

1 large part, the magistrate judge determined that the parties had resolved most of the dispute
2 themselves. (*Id.*) Plaintiff seeks reconsideration of that order, and moves to compel responses to
3 his First Request for Inspection, and to six of the ten requests made in his First Set of
4 Interrogatories, each made to the California Department of Corrections (“CDCR”). Plaintiff also
5 seeks the imposition of monetary sanctions if his motion is granted. The court addresses these
6 issues in turn.

7 Plaintiff’s First Request for Inspections requests the production of photographs of certain
8 locations at KVSP, including the locations of the pill-call line in Buildings A-2 and A-8, a cell
9 where he allegedly slipped, and a picture of a shower. (Doc. No. 69 at 27.) Defendants objected
10 that no responsive photographs of these areas exist, and that they are not required to create
11 documents in response to a discovery request.

12 The assigned magistrate judge denied the motion to compel with respect to this discovery
13 request by plaintiff. (Doc. No. 68 at 2.) The magistrate judge further advised defendants that if
14 any responsive documents or photographs were created, such as for use at trial, they must be
15 produced to plaintiff for inspection under the continuing duty to supplement or correct disclosures
16 pursuant to Federal Rule of Civil Procedure 26(e)(1). (*Id.*)

17 Defense counsel received an amended discovery request from plaintiff in a letter dated
18 May 28, 2018, asserting that rather than photographs, plaintiff would accept floorplans. (Doc.
19 No. 71 at 25.) In their opposition to the motion for reconsideration, defendants assert that they
20 will determine if any schematics exist, and if they do exist and are not confidential, will produce
21 them to plaintiff. (*Id.* at 6.) Defense counsel indicated they would advise plaintiff within ten
22 days, or by June 15, 2018, if floorplans of the areas in question are unavailable.¹ (*Id.*)

23 Based on the foregoing, it appears that the parties are still working at resolving this
24 discovery dispute, and that court intervention at this time is not appropriate or required. Informal

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26 ¹ Plaintiff’s reply in support of his motion for reconsideration repeats his assertion that floorplans
27 will suffice in lieu of photographs, thus suggesting that plaintiff had not yet received
28 communication from defense counsel regarding the availability of floorplans. Plaintiff’s reply,
however, is dated June 13, 2018—before the June 15, 2018 deadline by which defense counsel
indicated they would respond.

1 resolution of these discovery disputes between the parties is highly encouraged. Therefore,
2 plaintiff's motion to reconsider this issue will be denied without prejudice.

3 Regarding the disputed interrogatory requests, as noted above, those interrogatories were
4 first propounded on CDCR. CDCR is not a party to this action. (*See* Doc. Nos. 49, 66.) Earlier
5 in this case, defense counsel advised plaintiff that CDCR would not respond to the First Set of
6 Interrogatories. (Doc. No. 67 at 2.) Instead, as a compromise, defense counsel requested that
7 plaintiff propound the interrogatories to defendant Lopez, who would answer them, to the extent
8 not objectionable. (*Id.* at 3.) Plaintiff agreed and complied with that request. (*Id.* at 4.)

9 Due to the time spent working out that dispute, responses to these interrogatories were
10 only served on plaintiff on May 25, 2018, after the assigned magistrate judge issued the April 24,
11 2018 order that plaintiff seeks reconsideration of here. (*See* Doc. No. 71, Ex. A.) Therefore, the
12 assigned magistrate judge did not issue any ruling on the matter. The undersigned declines to
13 consider this discovery dispute in the first instance, and instead refers it to the assigned magistrate
14 judge for further consideration and only if appropriate and necessary.

15 Plaintiff also raises a request in his reply brief for a modification of the discovery and
16 scheduling order. The undersigned refers that matter to the assigned magistrate judge for
17 consideration as well. Because plaintiff's motion for reconsideration will be denied in part and
18 referred in part back to the assigned magistrate judge in light of ongoing discovery developments,
19 no monetary sanctions will be imposed.

20 For these reasons,

- 21 1. Plaintiff's motion for reconsideration, filed on May 7, 2018 (Doc. No. 69), is
22 denied in part, as explained above; and
- 23 2. The remaining outstanding discovery matters discussed above are referred to the
24 assigned magistrate judge for further proceedings consistent with this order.

25 IT IS SO ORDERED.

26 Dated: August 9, 2018

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28 UNITED STATES DISTRICT JUDGE