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

BENITA PALMER, et al.,	)	Case No.: 1:13-cv-01400 - AWI - JLT
	)	
Plaintiffs,	)	ORDER VACATING THE HEARING DATE OF
	)	JULY 31, 2015
v.	)	
	)	
SALVADOR VASQUEZ, et al.,	)	ORDER GRANTING DEFENDANTS’ MOTION
	)	TO COMPEL (Doc. 49)
Defendants.	)	
	)	

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Plaintiffs assert that Ladwright Lamon Smith (the husband of plaintiff Benita Palmer and the father of plaintiffs K.W., Nicole Palmer, and Christian Smith) “was murdered while incarcerated at the California Correctional Institution, located in Tehachapi, California prison.” (Doc. 28 at 3) Plaintiffs seek to hold Defendants liable for violations of civil rights pursuant to 42 U.S.C. § 1983. (*See id*)

Defendants report Plaintiff failed to serve their initial disclosures in this action, and failed to respond to discovery requested by Defendants. (Doc. 49) Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Defendants seek to compel Plaintiff to submit their initial disclosures as previously ordered by the Court, respond to the interrogatories, and respond to their request for production. (*Id.*) Plaintiffs did not oppose the motion. The Court has reviewed the motion and supporting documents, and finds the matter suitable for decision without oral arguments. Accordingly, the matter is taken under submission pursuant to Local Rule 230(g) and the hearing date of July 31, 2015 is **VACATED**. For the reasons set forth below, Defendants’ motion to compel discovery is **GRANTED**.

1 **I. Relevant Factual and Procedural History**

2 The Court held a scheduling conference on May 21, 2014, at which deadlines related to  
3 discovery were set for the parties. (Doc. 33) On January 29, 2015, the parties stipulated to an  
4 extension of time to resolve an ongoing discovery dispute and to allow the completion of non-expert  
5 discovery. (See Docs. 41, 42) Accordingly, the Court ordered the parties to complete all non-expert  
6 discovery no later than April 3, 2015, and to file any non-dispositive motions no later than July 3, 2015.  
7 (Doc. 42 at 1-2)

8 On June 13, 2015, Defendants filed the motion now pending before the Court, asserting  
9 Plaintiff had failed to comply with the Court’s order to make his initial disclosures pursuant to Rule 26  
10 of the Federal Rules of Civil Procedure, and that Plaintiff failed to respond to Defendants’ discovery  
11 requests, including interrogatories and requests for production of documents. (Doc. 49)

12 **II. Scope of Discovery and Requests**

13 The scope and limitations of discovery are set forth by the Federal Rules of Civil Procedure  
14 and Evidence. Fed. R. Civ. P. 26(b) states:

15 Unless otherwise limited by court order, parties may obtain discovery regarding any  
16 nonprivileged matter that is relevant to any party’s claim or defense – including the  
17 existence, description, nature, custody, condition, and location of any documents or  
18 other tangible things...For good cause, the court may order discovery of any matter  
relevant to the subject matter involved in the accident. Relevant information need not  
be admissible at the trial if the discovery appears reasonably calculated to lead to the  
discovery of admissible evidence.

19 Relevant evidence is defined as “evidence having any tendency to make the existence of any fact that  
20 is of consequence to the determination of the action more probable or less probable than it would be  
21 without the evidence.” Fed. R. Evid. 401. Relevancy to a subject matter is interpreted “broadly to  
22 encompass any matter that bears on, or that reasonably could lead to other matter that could bear on,  
23 any issue that is or may be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

24 **A. Interrogatories**

25 A party may propound interrogatories relating to any matter that may be inquired to under Rule  
26 26(b). Fed. R. Civ. P. 33(a). A responding party is obligated to respond to the fullest extent possible,  
27 and any objections must be stated with specificity. Fed. R. Civ. P. 33(b)(3)-(4). In general, a  
28 responding party is not required “to conduct extensive research in order to answer an interrogatory, but

1 a reasonable effort to respond must be made.” *Haney v. Saldana*, 2010 U.S. Dist. LEXIS 93447, at \*9  
2 (E.D. Cal. Aug. 24, 2010) (citing *L.H. v. Schwarzenegger*, 2007 U.S. Dist. LEXIS 73753 (E.D. Cal.  
3 Sep. 21, 2007)).

4 B. Requests for Production of Documents

5 A party may request documents “in the responding party’s possession, custody, or control.”  
6 Fed. R. Civ. P. 34(a)(1). Similarly, a party may serve a request “to permit entry onto designated land  
7 or other property possessed or controlled by the responding party, so that the requesting party may  
8 inspect, measure, survey, photograph, test, or sample the property . . .” Fed. R. Civ. P. 34(a)(2). A  
9 request is adequate if it describes items with “reasonable particularity;” specifies a reasonable time,  
10 place, and manner for the inspection; and specifies the form or forms in which electronic information  
11 can be produced. Fed. R. Civ. P. 34(b). Thus, a request is sufficiently clear if it “places the party  
12 upon ‘reasonable notice of what is called for and what is not.’” *Kidwiler v. Progressive Paloverde Ins.*  
13 *Co.*, 192 F.R.D. 193, 202 (N.D. W. Va. 2000) (quoting *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D.  
14 408, 412 (M.D.N.C. 1992)); *see also* Schwarzer, Tashima & Wagstaffe, *California Practice Guide:*  
15 *Federal Civil Procedure Before Trial* (Rev. #1 2011) Discovery, para. 11:1886 (“the apparent test is  
16 whether a respondent of average intelligence would know what items to produce”).

