to the extent any responsive materials exist,
16 Defendants object that the request calls for information that is protected from disclosure by the
17 official-information privilege.

18 (ECF No. 43 at 30.)

19 **Ruling:**

20 Plaintiff's motion to compel a further request must be denied. Plaintiff's request is overbroad
21 as it is not limited in time or scope. Defendants simply cannot respond to this request because the
22 amount of materials is potentially limitless, and they cannot guess which documents Plaintiff may be
23 seeking. Accordingly, Plaintiff's motion to compel is DENIED.

24 **b. Request for Production 2, Set One**

25 **Request for Production 2:**

26 "Any and all responses to documents request in #1."

27 **Response to Request for Production 2:**

28 Defendants object on the grounds that this request is overbroad and calls for vast amounts of
information that is simply irrelevant to Plaintiff's claims against the five Defendants. So too,
the request is unduly burdensome because it would require Defendants or other officials to
spend countless hours searching for items that may or may not exist, but are irrelevant to the
claims in this case in either event. Last, to the extent any responsive materials exist,

1 Defendants object that the request calls for information that is protected from disclosure by the
2 official-information privilege.

3 **Ruling:**

4 Plaintiff's motion to compel a further response to Request for Production No. 2 must be
5 DENIED for the same reasons discussed above as to Request for Production No. 1.

6 **c. Request for Production 3, Set One**

7 **Request for Production 3:**

8 "Any and all witness statements that have been made against any Defendant in previous
9 incidents, or in relation to documents requested in #1."

10 **Response to Request for Production 3:**

11 Defendants object on the grounds that this request is overbroad and calls for vast amounts of
12 information that is simply irrelevant to Plaintiff's claims against the five Defendants. So too,
13 the request is unduly burdensome because it would require Defendants or other officials to
14 spend countless hours searching for items that may or may not exist, but are irrelevant to the
15 claims in this case in either event. Last, to the extent any responsive materials exist, Defendant
16 object that the request calls for information that is protected from disclosure by the official-
17 information privilege.

18 (ECF No. 43, at 30-31.)

19 **Ruling:**

20 Plaintiff's motion to compel a further response to Request for Production No. 3 must be
21 DENIED for the same reasons discussed above as to Request for Production No. 1.

22 **d. Request for Production 11, Set One**

23 Request for Production 11:

24 "Inmate/Parolee Appeal CDC 602 by inmate Pentecost, P72157, concerning 'converted cells'
25 by any name and the response to that appeal."

26 **Response to Request for Production 11:**

27 Defendants object that this request lacks foundation because it assumes as true facts which
28 have not been established; namely, that the inmate named here ever submitted an
administrative appeal relating to "converted cells." Even assuming such an appeal existed,
Defendants object on the grounds that disclosure of such an appeal would violate third-party

1 privacy rights. Last, Defendants object that this request calls for production of materials that
2 are irrelevant to Plaintiff's claims against the five Defendants in this case.

3 (ECF No. 43 at 33.)

4 **Ruling:**

5 Plaintiff's motion to compel a further response must be DENIED. Plaintiff fails to explain
6 how this third-party appeal is relevant to the specific claims at issue in this case. In a letter attached to
7 Plaintiff's motion, Plaintiff asserts that "[t]he appeal is relevant to Plaintiff's claim against Defendant
8 Fisher as evidence under Rule 404." (ECF No. 43 at 39.) The letter attached to Plaintiff's motion
9 does not explain how the appeal (if it exists), is relevant to the claims against Fisher; rather, Plaintiff
10 merely contends it is relevant evidence under Rule 404 of the Federal Rules of Evidence. Plaintiff has
11 failed to demonstrate how any appeal by inmate Fisher is relevant to claims at issue in this action, and
12 Plaintiff has not demonstrated a proper purpose for the use of such third-party appeal as character
13 evidence under Federal Rule of Evidence 404. Accordingly, Plaintiff's motion to compel must be
14 denied.

15 e. **Requests for Production 4, 5, 6, 7, 8, 9, 10, 12, and 13**

16 As previously stated, Plaintiff's first set of production requests included fourteen separate
17 requests for documents. (ECF No. 43 at 29-34.) With the exception of the four responses discussed
18 above, Defendants submit that they have already responded fully to each of Plaintiff's production
19 requests. (ECF No. 44, at 7-8.)

20 Defendants submit that with respect to Plaintiff's requests for production 4, 5, 6, 7, 8, 9, 10, 12,
21 and 13, Defendants timely produced over 220 pages of materials as part of eight different attachments.
22 (ECF No. 44-1, Delgado Decl. ¶ 7.) Plaintiff does not mention the production of such documentation,
23 and Defendants have attached the documents to their response. (ECF No. 44, Ex. A.) In addition,
24 Defendants submit that all five Defendants produced copies of their post orders at Pleasant Valley
25 State Prison as part of their responses to Plaintiff's interrogatories. (Resp. to Req. for Produc. Nos 5-
26 9, ECF No. 43 at 31-32.)

27 Plaintiff's motion does not indicate how Defendants' responses are incomplete or unjustified,
28 and based on the representation by Defendants they have produced all responsive materials they were

1 able to locate, and no additional responsive documents to produce exist. Plaintiff must accept
2 Defendants' response and any bare assertion by Plaintiff regarding incomplete compliance is
3 insufficient to support a motion to compel.

4 With regard specifically to Plaintiff request for production 13 (in which Plaintiff requested
5 "Inmate/Parolee Appeal CDC 602 by Villescas, P16275, after the disposition of RVR 115 by Tucker,
6 which staff also lost.") and 14 (in which Plaintiff requested "Any and all documentation concerning
7 approval to convert regular cells for use by DPW inmates or into ADA cells."), Defendants were
8 unable to locate any responsive documents after a diligent search, and such indication was verified in
9 their responses. Absent evidence to the contrary-not present here, Plaintiff is required to accept
10 Defendants' responses that there is no responsive documents to produce. Accordingly, Plaintiff's
11 motion to compel a further response must be denied.

12 **C. Motion for Reconsideration**

13 1. Procedural Background

14 Pursuant to the Court's discovery and scheduling order issued April 25, 2014, the Court set a
15 deadline for the completion of all discovery by December 25, 2014-eight months after issuance of the
16 order. (ECF No. 22.)

17 On October 31, 2014, Plaintiff filed a motion to extend the discovery deadline. Defendants did
18 not oppose the motion, and the motion was granted extending the deadline for discovery to March 5,
19 2015. (ECF Nos. 26, 29.)

20 Plaintiff filed a second motion to extend the discovery deadline on January 29, 2015.
21 Defendants did not oppose the motion, and the motion was granted extending the discovery deadline
22 to May 5, 2015, and the dispositive motion deadline to July 5, 2015. (ECF Nos. 35, 36, 37.)

23 On April 21, 2015, Plaintiff filed a third motion to extend the discovery and dispositive motion
24 deadline. (ECF No. 39.) On May 8, 2015, Defendants filed an opposition to Plaintiff's motion. (ECF
25 No. 40.) Plaintiff filed a reply on May 22, 2015, titled a "motion for hearing of response to defense
26 opposition to extension of time." (ECF No. 41.)

27 On May 27, 2015, the Court denied Plaintiff's third request to extend the discovery deadline
28 finding that Plaintiff failed to demonstrate good cause for a further extension of the discovery deadline

1 given that Plaintiff had over a year to conduct discovery, as the deadline had previously been extended
2 twice. (ECF No. 42, at 3.)

3 2. Legal Standard for Reconsideration

4 “A motion for reconsideration should not be granted, absent highly unusual circumstances,
5 unless the district court is presented with newly discovered evidence, committed clear error, or if there
6 is an intervening change in the controlling law.” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH
7 & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation marks and citations omitted). “A party
8 seeking reconsideration must show more than a disagreement with the Court’s decision, and
9 recapitulation ...” of that which was already considered by the Court in rendering its decision. United
10 States v. Westlands Water Dist., 134 F.Supp.2d 1111, 1131 (E.D. Cal. 2011). To succeed, a party
11 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
12 decision. See Kern-Tulare Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D. Cal. 1986),
13 aff’d in part and rev’d in part on other grounds, 828 F.2d 514 (9th Cir. 1987). Additionally, pursuant
14 to this Court’s Local Rules, when filing a motion for reconsideration, a party must show what “new or
15 different facts or circumstances claimed to exist which did not exist or were not shown upon such
16 prior motion, or what other grounds exist for the motion.” Local Rule 230(j).

17 Once a scheduling order has been filed pursuant to Rule 16, the “schedule may be modified
18 only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). “Rule 16(b)’s ‘good
19 cause’ standard primarily considers the diligence of the party seeking the amendment. The Court may
20 modify the pretrial schedule ‘if it cannot reasonably be met despite the diligence of the party seeking
21 the extension.’” Johnson v. Mammoth Recreation, Inc., 975 F.2d 604, 609 (9th Cir. 1992) (citing Fed.
22 R. Civ. P. 16 advisory committee’s notes).

23 3. Ruling on Motion for Reconsideration

24 In his motion for reconsideration, Plaintiff contends that he has been unable to comply with the
25 discovery deadlines due to his medical issues. Plaintiff also contends that he could not conduct
26 additional discovery because defense counsel failed to comply with his first set of discovery requests.
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1 Plaintiff presents his motion for reconsideration to merely repeat facts that were presented in
2 his motion for extension of the discovery deadline and/or present facts that should have been presented
3 in his motion for extension of the discovery deadline.

4 Even assuming the truth of Plaintiff's allegations regarding his medical issues, Plaintiff has had
5 over a year (April 25, 2014 to May 5, 2015) to conduct discovery (unopposed by Defendants), and
6 Plaintiff failed to avail himself of such extensive time period. There is nothing before the Court to
7 reveal that Plaintiff's health prevented him from conducting discovery during the discovery time
8 frame.³ In addition, Plaintiff has failed to demonstrate due diligence on his part in attempting to
9 conduct discovery during the discovery period. Furthermore, as explained above Plaintiff was served
10 with Defendants responses to his first set of discovery requests on January 8, 2015, and the fact that
11 Plaintiff believed such responses were inadequate (which as explained above is not correct) does not
12 provide a basis to extend the discovery deadline. More importantly, Plaintiff's third motion for an
13 extension of time, instant motion for reconsideration, and motion to compel, does not identify or even
14 suggest the nature of any further discovery he may need with regarding the claims at issue in this
15 action. Plaintiff has failed to demonstrate that reconsideration of the Court's decision is warranted,
16 and his motion for reconsideration of the Court's May 27, 2015, order is DENIED.

17 **II.**

18 **ORDER**

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

- 20 1. Plaintiff's motion to compel is DENIED; and
21 2. Plaintiff's motion for reconsideration of the Court's May 27, 2015, order is DENIED.

22
23 IT IS SO ORDERED.

24 Dated: July 22, 2015



25 UNITED STATES MAGISTRATE JUDGE

26
27 _____
28 ³ Plaintiff did not submit any medical evidence in connection with the instant motion to substantiate his claim regarding the extent of his medical issues.