17 The responding party must respond in writing and is obliged to produce all specified relevant  
18 and non-privileged documents, tangible things, or electronically stored information in its “possession,  
19 custody, or control” on the date specified. Fed. R. Civ. P. 34(a). Actual possession, custody or control  
20 is not required. “A party may be ordered to produce a document in the possession of a non-party entity  
21 if that party has a legal right to obtain the document or has control over the entity who is in possession  
22 of the document.” *Soto v. City of Concord*, 162 F.R.D. 603, 620 (N.D. Cal. 1995). Such documents  
23 include documents under the control of the party’s attorney. *Meeks v. Parson*, 2009 U.S. Dist. LEXIS  
24 90283, 2009 WL 3303718 (E.D. Cal. September 18, 2009) (involving a subpoena to the CDCR); *Axler*  
25 *v. Scientific Ecology Group, Inc.*, 196 F.R.D. 210, 212 (D.Mass. 2000) (A “party must produce  
26 otherwise discoverable documents that are in his attorneys’ possession, custody or control”).

27 In the alternative, a party may state an objection to a request, including the reasons. Fed. R.  
28 Civ. P. 34(b)(2)(A)-(B). When a party resists discovery, he “has the burden to show that discovery

1 should not be allowed, and has the burden of clarifying, explaining, and supporting its objections.”  
2 *Oakes v. Halvorsen Marine Ltd.*, 189 F.R.D 281, 283 (C.D. Cal. 1998) (citing *Nestle Food Corp. v.*  
3 *Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 104 (D.N.J. 1990)).

### 4 **III. Discussion and Analysis**

5 Under the Federal Rules, “[a] party seeking discovery may move for an order compelling an  
6 answer, designation, production or inspection” when “a party fails to answer an interrogatory  
7 submitted under Rule 33; or . . . a party fails to respond that inspection will be permitted – or fails to  
8 permit inspection – as requested under Rule 34.” Fed. R. Civ. P. 37(a)(3)(B).

9 Here, Defendants assert Plaintiffs have failed to respond to the Interrogatories and Requests for  
10 Production of Documents propounded by Defendants on June 13, 2014. (Doc. 49 at 3) Defendants  
11 granted an extension of time for Plaintiffs to respond to discovery on August 6, 2014, but Plaintiffs  
12 reported they needed to review the medical records of Smith’s cellmate prior to responding. (*Id.*)  
13 Defendants requested responses to the discovery by sending an email on February 10, 2015. (*Id.*) In  
14 addition, Defendants sent a letter to Plaintiffs’ counsel on April 22, 2015 (*id.* at 116-17), and June 2,  
15 2015 (*id.* at 119) Further, Defendants assert they raised the issue of Plaintiffs’ failure to respond to the  
16 discovery requests during several telephonic conversations with counsel. (*Id.* at 4, 6; Bragg Decl. ¶4)  
17 On both June 18 and June 29, 2015, Mr. Bragg informed Plaintiffs’ counsel that he would be filing a  
18 motion to compel if the discovery responses were not provided. (*Id.* at 6, ¶ 5; 119) Despite this  
19 information, Plaintiffs failed to make their initial disclosures or respond to Defendants’ discovery  
20 requests. (*Id.* at 4)

21 Given Plaintiffs’ complete failure to respond to the discovery requests, Defendants’ motion to  
22 compel Plaintiffs to serve their initial disclosures and respond to Defendants’ interrogatories and  
23 requests for production of documents is **GRANTED**.

### 24 **IV. Conclusion and Order**

25 Plaintiffs are reminded that failure to comply with a Court order—including the Court’s  
26 Scheduling Order directing the parties to serve initial disclosures pursuant to Rule 26 of the Federal  
27 Rules of Civil Procedure—may result in the imposition of sanctions, including dismissal of an the  
28 action. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to

1 comply with a court order); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (same);

2 Accordingly, **IT IS HEREBY ORDERED:**

- 3 1. Defendants' motion to compel discovery (Doc. 49) is **GRANTED**;
- 4 2. Plaintiff SHALL serve his initial disclosures no later than **August 4, 2015**;
- 5 3. Plaintiff **SHALL** respond to Defendants' Special Interrogatories- Set One and produce  
6 documents responsive to Defendants' Request for Production of Documents- Set One  
7 no later than **August 7, 2015**; and

8 **Failure to comply with this order may result in sanctions pursuant to Local Rule 110.**

9  
10 IT IS SO ORDERED.

11 Dated: July 24, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE